



KANSAS BANKERS ASSOCIATION

Date: February 17, 2021

To: Senate Committee on Financial Institutions and Insurance
Senator Jeff Longbine, Chairman

From: Kelly VanZwoll—Staff Attorney & Government Relations
Kansas Bankers Association

Re: Opposition for SB 242—Consolidating mortgage lending provisions

Dear Chairman Longbine and Members of the Committee:

I am Kelly VanZwoll appearing on behalf of the Kansas Bankers Association (KBA), organized in 1887 and whose membership includes 98% of the 220 banks and savings & loans headquartered in Kansas. Our membership also includes 19 out-of-state commercial banks operating in Kansas. The Kansas banking industry employs more than 22,000 Kansans that provide financial services in every county across the state. Our organizational mission statement is:

"Together, we support our member banks and bankers with leadership, advocacy, and education to benefit the communities and customers they serve."

Thank you for the opportunity to testify today in opposition to SB 242. This bill would consolidate mortgage lending provisions and move them out of the Uniform Consumer Credit Code (UCCC) and into the Kansas Mortgage Business Act (KMBA). We understand the intent behind this bill is to simplify matters for non-bank lenders who work with both the UCCC and the KMBA. However, currently our Kansas banks are not subject to the KMBA. Moving these provisions into the KMBA would force Kansas banks to work within a new body of law and require them to spend money on new forms. All of this would be at the detriment of Kansas banks and for the benefit of mostly out of state non-bank lenders.

We have a suggestion to offer that we believe tackles the matter at hand of consolidating mortgage lending provisions without creating additional and unnecessary costs and stress to Kansas banks. By simply referencing the relevant statutes of the UCCC in the KMBA, those who work with the KMBA will still have a "one stop-shop" for their mortgage lending requirements. If this suggested language is adopted, we would move our position to neutral.

Thank you for your time and attention to this very important matter. We respectfully request that when the Committee takes action on SB 242, it considers our suggested language.

Kansas Bankers Association
SB 242: Suggested Substitute Bill

New Section 1. A mortgage company that engages in a covered transaction shall comply with the provisions of K.S.A. 16a-1-107, 16a-1-301, 16a-2-104, 16a-2-307, 16a-2-401, 16a-2-501, 16a-2-502, 16a-2-509, 16a-3-207, 16a-3-306, 16a-3-308, 16a-5-201, 16a-6-115, and amendments thereto.

Amending K.S.A. 9-2201:

9-2201. Mortgage business; definitions. As used in this act:

(a) "Application" means the submission of a consumer's financial information, including the consumer's name, income and social security number to obtain a credit report, the property address, an estimate of the value of the property and the mortgage loan amount sought, for the purpose of obtaining an extension of credit.

(b) "Bona fide office" means an applicant's or licensee's place of business with an office that:

(1) Is located in this state;

(2) is not located in a personal residence;

(3) has regular hours of operation;

(4) is accessible to the public;

(5) is leased or owned by the licensee and serves as an office for the transaction of the licensee's mortgage business;

(6) is separate from any office of another registrant; and

(7) is accessible to all of the licensee's books, records and documents.

(c) "Branch office" means a place of business, other than a principal place of business, where mortgage business is conducted and which is licensed as required by this act.

(d) "Commissioner" means the state bank commissioner or designee, who shall be the deputy commissioner of the consumer and mortgage lending division of the office of the state bank commissioner.

(e) "Covered transaction" means a mortgage loan that:

(1) Is a subordinate mortgage;

(2) has a loan-to-value ratio at the time when made exceeds 100%, except for any loan guaranteed by a government program; or

(3) the annual percentage rate of the loan exceeds the code mortgage rate if it is secured by a consumer's principal residence and is not open-end, incurred to acquire or construct the consumer's principal residence or a reverse mortgage.

~~(e)~~ (f) "Individual" means a human being.

~~(f)~~ (g) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.

~~(g)~~ (h) "Licensee" means a person who is licensed by the commissioner as a mortgage company.

~~(h)~~ (i) "Loan originator" means an individual:

(1) Who engages in mortgage business on behalf of a single mortgage company;

(2) whose conduct of mortgage business is the responsibility of the licensee;

(3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and

(4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.

~~(i)~~ (j) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.

(1) For purposes of this subsection, the term "clerical or support duties" may include subsequent to the receipt of an application:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a loan originator.

~~(j)~~ (k) "Mortgage business" means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling, arranging for others, or

holding the rights to or offering to solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans in the primary market.

~~(k)~~ (l) "Mortgage company" means a person engaged in mortgage business from a principal place of business or branch office, which has been licensed as required by this act.

~~(h)~~ (m) "Mortgage loan" means a loan or agreement to extend credit made to one or more individuals which is secured by a first or subordinate mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien, except as provided for in K.S.A. 60-1101 through 60-1110, and amendments thereto, upon any lot intended for residential purposes or a one-to-four family dwelling as defined in 15 U.S.C. § 1602(w), located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.

~~(m)~~ (n) "Mortgage servicer" means any person engaged in mortgage servicing.

~~(n)~~ (o) "Mortgage servicing" means collecting payment, remitting payment for another or the right to collect or remit payment of any of the following: Principal; interest; tax; insurance; or other payment under a mortgage loan.

~~(o)~~ (p) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

~~(p)~~ (q) "Not-for-profit" means a business entity that is granted tax exempt status by the internal revenue service.

~~(q)~~ (r) "Person" means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

~~(r)~~ (s) "Primary market" means the market wherein mortgage business is conducted including activities conducted by any person who assumes or accepts any mortgage business responsibilities of the original parties to the transaction.

~~(s)~~ (t) "Principal place of business" means a licensed place of business where mortgage business is conducted, which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed.

~~(t)~~ (u) "Promotional items" means pens, pencils, hats and other such novelty items.

~~(u)~~ (v) "Registrant" means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator.

~~(v)~~ (w) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.