

ENROLLED ACT NO. 91, HOUSE OF REPRESENTATIVES

SIXTY-SECOND LEGISLATURE OF THE STATE OF WYOMING
2013 GENERAL SESSION

AN ACT relating to professions; providing for registration and regulation of appraisal management companies; providing for rules and regulations; providing definitions; providing penalties; providing for criminal history background checks; amending membership of board of real estate appraisers; providing an appropriation; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-39-201 through 33-39-225 are created to read:

ARTICLE 2
APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION
ACT

33-39-201. Short title.

This article shall be known as the "Wyoming Appraisal Management Company Registration and Regulation Act."

33-39-202. Definitions.

(a) As used in this article:

(i) "Appraisal" or "real estate appraisal" means as defined in W.S. 33-39-102(a)(i);

(ii) "Appraisal firm" means a corporation, limited liability company, sole proprietorship or other entity that performs appraisal services and is one hundred percent (100%) owned and controlled by a person or persons certified as an appraiser in this state;

(iii) "Appraisal management company" means, in connection with valuing properties collateralizing mortgage

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loans or mortgages incorporated in a securitization, an external third party authorized either by a creditor of a consumer credit transaction secured by real estate or by an underwriter of or other principal in the secondary mortgage markets that directly or indirectly performs appraisal management services;

(iv) "Appraisal management service" means to directly or indirectly perform any of the following acts:

(A) Administering an appraisal panel;

(B) Recruiting, retaining or selecting an appraiser to perform an appraisal for a third party client;

(C) Contracting with an appraiser to perform an appraisal assignment for a third party client;

(D) Providing a completed appraisal performed by an appraiser to one (1) or more third party clients; or

(E) Managing the process of having an appraisal performed, including:

(I) Receiving and assigning appraisal orders and reports;

(II) Tracking and determining the status of orders for appraisals;

(III) Conducting quality control of a completed appraisal before delivery of the appraisal to the person who ordered the appraisal;

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(IV) Collecting fees from creditors and underwriters for services provided; or

(V) Compensating appraisers for services performed.

(v) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value or compliance with the Uniform Standards of Professional Appraisal Practice. "Appraisal review" does not include:

(A) A general examination for grammatical, typographical or other similar errors; or

(B) A general examination for completeness including regulatory or client requirements as specified in the agreement process that do not communicate an opinion.

(vi) "Appraiser" means a person who holds a certification as an appraiser in this state in compliance with W.S. 33-39-101 through 33-39-130;

(vii) "Appraiser panel" means a group of independent appraisers selected by an appraisal management company to perform real estate appraisal services for the appraisal management company;

(viii) "Board" means the Wyoming certified real estate appraiser board;

(ix) "Client" means any person or entity that contracts with, or otherwise enters into an agreement with,

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an appraisal management company for the performance of appraisal management services and real estate appraisal services;

(x) "Contact person" means:

(A) The owner of more than a ten percent (10%) interest of, or an officer or director of a corporation, partnership or other business entity seeking to offer appraisal management services in this state;

(B) An individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and has the authority to enter into agreements with independent appraisers for the performance of real estate appraisal services; or

(C) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(xi) "In good standing" means maintaining an active certification in this state pursuant to the Certified Real Estate Appraiser Act, which certification is not subject to any disciplinary or probationary restrictions;

(xii) "Real estate appraisal services" means the practice of developing a supportable opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate;

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(xiii) "Uniform standards for professional appraisal practice" means as defined in W.S. 33-39-102(a) (xvi).

33-39-203. Registration required.

(a) No person or entity shall engage in the business or act in the capacity of an appraisal management company regarding property located in this state without an active Wyoming registration therefore. Unless exempted from this article, any single act described within the definition of "appraisal management services" is sufficient to constitute "engaging in the business" within the meaning of this article. Any person who engages in the business or acts in the capacity of an appraisal management company regarding property located in this state, with or without a Wyoming appraisal management company registration, has thereby submitted to the jurisdiction of the state of Wyoming and to the administrative jurisdiction of the board, and shall be subject to all penalties and remedies available under Wyoming law for any violation of this article.

(b) It is unlawful for a person to directly or indirectly engage or attempt to engage in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company regarding property located in this state without first obtaining a registration issued by the board under the provisions of this article, regardless of the entity's use of the term "appraisal management company", "mortgage technology company" or any other name.

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(c) The registration application required by subsection (a) of this section shall, at a minimum, include the following information:

(i) The name, business address and phone contact information of the person seeking registration;

(ii) If the person is not domiciled in this state, the name and contact information for the person's agent for service of process in this state;

(iii) The name, address and contact information for any individual or any corporation, partnership or other business entity that owns ten percent (10%) or more of the appraisal management company;

(iv) The name, address and contact information for the designated contact person;

(v) A certification that the appraisal management company complies with this article;

(vi) Any other information reasonably required by the board for the registration required by subsection (a) of this section; and

(vii) Evidence of a surety bond with one (1) or more corporate sureties authorized to do business in this state or an irrevocable letter of credit issued by an insured institution in the amount of twenty-five thousand dollars (\$25,000.00), subject to the following:

(A) The surety bond or letter of credit required under this paragraph shall be conditioned that the applicant pays:

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(I) All amounts owing to persons who perform real estate appraisal services for the appraisal management company; and

(II) All amounts adjudged against the appraisal management company by reason of negligent or improper real estate appraisal services or appraisal management services or breach of contract in performing real estate appraisal services or appraisal management services.

(B) The surety bond or letter of credit shall require the surety company to provide written notice to the board by registered or certified mail at least thirty (30) days before the surety company cancels or revokes the bond, and within thirty (30) days after the surety company pays for a loss under the bond;

(C) The surety bond or letter of credit required by this section shall be continuously on file with the board in the amount of twenty-five thousand dollars (\$25,000.00) and is for the exclusive purpose of payment of the obligations listed in subparagraph (A) of this section. Upon termination or cancellation of the bond or reduction of the bond or letter of credit to less than twenty-five thousand dollars (\$25,000.00), a registered appraisal management company shall:

(I) File a replacement bond or letter of credit within the time period established by the board by rule; or

(II) Surrender the company's registration to the board and cease operating as an appraisal management company.

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(D) Any person damaged by an appraisal management company's failure to pay an obligation listed in subparagraph (A) of this section has a right of action against the bond. An action against the bond shall be commenced in a court of competent jurisdiction within one (1) year after the appraisal management company fails to pay the amount owing or the amount adjudged against the appraisal management company;

(E) Termination or cancellation of the surety bond or letter of credit required by this section shall not terminate, cancel or limit the liability of the issuer of the surety bond or letter of credit for any and all claims against the surety bond or letter of credit to satisfy a final order of a court of competent jurisdiction in an action that was commenced prior to the cancellation of the surety bond or letter of credit.

33-39-204. Exemptions.

(a) This article shall not apply to:

(i) Any person that exclusively employs persons on an employer and employee basis for the performance of real estate appraisal services in the normal course of its business and the employer is responsible for ensuring that the real estate appraisal services being performed by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practices;

(ii) A department or unit within a financial institution that is regulated by a federal financial institution regulatory agency, or is regulated by an agency of this state, that receives a request for the performance of an appraisal from one (1) employee of the financial institution, and another employee of the same financial

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institution assigns the request for the appraisal to an appraiser who is an independent contractor to the institution;

(iii) An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency;

(iv) Any independent contractor appraiser who in the normal course of business enters into an agreement, whether written or otherwise, with another independent contractor appraiser for the performance of real estate appraisal services that the hiring or contracting appraiser cannot complete for any reason, including but not limited to competency, work load, schedule or geographic location;

(v) An appraisal firm as defined in this article;

(vi) Attorneys, certified public accountants, financial advisors, insurance agents, real estate brokers and agents or other professionals who request an appraisal of the client's property on behalf of the client.

33-39-205. Forms.

An applicant for registration as an appraisal management company in this state shall submit to the board an application on a form as prescribed by the board.

33-39-206. Expiration of registration.

A registration granted by the board pursuant to this article shall be valid for one (1) year from the date on which it is issued.

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33-39-207. Consent to service of process.

Each entity applying for registration as an appraisal management company in this state shall complete an irrevocable "uniform consent to service of process" as prescribed by the board.

33-39-208. Fees.

Pursuant to W.S. 33-1-201, the board shall establish fees for original registrations, renewals and certifications. The fees shall be used to pay the expense of maintaining and operating the office of the board and the enforcement of this article.

33-39-209. Owner requirements.

(a) No appraisal management company shall be eligible for registration in this state if the company has more than ten percent (10%) ownership by any person who has had a license or certificate to act as an appraiser refused, denied, cancelled, revoked or surrendered in lieu of revocation in this state or in any other state unless the certificate or license has been reinstated.

(b) Each person who owns more than ten percent (10%) of an appraisal management company performing appraisal management services regarding real estate located in this state shall:

(i) Have not been convicted of or pleaded guilty or nolo contendere to any felony involving theft, dishonesty or breach of trust;

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(ii) Submit fingerprints and other information necessary for a criminal history record background check as provided under W.S. 7-19-201; and

(iii) Certify to the board that the person has never had a certificate or license to act as an appraiser refused, denied, cancelled, revoked or surrendered in lieu of revocation in this state or in any other state unless the certificate or license has been reinstated.

33-39-210. Designated contact person.

Each appraisal management company applying to the board for registration in this state shall designate one (1) contact person who will be the main contact for all communication between the board and the appraisal management company.

33-39-211. Designated contact person; requirements.

(a) In order to serve as a contact person of an appraisal management company, a person shall:

(i) Certify to the board that the person has never had a certificate or a license issued by the board of this state, or the board of any other state, to act as an appraiser refused, denied, cancelled, revoked or surrendered in lieu of revocation unless such certificate or license was subsequently granted or reinstated;

(ii) Have not been convicted of or pleaded guilty or nolo contendere to any felony involving theft, dishonesty or breach of trust; and

(iii) Submit fingerprints and other information necessary for a criminal history record background check as provided under W.S. 7-19-201.

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33-39-212. Employee requirements.

(a) Any employee of the appraisal management company, or any person working on behalf of the appraisal management company, who has the responsibility of selecting independent appraisers for the performance of real estate appraisal services for the appraisal management company shall receive appropriate training concerning the application of the Uniform Standards of Professional Appraisal Practice.

(b) Any employee of or any person working on behalf of the appraisal management company that performs an appraisal review of an appraisal of a parcel of real property in this state shall hold a valid appraiser certificate in this state.

33-39-213. Limitations.

An appraisal management company registered in this state pursuant to this article shall not enter into any contract or agreement with an independent appraiser for the performance of real estate appraisal services unless the appraiser holds an appraiser certificate in good standing.

33-39-214. Pre-engagement certification.

Each appraisal management company seeking to be registered or renew a registration in this state shall certify to the board on an annual basis on a form prescribed by the board that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds an appraiser certificate in good standing.

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33-39-215. Adherence to standards.

(a) Each appraisal management company shall certify to the board on an annual basis that:

(i) It has a system in place to review the work of all independent appraisers who are performing real estate appraisal services for the appraisal management company on a periodic basis to verify that the real estate appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice; and

(ii) It requires all appraisers to have required competency to perform real estate appraisal services as provided in the applicable edition of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

33-39-216. Recordkeeping.

Each appraisal management company shall certify to the board on an annual basis that it maintains a detailed record of each service request it receives and the name of the independent appraiser who performs the real estate appraisal services for the appraisal management company for a period of five (5) years from the final appraisal submission to the client, or two (2) years after final disposition of a judicial proceeding related to the assignment, whichever period expires later.

33-39-217. Registration number.

(a) The board shall issue a unique registration number to each appraisal management company registered in this state pursuant to this article.

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(b) The board shall maintain and publish a list of the appraisal management companies registered in this state and the registration numbers assigned to each company.

(c) An appraisal management company registered in this state shall disclose the registration number provided to it by the board on the engagement documents presented to an appraiser.

33-39-218. Appraiser independence; prohibitions.

(a) It shall be unlawful for any employee, director, officer or agent of an appraisal management company registered in this state to influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or in any other manner, including but not limited to:

(i) Withholding or threatening to withhold timely payment for an appraisal, except in cases of breach of contract or substandard performance of services;

(ii) Withholding or threatening to withhold future business for an independent appraiser or demoting or terminating or threatening to demote or terminate an independent appraiser;

(iii) Expressly or impliedly promising future business, promotions or increased compensation for an independent appraiser;

(iv) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be

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reached, or on a preliminary estimate or opinion requested from an independent appraiser;

(v) Requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the independent appraiser's completion of an appraisal service;

(vi) Providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;

(vii) Providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

(b) It shall be unlawful for an appraisal management company to:

(i) Allow the removal of an independent appraiser from an appraiser panel, without prior written notice to the appraiser;

(ii) Obtain, use or pay for a second or subsequent appraisal or order an automated valuation model in connection with a mortgage financing transaction unless:

(A) The action is required by law;

(B) There is a reasonable basis to believe that the initial appraisal was flawed or tainted and the basis is clearly and appropriately noted in the loan file; or

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(C) The appraisal or automated valuation model is done pursuant to a bona fide prefunding or post-funding appraisal review or quality control process.

(iii) Require an appraiser to prepare an appraisal if the appraiser, in the judgment of the appraiser, does not have the necessary expertise for the specific geographic area and the appraiser has notified the company of this belief and declined the assignment;

(iv) Require an appraiser to prepare an appraisal under a schedule that the appraiser, in the judgment of the appraiser, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations if the appraiser has notified the company of this belief and declined the assignment;

(v) Use, obtain or request the digital signature or seal of the appraiser;

(vi) Alter, modify or otherwise change any aspect of an appraisal report without the agreement of the appraiser that the modification is appropriate unless required by applicable law;

(vii) Engage in any act or practice that does not comply with the Uniform Standards of Professional Appraisal Practice or any assignment conditions and certifications required by the client;

(viii) Engage in any other act or practice that impairs or attempts to impair the independence, objectivity or impartiality of an appraiser;

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(ix) Require an appraiser to enter into an agreement to not serve on the panel of another appraisal management company;

(x) Require an appraiser to indemnify or hold harmless the appraisal management company against liability other than those liabilities, damages, losses or claims arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful conduct.

(c) Nothing in subsection (a) or (b) of this section shall be construed as prohibiting the appraisal management company from requesting that an independent appraiser:

(i) Provide additional information about the basis for a valuation;

(ii) Correct objective factual errors in an appraisal report; or

(iii) Consider additional appropriate property information.

33-39-219. Compensation of appraisers.

An appraisal management company shall have a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth In Lending Act, 16 U.S.C. 1601 et seq., or subsequent similar federal enactment, including the requirement that fee appraisers be compensated at a customary and reasonable rate, consistent with presumptions of compliance under

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federal law, when the appraisal management company is providing services for a consumer credit transaction secured by real estate.

33-39-220. Statement of fees.

(a) In reporting to a client, an appraisal management company shall separately state the fees:

(i) Paid to an appraiser for the completion of an appraisal service; and

(ii) Charged by the appraisal management company for appraisal management services.

(b) An appraisal management company shall not:

(i) Prohibit an appraiser from recording the fee that the appraiser was paid by the appraisal management company for completing the appraisal service in the body of the report that is submitted by the appraiser to the appraisal management company; or

(ii) Include any fees for appraisal management services performed by the appraisal management company in the amount the company reports as charges for the actual completion of an appraisal service by an appraiser.

33-39-221. Mandatory reporting.

An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, in a manner that materially affects the value conclusion contained in an

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appraisal report, shall file a complaint with the board pursuant to W.S. 33-39-123.

33-39-222. Requirement for payment.

An appraisal management company shall, except in cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within sixty (60) days of the date on which the independent appraiser transmits or otherwise provides the appraisal or valuation study to the appraisal management company or its assignee unless a mutually agreed upon alternate arrangement has been previously established.

33-39-223. Notification of dismissal.

Except within the first ninety (90) days after an independent appraiser is added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without notifying the appraiser in writing of the reasons for the action.

33-39-224. Disciplinary proceedings.

(a) The board shall upon a written sworn complaint or may upon its own motion investigate the actions of any appraisal management company and may impose an administrative fine not to exceed two thousand five hundred dollars (\$2,500.00) for each separate violation, censure the company, place the company on probation and set the terms of the probation, suspend or revoke any registration issued under this article for any of the following:

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(i) Procuring a registration pursuant to this article by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a registration or through any form of fraud or misrepresentation;

(ii) Being convicted of a felony, but this discipline shall be limited to probation, suspension or revocation of a registration;

(iii) Making any substantial misrepresentation, false promises or false or fraudulent representation;

(iv) Violating any provision of this article or rule or regulation of the board;

(v) Being negligent or incompetent, as defined in the Uniform Standards of Professional Appraisal Practice, in reviewing an appraisal, in preparing an appraisal report or in communicating an appraisal report.

(b) Upon receipt from the department of family services of a certified copy of an order from a court to withhold, suspend or otherwise restrict a registration issued by the board, the board shall notify the party named in the court order of the withholding, suspension or restriction of the registration in accordance with the terms of the court order. No appeal under the Wyoming Administrative Procedure Act shall be allowed for a registration withheld, suspended or restricted under this subsection.

(c) The board may assess to a registered appraisal management company, an applicant for registration as an

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appraisal management company, or an unregistered appraisal management company performing appraisal management services in this state all or part of the actual expenses of a contested case proceeding resulting in the discipline or censure of the registrant, suspension or revocation of the registrant's certificate of registration, the denial of a certificate of registration to the applicant or the discipline or censure of an unregistered appraisal management company performing appraisal management services in this state.

33-39-225. Hearing.

The hearing on any charge of violation of W.S. 33-39-224 shall be at a time and place prescribed by the board and in accordance with the provisions of the Wyoming Administrative Procedure Act.

Section 2. W.S. 7-19-106(a)(xviii), 7-19-201(a)(xi), 33-39-104(a) and 33-39-105(a) by creating a new paragraph (x) are amended to read:

7-19-106. Access to, and dissemination of, information.

(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

(xviii) The certified real estate appraiser board for purposes of permitting or registration under title 33, chapter 39;

7-19-201. State or national criminal history record information.

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(a) The following persons shall be required to submit to fingerprinting in order to obtain state and national criminal history record information:

(xi) Persons applying for a permit under W.S. 33-39-109 or a registration under W.S. 33-39-209 or 33-39-211;

33-39-104. Board of certified real estate appraisers.

(a) There is hereby established as an adjunct to the Wyoming real estate commission the certified real estate appraiser board which shall consist of ~~five (5)~~ six (6) members, one (1) of whom shall be a public member, one (1) of whom shall be a member of the banking industry, one (1) of whom shall be an owner or representative of an appraisal management company and three (3) of whom shall be certified real estate appraisers. The director of the real estate commission will serve as an ex officio member.

33-39-105. Powers of the board; rulemaking authority.

(a) The board shall:

(x) Implement, administer and enforce, and promulgate rules and regulations that are necessary to implement, administer and enforce the provisions of the Wyoming Appraisal Management Company Registration and Regulation Act, W.S. 33-39-201 through 33-39-224.

Section 3. There is appropriated sixty thousand dollars (\$60,000.00) from the real estate appraiser board administration fund to the board of real estate appraisers. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2014. This appropriation shall only be expended for the purpose

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of this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2014.

Section 4. Notwithstanding any other provision of this act, an appraisal management company conducting business in this state on or before July 1, 2013 may continue to conduct business in this state without registering pursuant to W.S. 33-39-203 created by this act until sixty (60) days after the date rules implementing the registration process created by the Wyoming certified real estate appraiser board pursuant to W.S. 33-39-203 take effect.

Section 5. This act is effective July 1, 2013.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk

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