

## **BILL ANALYSIS**

C.S.H.B. 1146  
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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Appraisal management companies are businesses that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. Currently, oversight or regulation of such companies in Texas is inadequate. Certain concerned parties believe that the Texas Appraiser Licensing and Certification Board is the most appropriate entity to provide such oversight. C.S.H.B. 1146 provides the board with the statutory authority to develop and implement registration requirements for appraisal management companies operating in Texas and to investigate and adjudicate complaints against such companies.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Appraiser Licensing and Certification Board in SECTIONS 3 and 4 of this bill.

### **ANALYSIS**

C.S.H.B. 1146 amends the Occupations Code to prohibit a person, effective March 1, 2012, from acting or attempting to act as an appraisal management company, providing or attempting to provide appraisal management services, or advertising or representing or attempting to advertise or represent the person as an appraisal management company unless the person is registered in accordance with the bill's provisions relating to the regulation of appraisal management companies. The bill provides a short title, the Texas Appraisal Management Company Registration and Regulation Act, for purposes of citing these provisions and specifies that the purpose of the act is to establish and enforce standards related to appraisal management services for appraisal reports on residential properties located in Texas with fewer than five units.

C.S.H.B. 1146 makes provisions of the act inapplicable to a person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals; a person acting as an appraisal firm as defined by rule of the Texas Appraiser Licensing and Certification Board that at all times during a calendar year employs on an exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals; a department or unit within certain financial institutions under specific circumstances; a person who enters into an agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal under certain circumstances; an appraisal management company that has an appraisal panel of not more than 15 appraisers at all times during a calendar year; or an appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under provisions of the bill relating to prohibited practices or under the federal Truth in Lending Act through direct regulation by a federal financial institution regulatory agency.

C.S.H.B. 1146 prohibits an appraisal management company from requiring an employee of the company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of the act.

C.S.H.B. 1146 authorizes the board to adopt rules necessary to administer the act and requires the board by rule to establish application, renewal, and other fees for an appraisal management company to register under provisions of the act in amounts so that the sum of the fees paid by all companies seeking registration under those provisions are sufficient for administering the act. The bill provides for the annual collection by the board of a national registry fee from each registered appraisal management company and for the deposit and disbursement of those fees. The bill establishes eligibility requirements and application requirements for original and renewal registrations, specifies a date of expiration for a registration that is not renewed, and requires the board to adopt rules regarding the renewal of a registration under the act.

C.S.H.B. 1146 requires an appraisal management company applying for registration to designate one controlling person as the primary contact for all communication between the board and the company and sets forth eligibility requirements for that primary contact. The bill authorizes the board to deny a registration under certain circumstances, requires the board to immediately provide written notice to an applicant whose registration is denied, and provides for an appeal of a denial. The bill requires the board to issue a unique registration number to each company registered under the bill's provisions and publish annually a list of the registered companies and each company's registration number.

C.S.H.B. 1146 prohibits a registered appraisal management company from knowingly employing a person in a position involving certain responsibilities relating to appraisals who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; entering into any independent contract arrangement with such a person; or entering into a business relationship with any entity that employs or has entered into a business relationship with such a person. The bill establishes that an appraisal management company is not in violation of such prohibitions if the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has since had a license or certificate granted or reinstated and the person maintains the license or certificate in good standing.

C.S.H.B. 1146 requires a registered appraisal management company to verify that an individual to whom the company is making an assignment for the completion of an appraisal is licensed or certified under the Texas Appraiser Licensing and Certification Act and has not had such a license or certificate denied, revoked, or surrendered since the last time the company assigned an appraisal to that appraiser. The bill requires a person who performs an appraisal review for an appraisal management company to be licensed or certified under the Texas Appraiser Licensing and Certification Act with at least the same certification for the property type as the appraiser who completed the report being reviewed. The bill sets forth requirements for an appraisal management company to verify the competency of an appraiser before making an assignment to that appraiser and to perform a periodic appraisal review of the work of appraisers performing appraisal services for the company to ensure that such services comply with specified standards of professional appraisal practice in effect at the time of the appraisal or other standards prescribed by board rule. The bill establishes recordkeeping requirements for a registered company or applicant for registration and specifies that, under such requirements, a written record of all substantive communications between a registered company and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment is required to be maintained. The bill authorizes the board to audit the records of a registered appraisal management company to ensure compliance with the act, board rules, and the Uniform Standards of Professional Appraisal Practice and to maintain certain records.

C.S.H.B. 1146 requires an appraisal management company to meet certain requirements relating to the timeliness and the amount of appraiser compensation, and authorizes an appraiser who is aggrieved relating to such compensation to file a complaint with the board under certain conditions. The bill sets out requirements and prohibitions relating to an appraisal management company's statement of the fees it pays to an appraiser for the completion of an appraisal and the fees it charges for appraisal management services and requires the company to disclose its

registration number on all print and electronic advertising. The bill requires 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 in a manner that materially affects a value conclusion, violating applicable laws, or otherwise engaging in unethical or unprofessional conduct to refer the matter to the board. The bill sets out terms and procedures for removing an appraiser from the appraisal panel of an appraisal management company, authorizes an appraiser removed for an alleged violation to file a complaint with the board for a review of the company's decision if the matter remains unresolved after the appraiser completed the company's dispute resolution process under the bill's provisions, and establishes procedures for the board's consideration and resolution of such a complaint.

C.S.H.B. 1146 requires an appraisal management company to make an internal independent or external third-party dispute resolution process available on written request of an appraiser who is dismissed from the company's appraisal panel for certain reasons, is aggrieved relating to compensation, or alleges a violation of one or more prohibited practices of an appraisal management company. The bill prohibits an appraisal management company from charging an appraiser for using the dispute resolution process except under certain conditions and authorizes the board by rule to establish requirements for a company's dispute resolution process.

C.S.H.B. 1146 establishes the disciplinary powers of the board if the board determines that an appraisal management company has committed certain actions and authorizes the board to probate the suspension or revocation of a registration under reasonable terms determined by the board. The bill authorizes the board to impose an administrative penalty against a person who violates the provisions of the Texas Appraisal Management Company Registration and Regulation Act or a rule adopted under those provisions, sets a cap of \$10,000 on the penalty for each violation, and establishes bases for determining the amount of the penalty. The bill prohibits an appraisal management company or an employee, director, officer, or agent of a company from performing certain acts or engaging in certain business practices relating to the appraisal of property, and authorizes the board to institute a disciplinary action or impose an administrative penalty against an appraiser who, while acting as an employee, officer, or agent of a company, engages in such prohibited conduct. The bill authorizes any person, including a member of the board, to file a written complaint with the board; authorizes the board, on its own motion, to file a complaint against a registered appraisal management company; and establishes procedures for reviewing and investigating such complaints.

C.S.H.B. 1146 establishes the general subpoena authority of the board; sets forth requirements relating to the report submitted to the board by an investigator at the conclusion of the investigation of a complaint; and authorizes the board to take certain actions based on that report, including proceeding as the complainant with a contested case hearing under the Administrative Procedure Act. The bill authorizes the board by rule to delegate any of its authority relating to taking such actions based on that report to the commissioner of the Texas Appraiser Licensing and Certification Board. The bill provides requirements relating to the written notification of an alleged violation and proposed penalty and provisions relating to paying the penalty or requesting a hearing on the board's determination. The bill establishes procedures relating to the temporary suspension of a person's registration by a disciplinary panel appointed by the presiding officer of the board and provides for the automatic expiration of such a suspension under certain conditions. The bill sets out terms relating to a notice of a contested case hearing involving an appraisal management company and provides that such a hearing is subject to the Administrative Procedure Act. The bill requires the administrative law judge of a contested case hearing, on the conclusion of the hearing, to make findings of fact and conclusions of law and to issue to the board a proposal for decision that the board take one or more specified actions. The bill sets out options for the board's decision and requirements for notice of the board's order to the person who requested the hearing. The bill establishes procedures for an application for a rehearing of a contested case after a final decision in the case has been issued, restrictions on the qualifications for a rehearing, and other terms and conditions for a rehearing. The bill makes its provisions relating to disciplinary actions and procedures and administrative penalties effective

March 1, 2012.

C.S.H.B. 1146 authorizes the board to institute an action in its own name against any person to enjoin a violation of the act or of a rule adopted by the board under the act and sets out requirements relating to such an injunction. The bill provides that a person who receives consideration for engaging in an activity for which registration is required under the act and who is not registered is liable for a civil penalty and sets out provisions relating to the amount and recovery of such a penalty. The bill makes it a Class A misdemeanor offense to engage in an activity for which registration is required under the act without being registered. The bill makes its provisions relating to an injunction and civil and criminal penalties effective March 1, 2012.

C.S.H.B. 1146 defines "appraisal management company," "appraisal management service," "appraisal panel," "appraisal review," "appraiser," "controlling person," "financial institution," and "Uniform Standards of Professional Appraisal Practice." The bill makes definitions in provisions of law relating to the regulation of real estate appraisers applicable to the act.

C.S.H.B. 1146, in provisions of law relating to the composition of the nine-member Texas Appraiser Licensing and Certification Board, decreases from four to three the number of members who are public members who qualify for board appointment based on their recognized business ability and adds one member who is a controlling person of a registered appraisal management company. The bill establishes that the terms of one or two public members, as appropriate, rather than two public members, expire on January 31 of each year. The bill makes its provisions relating to board members effective January 31, 2012.

C.S.H.B. 1146 requires the board, not later than January 1, 2012, to adopt all rules, fees, and forms as required by the bill.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1146 contains a provision not included in the original decreasing from four to three the number of public members of the Texas Appraiser Licensing and Certification Board, and adding one public member who is a controlling person of a registered appraisal management company. The substitute contains provisions not included in the original establishing that the terms of one or two public members, as appropriate, expire on January 31 of each year, and establishing that these provisions relating to board members and their terms are effective January 31, 2012.

C.S.H.B. 1146 contains a provision not included in the original establishing the purpose of the Texas Appraisal Management Company Registration and Regulation Act.

C.S.H.B. 1146 differs from the original by establishing that definitions in provisions of law relating to the regulation of real estate appraisers apply to the act, whereas the original includes in the act the definitions from those provisions of law for "appraisal," "Appraisal Foundation," "Appraisal Standards Board," "appraisal subcommittee," "board," and "federal financial institution regulatory agency." The substitute contains definitions for "appraisal review" and "financial institution" not included in the original.

C.S.H.B. 1146 contains a provision not included in the original making the provisions of the act inapplicable to a person acting as an appraisal firm that at all times during a calendar year employs on an exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals. The substitute, in the provision making the act inapplicable to a department or unit within a financial institution that is subject to direct regulation by an agency

of this state or the United States government, differs from the original by specifying that the department or unit is subject to appraisal independence standards at least as stringent as those under provisions of the bill relating to prohibited practices or under the federal Truth in Lending Act through such direct regulation.

C.S.H.B. 1146 differs from the original, in the provision making the act inapplicable to an appraisal management company with an appraisal panel of not more than 15 appraisers, by specifying that the company meets that limitation requirement at all times during a calendar year. The substitute differs from the original, in the provision making the act inapplicable to certain appraisal management companies that are subsidiaries owned and controlled by a financial institution, by specifying that such a financial institution is subject to appraisal independence standards at least as stringent as those under provisions of the act relating to prohibited practices or under the federal Truth in Lending Act and that the regulation of that financial institution by a federal financial institution regulatory agency is direct regulation, whereas the original omits those specifications.

C.S.H.B. 1146 differs from the original by requiring the board by rule to establish application, renewal, and other fees in amounts so that the sum of the fees paid by all appraisal management companies seeking registration under the act are sufficient for the administration of the act, whereas the original requires the board by rule to establish only an application fee in an amount that meets that requirement. The substitute omits a provision included in the original setting the cap for the application fee at \$2,500. The substitute differs from the original, in the provision requiring the annual collection of a national registry fee from each registered appraisal management company for each person who is on the appraisal panel of the company, by specifying that each such person is licensed or certified as an appraiser in Texas, whereas the original omits that specification.

C.S.H.B. 1146 contains provisions not included in the original making provisions prohibiting a person not registered in accordance with the act from acting as an appraisal management company, providing appraisal management services, or advertising or representing the person as an appraisal management company applicable to a person attempting to perform such activities.

C.S.H.B. 1146 contains a provision not included in the original requiring an application for or renewal of registration as an appraisal management company to contain the name and contact information of at least one appraiser designated by the company to respond to and communicate with appraisers on the company's appraisal panel regarding appraisal assignments. The substitute differs from the original by requiring such an application to contain a certification that the entity has a system in place to ensure compliance with provisions of the act relating to the practice by an appraisal management company, whereas the original required the certification to ensure compliance only with provisions relating to verification of licensure or certification, professional standards, and business records.

C.S.H.B. 1146 contains provisions not included in the original requiring the controlling person designated as the primary contact for all communication between the board and the company to be certified as an appraiser in at least one state at all times during the designation, to have completed the 15-hour national Uniform Standards of Professional Appraisal Practice course, and to complete the seven-hour national Uniform Standards of Professional Appraisal Practice course every two years, in addition to meeting other requirements.

C.S.H.B. 1146 differs from the original by providing as grounds for the board to deny a registration the board's determination that there is probable cause to believe that any person who owns more than 10 percent of the appraisal management company has violated a provision of the bill to which a registrant would be subject within the 12 months preceding the date of the application, whereas the original sets the threshold for such ownership at five percent. The substitute differs from the original by establishing that a registration expires on the second anniversary of the date the registration is issued unless renewed, rather than on the first

anniversary of that date as in the original.

C.S.H.B. 1146 contains a provision not included in the original specifying that, under certain conditions, an appraisal management company is not in violation of the prohibition against employing certain persons who have had a license or certification denied, revoked, or surrendered. The substitute, in the bill provision requiring a person who performs an appraisal review for an appraisal management company to be licensed or certified under the bill's provisions, differs from the original by requiring such certification to be at least the same certification for the property type as the appraiser who completed the report being reviewed.

C.S.H.B. 1146 omits a provision included in the original requiring a registered appraisal management company to ensure the compliance of appraisals with certain federal appraisal independence standards. The substitute differs from the original by requiring the periodic appraisal review of the work of appraisers to be performed to ensure that the services performed comply with the edition of the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal or other standards prescribed by board rule, whereas the original requires the review to ensure services comply with the most current edition of the uniform standards or other standards prescribed by board rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

C.S.H.B. 1146 contains provisions not included in the original establishing a minimum time requirement of five years for an appraisal management company that is registered or has applied for registration to retain certain business records, authorizing the board to audit the records of a registered appraisal management company, and requiring a written record of all substantive communications between a registered company and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment to be maintained.

C.S.H.B. 1146 contains a provision not included in the original authorizing an appraiser who is aggrieved relating to the appraiser's compensation to file a complaint with the board under certain conditions. The substitute differs from the original by specifying that an appraisal management company's separate statement of fees is provided in reports to the board, to a client, or for inclusion in a settlement statement, whereas the original omits the specification of where the statement of fees is provided. The substitute differs from the original by prohibiting an appraisal management company from including any fees for company services performed in the amount the company reports as charges for the actual completion of an appraisal by an appraiser, rather than in the amount the company charges for such completion, as in the original. The substitute differs from the original, in the provision requiring 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 to refer the matter to the board, by specifying that the failure to comply to those standards is in a manner that materially affects a value conclusion, whereas the original omits the specification of the manner of the failure to comply.

C.S.H.B. 1146 differs from the original, in the provision relating to the removal of an appraiser from an appraisal panel or the refusal to assign requests for appraisal services to an appraiser under certain conditions, by requiring the company to provide an opportunity for the appraiser to respond in writing to the notification of the reason for removal from the company's panel, whereas the original does not specify that the response be in writing. The substitute differs from the original, in the provision authorizing an appraiser who is removed from the appraisal panel for certain reasons to file a complaint with the board for a review of the decision of the company, by establishing as a condition for that authorization that the matter remains unresolved after the appraiser completes the company's dispute resolution process.

C.S.H.B. 1146 contains a provision not included in the original authorizing the board to enter an order requiring the appraiser to reimburse the appraisal management company for the actual cost of a third-party dispute resolution process if after opportunity for hearing and review the board determines that the appraiser committed the alleged violation. The substitute contains provisions

not included in the original requiring an appraisal management company to make an internal independent or external third-party dispute resolution process available on written request of certain appraisers, prohibiting an appraisal management company from charging an appraiser for using the dispute resolution process except under certain conditions, and authorizing the board by rule to establish requirements for a company's dispute resolution process.

C.S.H.B. 1146 differs from the original by authorizing the board to reprimand an appraisal management company, whereas the original authorizes the board to censure such a company. The substitute contains a provision not included in the original authorizing the board to probate the suspension or revocation of a registration. The substitute differs from the original, in the provision authorizing the board to impose an administrative penalty, by specifying that such authorization is in addition to any other disciplinary action under the act. The substitute differs from the original by setting a cap for the administrative penalty at \$10,000 for each violation, whereas the original sets the cap at \$25,000 for each violation.

C.S.H.B. 1146 differs from the original, in provisions establishing prohibited practices of an appraisal management company or an employee, director, officer, or agent of a company, by prohibiting the alteration or removal of the appraiser's signature or seal, whereas the original prohibits the permanent removal of those items. The substitute differs from the original, in the prohibited practice of adding information to or removing information from an appraisal report, by also prohibiting the changing of information contained in a report and including in the applicable information any disclosure submitted by an appraiser in or with the report, whereas the original prohibits adding information to or removing information from the report with an intent to change the valuation conclusion.

C.S.H.B. 1146 substitute contains an exception not included in the original to the prohibited practice of obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction that the subsequent appraisal or automated valuation model is otherwise required or permitted by federal or state law. The substitute differs from the original by prohibiting the prohibition or inhibition of communication between the appraiser, the lender, a real estate license holder, and an appraiser designated by the company to respond to appraisers regarding appraisal assignments, whereas the original does not include the appraiser designated by the company in that prohibition.

C.S.H.B. 1146 omits a prohibited practice included in the original prohibiting a request, for the purpose of facilitating a mortgage loan transaction, of a broker price opinion or any other real property price or value estimation that does not qualify as an appraisal. The substitute contains a provision not included in the original prohibiting the refusal to accept an appraisal report prepared by more than one appraiser if an appraiser provides substantial assistance to another appraiser in the preparation of the report, unless the appraisal assignment names an individual appraiser or the statement of work requires an unassisted report.

C.S.H.B. 1146 differs from the original, in the prohibition against requiring an appraiser to modify any aspect of an appraisal report, by specifying that the modification is without the appraiser's agreement that the modification is appropriate. The substitute contains as prohibited practices not included in the original requiring an appraiser to enter into an agreement to not serve on the panel of another appraisal management company, to indemnify or hold harmless the appraisal management company against liability except liability for errors and omissions by the appraiser, and to pay an application or renewal fee imposed on the appraisal management company.

C.S.H.B. 1146 contains provisions not included in the original establishing that the prohibited practices set out in the act may not be construed as prohibiting an appraiser from reimbursing an appraisal management company for the actual cost of discretionary services provided to the appraiser or prohibiting an appraisal management company from requiring an appraiser to provide advance notice of and an opportunity for the appraisal management company to

participate in any communications between the appraiser and a lender. The substitute differs from the original by specifying, in the provision establishing that those prohibited practices may not be construed as prohibiting an appraisal management company from asking an appraiser to take certain actions in regard to an appraisal, that the request is made after a report is delivered, whereas the original does not include that specification. The substitute contains a provision not included in the original authorizing the board to institute a disciplinary action or impose an administrative penalty against certain appraisers who engage in conduct prohibited for an appraisal management company or an employee, director, officer, or agent of a company.

C.S.H.B. 1146 differs from the original by authorizing the board, based on the report submitted on the conclusion of the investigation of a complaint, to enter into an agreed order with the respondent if the board determines that there is probable cause to believe that a violation occurred as an alternative to proceeding as the complainant with a contested case hearing under such circumstances, whereas the original does not include an agreed order as an alternative to a contested case hearing. The substitute contains a provision not in the original authorizing the board by rule to delegate certain authority to the commissioner of the board.

C.S.H.B. 1146 differs from the original by requiring the notice of violation to the person alleged to have committed a violation to include a summary of the alleged violation, rather than a brief summary of the alleged violation as in the original, and to state the recommended sanction, including the amount of the proposed administrative penalty, rather than stating the amount of the proposed administrative penalty as in the original. The substitute differs from the original by establishing that the deadline by which a person who receives a notice of violation and penalty is authorized to take certain action is not later than the 20th day after the date the person receives the notice, rather than not later than the 30th day after that date as in the original.

C.S.H.B. 1146 differs from the original, in the provision requiring the board by order to approve the board's determination and impose the proposed penalty if the person accepts the board's determination, by also making that requirement applicable if the person fails to respond to the notice in a timely manner. The substitute contains provisions not included in the original establishing procedures and requirements relating to the temporary suspension of a person's registration.

C.S.H.B. 1146 differs from the original, in the requirement that the administrative law judge issue to the board a proposal for decision that the board take one or more actions on the conclusion of a contested case hearing, by omitting from the action of dismissal of the charges the inclusion of an order declaring that the case file is confidential, and by including as such an action the imposing of an administrative penalty.

C.S.H.B. 1146 omits provisions included in the original setting out procedures for a hearing in a contested case. The substitute differs from the original by authorizing the board by order to determine a violation has occurred and to impose an administrative penalty or other sanction based on certain facts, conclusions, and the recommendations of the hearings examiner, whereas the original authorizes the board by order to determine a violation has occurred and to impose only an administrative penalty based on those same conditions. The substitute differs from the original by requiring the notice of the board's determination by order to include either the amount of any penalty imposed or a description of any sanction imposed, rather than including only the amount of any penalty imposed, as in the original.

C.S.H.B. 1146 contains provisions not included in the original establishing procedures for an application for a rehearing of a contested case after a final decision in the case has been issued and provisions relating to the decision on a rehearing. The substitute contains provisions not included in the original relating to an injunction by the board against a person who violates the provisions of the act or a rule under those provisions and establishing civil and criminal penalties for engaging in certain activities without the registration required under those provisions.



C.S.H.B. 1146 omits provisions included in the original establishing the options of a person who requests a contested case hearing following the board's decision in the hearing; setting out provisions relating to the collection of any penalty and the handling of any expenses and costs assessed against the person; authorizing the board, if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection and authorizing the attorney general, if the attorney general brings an action against the person to enforce the administrative penalty and the person is found liable for the penalty, to recover reasonable expenses and costs on behalf of the attorney general and the board; and specifying that a proceeding under the provisions of the act is subject to the Administrative Procedure Act.

C.S.H.B. 1146 differs from the original by making the provisions of the act relating to disciplinary actions and procedures, administrative penalties, an injunction, and civil and criminal penalties effective March 1, 2012, whereas the original makes only the provisions relating to administrative penalties effective on that date. The substitute differs from the original by making conforming changes and differs from the original in nonsubstantive ways.