

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 432

Representatives Boggs, Kelly

**Cosponsors: Representatives Kent, Miller, West, Smith, K., Lepore-Hagan,
Sheehy, Henne, Leland**

A BILL

To enact sections 1323.01, 1323.02, 1323.03, 1
1323.04, 1323.05, 1323.06, 1323.07, 1323.08, 2
1323.09, 1323.10, 1323.11, 1323.12, 1323.13, 3
1323.14, 1323.15, 1323.16, 1323.17, and 1323.99 4
of the Revised Code to require student loan 5
servicers to be licensed by the Division of 6
Financial Institutions and to create the 7
position of student loan ombudsperson in the 8
Division of Financial Institutions to provide 9
assistance to student loan borrowers. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1323.01, 1323.02, 1323.03, 11
1323.04, 1323.05, 1323.06, 1323.07, 1323.08, 1323.09, 1323.10, 12
1323.11, 1323.12, 1323.13, 1323.14, 1323.15, 1323.16, 1323.17, 13
and 1323.99 of the Revised Code be enacted to read as follows: 14

Sec. 1323.01. As used in this chapter: 15

(A) "Licensee" means a student loan servicer licensed 16
under this chapter. 17

(B) "Servicing" means receiving a scheduled periodic 18
payment from a borrower pursuant to the terms of a student 19
education loan, including amounts for escrow accounts, and 20
making the payments to the owner of the loan or other third 21
party of principal and interest and other payments with respect 22
to the amounts received from the borrower as may be required 23
pursuant to the terms of the servicing loan document or 24
servicing contract. "Servicing" includes applying the payments 25
of principal and interest and other such payments with respect 26
to the amounts received from a student loan borrower as may be 27
required pursuant to the terms of a student education loan and 28
performing other administrative services with respect to a 29
student education loan. 30

(C) "Student education loan" means any loan primarily used 31
to finance education and other school-related expenses. 32

(D) "Student loan borrower" means any resident of this 33
state who has received or agreed to pay a student education 34
loan, or any person who shares responsibility with such resident 35
for repaying the student education loan. 36

(E) "Student loan servicer" means any person responsible 37
for the servicing of a student education loan to a student loan 38
borrower. 39

Sec. 1323.02. (A) Except as provided in division (B) of 40
this section, no person shall act as a student loan servicer, 41
directly or indirectly, without a student loan servicer license 42
issued pursuant to this chapter. 43

(B) Division (A) of this section does not apply to any 44
entity chartered and lawfully doing business under the authority 45
of any law of this state, another state, or the United States as 46

a bank, savings bank, trust company, savings and loan 47
association, or credit union, or subsidiary of any such entity, 48
which subsidiary is regulated by a federal banking agency and is 49
owned and controlled by a depository institution. 50

Sec. 1323.03. (A) A person seeking a student loan servicer 51
license shall submit a written application to the superintendent 52
of financial institutions in such form prescribed by the 53
superintendent. The application shall be accompanied by all of 54
the following: 55

(1) A one thousand dollar nonrefundable license fee; 56

(2) A nonrefundable investigation fee, in an amount to be 57
established annually by the superintendent; 58

(3) Upon the request of the superintendent, a financial 59
statement prepared by a certified public accountant or public 60
accountant, a criminal records check, or any other information 61
the superintendent considers necessary. 62

(B) Upon receipt of an application for an initial student 63
loan servicer license, the superintendent shall investigate the 64
financial condition and responsibility, financial and business 65
experience, and character and general fitness of the applicant. 66

(C) The superintendent shall issue a license if, after 67
reviewing the application, the superintendent finds, in the 68
superintendent's opinion, that all of the following are true: 69

(1) The applicant's financial condition is sound. 70

(2) The applicant's business will be conducted honestly, 71
fairly, equitably, carefully, and efficiently in accordance with 72
this chapter. 73

(3) If the applicant is an individual, the individual is 74

<u>in all respects properly qualified and of good character.</u>	75
<u>(4) If the applicant is a partnership, each partner is in all respects properly qualified and of good character.</u>	76
<u>(5) If the applicant is a corporation or association, the president, chairperson of the executive committee, senior officer responsible for the corporation's business, the chief financial officer, or any other person who performs similar functions, and each director, trustee, and each shareholder holding ten per cent or more of each class of the securities of the corporation is in all respects properly qualified and of good character.</u>	78
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<u>(6) If the applicant is a limited liability company, each member is in all respects properly qualified and of good character.</u>	86
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<u>(7) No person has knowingly made any incorrect statement of a material fact in the application or in any statement or report made in accordance with this chapter.</u>	89
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<u>(8) No person on behalf of the applicant has knowingly failed to state any material fact necessary to give the superintendent any information required under this chapter.</u>	92
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<u>(9) The applicant has paid the license and investigation fees required by this section.</u>	95
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<u>(10) The applicant has met any other requirements determined by the superintendent.</u>	97
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<u>(D) If an applicant fails to respond to an information request from the superintendent pursuant to this section, the superintendent shall notify the applicant in writing that if the applicant fails to submit the requested information not later</u>	99
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than sixty days after the date the information was requested by 103
the superintendent, the application will be deemed abandoned. If 104
the applicant fails to timely submit the information, the 105
application is deemed abandoned. A license and investigation fee 106
submitted prior to the date the application is deemed abandoned 107
shall be forfeited and shall not be refunded. An abandoned 108
application does not disqualify an applicant from subsequently 109
applying for a license under this chapter. 110

(E) A license issued pursuant to this section is valid for 111
one business location and is not transferable or assignable. A 112
licensee shall provide prior, written notice to the 113
superintendent before any change in location of the licensee's 114
place of business. 115

Sec. 1323.04. A license issued in accordance with section 116
1323.03 of the Revised Code is valid for one year. The license 117
may be renewed pursuant to section 1323.06 of the Revised Code. 118

Sec. 1323.05. (A) Not later than fifteen days after a 119
licensee ceases to engage in the business of student loan 120
servicing in this state for any reason, including the business 121
decision to terminate operations in this state, license 122
revocation, bankruptcy, or voluntary dissolution, the licensee 123
shall provide written notice of surrender to the superintendent 124
of financial institutions, and shall surrender the license, for 125
each location at which the licensee is ceasing to engage in 126
student loan servicing. 127

(B) The written notice of surrender described in division 128
(A) of this section shall identify the location where the 129
records of the license will be stored and the name, address, and 130
telephone number of an individual authorized to provide access 131
to those records. 132

(C) Surrender of a license under this section does not 133
reduce or eliminate the licensee's civil or criminal liability 134
arising from acts or omissions occurring prior to the surrender 135
of the license. 136

Sec. 1323.06. (A) A licensee may renew a license held 137
under this chapter for the ensuing one-year period by submitting 138
an application to the superintendent of financial institutions 139
along with both of the following: 140

(1) A renewal fee to be determined by the superintendent 141
in rules adopted in accordance with Chapter 119. of the Revised 142
Code; 143

(2) Any supplemental materials required by the 144
superintendent in accordance with division (A)(3) of section 145
1323.03 of the Revised Code. 146

(B) A renewal application shall be submitted at least 147
thirty days prior to the date the license expires. 148

(C) The superintendent may assess a late fee for renewal 149
applications that are filed less than thirty days prior to the 150
license's expiration date. 151

(D) If a renewal application has been filed with the 152
superintendent on or before the date the license expires, the 153
license shall continue in full force and effect until the 154
superintendent renews the license or notifies the licensee in 155
writing of the superintendent's refusal to renew the license. If 156
the superintendent refuses to renew the license, the notice 157
shall include the grounds for the refusal. 158

(E) The superintendent may refuse to renew a license under 159
this section on any ground for which the superintendent may 160
refuse to issue an initial license under section 1323.03 of the 161

<u>Revised Code.</u>	162
<u>Sec. 1323.07. No licensee shall do any of the following:</u>	163
<u>(A) Directly or indirectly employ any scheme, device, or</u>	164
<u>artifice to defraud or mislead student loan borrowers;</u>	165
<u>(B) Engage in any unfair or deceptive practice toward any</u>	166
<u>person or misrepresent or omit any material information in</u>	167
<u>connection with the servicing of a student education loan,</u>	168
<u>including misrepresenting the amount, nature, or terms of any</u>	169
<u>fee or payment due on a student education loan, the terms and</u>	170
<u>conditions of the loan agreement, or the borrower's obligations</u>	171
<u>under the loan;</u>	172
<u>(C) Obtain property by fraud or misrepresentation;</u>	173
<u>(D) Knowingly misapply or recklessly apply student</u>	174
<u>education loan payments to the outstanding balance of a student</u>	175
<u>education loan;</u>	176
<u>(E) Recklessly provide inaccurate information to a credit</u>	177
<u>bureau, thereby harming the student loan borrower's</u>	178
<u>creditworthiness;</u>	179
<u>(F) Fail to report both the favorable and unfavorable</u>	180
<u>payment history of the student loan borrower to a nationally</u>	181
<u>recognized consumer credit bureau at least annually if the</u>	182
<u>student loan servicer regularly reports information to a credit</u>	183
<u>bureau;</u>	184
<u>(G) Refuse to communicate with an authorized</u>	185
<u>representative of the student loan borrower who provides a</u>	186
<u>written authorization signed by the student loan borrower,</u>	187
<u>provided the student loan servicer may adopt procedures</u>	188
<u>reasonably related to verifying that the representative is in</u>	189

fact authorized to act on behalf of the student loan borrower; 190

(H) Negligently make any false statement or knowingly and 191
willfully make any omission of a material fact in connection 192
with any information on reports filed with a governmental agency 193
or in connection with any investigation conducted by the 194
superintendent of financial institutions or another governmental 195
agency. 196

Sec. 1323.08. No licensee shall do either of the 197
following: 198

(A) Engage in business as a student loan servicer under 199
any name or place of business other than that named in the 200
license; 201

(B) Operate more than one place of business under the same 202
license. 203

Sec. 1323.09. Each licensee and student loan servicer 204
exempt from licensure under this chapter pursuant to division 205
(B) of section 1323.02 of the Revised Code shall maintain 206
adequate records of each student education loan transaction for 207
not less than two years following the final payment on the loan 208
or the assignment of the loan, whichever occurs first, or any 209
longer period as required by any other provision of law. The 210
superintendent of financial institutions may require a licensee 211
or exempt student loan servicer to make the records available 212
for inspection. The licensee or exempt student loan servicer 213
shall make the records available for inspection within five days 214
of receipt of such a request. The superintendent may grant a 215
licensee or exempt student loan servicer additional time to make 216
the records available as necessary. 217

Sec. 1323.10. (A) The superintendent of financial 218

<u>institutions may conduct investigations for both of the</u>	219
<u>following:</u>	220
<u>(1) Initial licensing, license renewal, license</u>	221
<u>suspension, license revocation or termination, or general or</u>	222
<u>specific inquiry or investigation to determine compliance with</u>	223
<u>this chapter. In doing so, the superintendent may access,</u>	224
<u>receive, and use any books, accounts, records, files, documents,</u>	225
<u>information, or other evidence of or pertaining to the student</u>	226
<u>loan servicer.</u>	227
<u>(2) Violations or complaints arising under this chapter.</u>	228
<u>(B) In conducting an investigation under division (A) of</u>	229
<u>this section, the superintendent may access the documents and</u>	230
<u>records of the student loan servicer or person under</u>	231
<u>investigation. During such an investigation, the student loan</u>	232
<u>servicer shall have access to the documents and records as</u>	233
<u>necessary to conduct its ordinary business affairs, unless the</u>	234
<u>superintendent has reasonable grounds to believe the documents</u>	235
<u>or records of the student loan servicer licensee or person have</u>	236
<u>been, or are at risk of being, altered or destroyed for purposes</u>	237
<u>of concealing a violation of this chapter.</u>	238
<u>(C) No person subject to investigation under this chapter</u>	239
<u>shall knowingly withhold, remove, mutilate, destroy, or alter</u>	240
<u>any books, records, computer records, or other information. A</u>	241
<u>violation of this division is a violation of section 2921.12 of</u>	242
<u>the Revised Code.</u>	243
<u>Sec. 1323.11. (A) The superintendent of financial</u>	244
<u>institutions may suspend, revoke, or refuse to renew a license</u>	245
<u>issued under this chapter if the superintendent finds either of</u>	246
<u>the following are true:</u>	247

(1) The licensee has violated any provision of this 248
chapter or any rule adopted pursuant to section 1323.16 of the 249
Revised Code; 250

(2) Any fact or condition exists which, if it had existed 251
at the time of the original application for the license, clearly 252
would have warranted a denial of the application. 253

(B) The superintendent shall not refund any portion of the 254
license or renewal fee if the license is surrendered, revoked, 255
or suspended prior to the expiration of the term for which it 256
was issued. 257

(C) The superintendent may investigate and bring a civil 258
action in a court of competent jurisdiction seeking an 259
injunction and damages if the superintendent finds either of the 260
following are true: 261

(1) That a person has violated any of the provisions of 262
this chapter or any rule adopted pursuant to section 1323.16 of 263
the Revised Code. 264

(2) That any person associated with the licensee has 265
committed any fraud, engaged in dishonest activities, or made 266
any misrepresentation. 267

(D) If the superintendent determines that a person has 268
violated division (A) of section 1323.02 of the Revised Code, 269
the superintendent shall issue a cease and desist order ordering 270
the person to cease engaging in the prohibited activity. If the 271
person fails to comply with the order, the superintendent may 272
bring a civil action in a court of competent jurisdiction 273
seeking an injunction. 274

Sec. 1323.12. Each licensee shall comply with all 275
applicable federal laws and regulations relating to student loan 276

servicing. Any violation of federal law or regulations is deemed 277
to be a violation of this chapter and is a basis upon which the 278
superintendent of financial institutions may take enforcement 279
action under this chapter. 280

Sec. 1323.13. (A) There is hereby created the position of 281
student loan ombudsperson within the division of financial 282
institutions who shall provide timely assistance to any student 283
loan borrower. The ombudsperson shall be appointed by the 284
superintendent of financial institutions and shall work in 285
consultation with the superintendent. 286

(B) The student loan ombudsperson shall do all of the 287
following: 288

(1) Receive, review, and assist in resolving complaints 289
from student loan borrowers, including attempts to resolve such 290
complaints in collaboration with institutions of higher 291
education as defined in section 2741.01 of the Revised Code, 292
student loan servicers, and any other participants in student 293
loan lending; 294

(2) Compile and analyze data on student loan borrower 295
complaints and any subsequent resolutions; 296

(3) Assist student loan borrowers to understand their 297
rights and responsibilities under the terms of student education 298
loans; 299

(4) Provide information to the public regarding the 300
problems for and concerns of student loan borrowers; 301

(5) Make recommendations to the superintendent for 302
resolving those problems and concerns; 303

(6) Analyze and monitor the development and implementation 304

of federal, state, and local laws, ordinances, regulations, and 305
policies relating to student loan borrowers and recommend any 306
related necessary changes; 307

(7) Review complete student education loan history for any 308
student loan borrower who has provided written consent for such 309
review; 310

(8) Disseminate information to student loan borrowers, 311
potential student loan borrowers, public institutions of higher 312
education as defined in section 3305.01 of the Revised Code, 313
student loan servicers, and any other participant in student 314
education loan lending; 315

(9) Ensure all state employees are informed of the right 316
to public service loan forgiveness; 317

(10) Any other task designated by the superintendent or 318
the Revised Code. 319

(C) The student loan ombudsperson, in consultation with 320
the superintendent, shall establish a student loan borrower 321
education course to include educational presentations and 322
materials regarding student education loans. The course shall 323
include all of the following information regarding student 324
education loans: 325

(1) An explanation of key loan terms; 326

(2) Prescribed documentation requirements; 327

(3) Monthly payment obligations; 328

(4) Income-based repayment options; 329

(5) Loan forgiveness; 330

(6) Disclosure requirements. 331

Sec. 1323.14. There is hereby created in the state 332
treasury the student loan servicer licensing fund. The fund 333
shall consist of all student loan servicer license and renewal 334
fees, investigation fees, and any other fees and fines collected 335
by the superintendent of financial institutions in relation to 336
this chapter. Money in the fund shall be used by the division of 337
financial institutions and the student loan ombudsperson to fund 338
the student loan borrower education course required by division 339
(C) of section 1323.13 of the Revised Code. Investment earnings 340
of the fund shall be credited to the fund. 341

Sec. 1323.15. (A) The superintendent of financial 342
institutions shall prepare an annual report on the work of the 343
student loan ombudsperson, beginning on January 1, 2018, and 344
annually thereafter. The report shall be submitted to the 345
speaker of the house of representatives, the president of the 346
senate, the clerks of the house of representatives and the 347
senate, and the chairs of the house of representatives and 348
senate committees having jurisdiction over student loan matters. 349

(B) The report described in division (A) of this section 350
shall include all of the following: 351

(1) The number of complaints received by the student loan 352
ombudsperson from student loan borrowers; 353

(2) The types of complaints received by the student loan 354
ombudsperson from student loan borrowers; 355

(3) Any recommendations to improve the effectiveness of 356
the student loan ombudsperson position. 357

Sec. 1323.16. Not later than April 1, 2019, the 358
superintendent of financial institutions shall adopt rules, in 359
accordance with Chapter 119. of the Revised Code, as necessary 360

to implement this chapter. 361

Sec. 1323.17. (A) No person shall recklessly violate 362
section 1323.03 or 1323.07 of the Revised Code. 363

(B) No person shall violate section 1323.05, 1323.08, or 364
1323.09 of the Revised Code or rules adopted by the 365
superintendent of financial institutions in the administration 366
of those sections. 367

(C) If the person violating division (A) of this section 368
is an organization, the organization is subject to criminal 369
liability under section 2901.23 of the Revised Code and shall be 370
fined in accordance with section 2929.31 of the Revised Code. 371

Sec. 1323.99. (A) (1) Whoever violates division (A) of 372
section 1323.17 of the Revised Code is guilty of a misdemeanor 373
of the first degree on the first offense and a felony of the 374
fifth degree on each subsequent offense. 375

(2) If the person violating division (A) of section 376
1323.17 of the Revised Code is an organization, the organization 377
is subject to criminal liability under section 2901.23 of the 378
Revised Code and shall be fined in accordance with section 379
2929.31 of the Revised Code. 380

(B) Whoever violates division (B) of section 1323.17 of 381
the Revised Code shall be civilly fined not less than one 382
hundred dollars nor more than five hundred dollars for the first 383
offense and not less than fine hundred dollars nor more than one 384
thousand dollars on each subsequent offense. 385

(C) Notwithstanding section 1901.31, 1907.20, or 2335.37 386
of the Revised Code, the clerk of the court shall transmit to 387
the treasurer of state for deposit into the state treasury to 388
the credit of the student loan servicer licensing fund created 389

in section 1323.14 of the Revised Code any fine imposed under 390
this section. 391

Section 2. Section 1323.02 of the Revised Code, as enacted 392
by this act, shall take effect January 1, 2019. 393