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To: Senate Financial Institutions and Insurance Committee

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Subject: SB 242 - Moving Mortgage Regulation from the Kansas Uniform Consumer Credit Code (UCCC) to the Kansas Mortgage Business Act (KMBA) and Modernizing and Simplifying the KMBA for Kansas Consumers and Mortgage Companies

Chairperson Longbine and members of the Senate Financial Institutions and Insurance Committee, thank you for the opportunity to provide testimony on behalf of Zillow in support of SB 242, which would move mortgage regulation from the Kansas Uniform Consumer Credit Code (UCCC) to the Kansas Mortgage Business Act (KMBA) and modernize and simplify the KMBA for Kansas consumers and mortgage companies.

Zillow is reimagining real estate to make it easier for consumers to buy, sell, rent or finance their next home with transparency and nearly seamless end-to-end service. Zillow's goal is to create products to help consumers overcome uncertainty, high costs and delays in their real estate transaction experience.

As part of our efforts to reimagine real estate and make it easier for consumers to finance their next home, Zillow is proud to operate Zillow Home Loans (ZHL), which is located in Overland Park, Kansas and employs over 125 licensed mortgage loan originators (LMOs) in the state of Kansas. In total, Zillow is proud to have over 190 employees based out of our Overland Park office.

As a starting point, we would like to commend the Office of the State Bank Commissioner (OSBC) for taking the initiative to modernize and simplify how the mortgage business is regulated in the state of Kansas. Technology and consumer expectations have evolved over the last few years and this evolution has only been accelerated during the current COVID-19 pandemic. Within the provisions of SB 242, the OSBC has taken some major steps to modernize and simplify the regulation of the mortgage business to respond to these changes.

Most importantly, SB 242 would result in the following positive changes for Kansas consumers and mortgage companies: (1) reduce the paperwork burden on consumers and mortgage companies by removing certain disclosure requirements that are not relevant or helpful to the mortgage business; (2) make it easier for consumers to understand their rights by simplifying the wording and organization of the law; (3) make the appraisal process more convenient by allowing more alternative appraisal methods; and (4) make the process of receiving certain documents more convenient for both consumers and mortgage companies by allowing electronic delivery.

Having said that, Zillow does believe that there are several changes that could be made to the provisions of SB 242 to provide even more clarity and simplification to Kansas consumers and mortgage companies. Throughout this entire process, we would like to express our gratitude to the OSBC's staff for being willing to answer our questions on the proposed legislation and to respond to our comments and questions.

#1 - Remove the Private Right of Action Found in New Section Six on Pages Three and Four of the Bill

First, Zillow would recommend that the committee consider removing the private right of action found in New Section 6 on pages two through four of the legislation. Even if this section is removed from the bill, the OSBC will still continue to have the full regulatory authority to establish regulations relating to the act, investigate potential violations of the act and impose discipline on licensed mortgage companies under the act.

Generally, private rights of action undermine appropriate regulatory agency enforcement and allow plaintiffs' lawyers to have a disproportionate role in setting regulatory policy, rather than allowing expert state regulators to shape and balance policies and protections. In contrast, statutes and regulations enforced exclusively by agencies are appropriately guided by experts in the field who can be expected to understand the complexities of encouraging compliance and innovation while preventing and remediating harms.

Private rights of action can also be abused by plaintiffs' attorneys, leading to grossly expensive litigation and staggeringly high legal settlements that disproportionately benefit plaintiffs' lawyers rather than individuals whose interests may have been infringed. Private rights of action also hinder innovation and consumer choice by threatening companies with frivolous, excessive and expensive litigation, particularly if those companies are at the forefront of transformative new technologies.

#2 - Recommend Clarification on Allowing Licensed Mortgage Loan Originators (MLOs) to Work Remotely

Second, Zillow believes that passing this legislation would provide the Kansas Legislature with a great opportunity to clarify that mortgage loan origination activities are not required to be conducted exclusively from a licensed branch office. Under K.S.A. 2020 Supp. 9-2203(a) in lines six through ten in Section 15, "mortgage business shall only be conducted in this state at or from a mortgage company licensed by the commissioner as required by this act. Additionally, K.S.A. 2020 Supp. 9-2203(c) in lines 16 through 18 in Section 15, "loan origination shall only be conducted at or from a licensed mortgage company."

Throughout the duration of the COVID-19 pandemic, the OSBC has issued regulatory guidance (which has been extended through at least June 30, 2021) allowing licensed mortgage loan originators (MLOs) to conduct mortgage loan origination activities from remote work locations. This temporary guidance has allowed licensees to take the necessary precautions to avoid the risk of exposure or transmission of COVID-19 and has allowed mortgage companies to continue to serve consumers during these difficult times.

Just like with many other accommodations made during the COVID-19 pandemic, our experience with the regulatory guidance issued by the OSBC has been that licensed MLOs are increasingly capable of providing effective, efficient and regulatory-compliant service to Kansas consumers while working from remote locations. Going forward, we would recommend that the Kansas Legislature and OSBC take this opportunity to make this guidance permanent by clarifying in the statute that licensed MLOs are allowed to conduct mortgage loan origination activities from remote work locations.

Conclusion

In closing, we would respectfully request that the members of the Senate Financial Institutions and Insurance Committee help modernize and simplify the Kansas Mortgage Business Act (KMBA) for Kansas consumers and mortgage companies by supporting SB 242. Thank you for the opportunity to provide comments on this very important issue.