



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Carla Napolitano

### **H.B. 432**

132nd General Assembly  
(As Introduced)

**Reps.** Boggs and Kelly, Kent, Miller, West, K. Smith, Lepore-Hagan, Sheehy, Henne, Leland

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## **BILL SUMMARY**

### **Student Loan Ombudsperson**

- Creates the Student Loan Ombudsperson in the Division of Financial Institutions to assist student loan borrowers by resolving complaints, analyzing complaints, resolutions, and legal developments, making recommendations to the Superintendent of Financial Institutions, and informing the public.
- Requires the Ombudsperson to create a student loan borrower education course that explains (1) key loan terms, (2) documentation requirements, (3) monthly payment obligations, (4) income-based repayment options, (5) loan forgiveness, and (6) disclosure requirements.
- Requires the Superintendent to prepare an annual report on the work of the Ombudsperson and submit the report to certain members of the General Assembly.

### **Student loan servicer license**

- Requires student loan servicers to be licensed by the Division of Financial Institutions and authorizes the Division to issue a cease and desist order to any person violating this requirement.
- Exempts from the bill's licensing requirement a bank, savings bank, trust company, savings and loan association, or credit union, or subsidiary or any of these entities that is regulated by a federal banking agency and owned and controlled by a depository institution.
- Establishes procedures and standards for obtaining a student loan servicer license that include requiring the Superintendent to investigate all applicants for a student

loan servicer license and requiring the Superintendent to issue a license to applicants that meet the specified criteria.

- Establishes that a student loan servicer license is valid for one year and may be renewed annually.
- Requires licensees to comply with certain requirements regarding the business's location and name and ceasing to engage in student loan servicing.
- Prohibits a licensee from defrauding, misleading, or deceiving student loan borrowers, or mishandling student loans.
- Requires those licensed and exempt from licensing under the bill to maintain and make available to the Superintendent certain student loan records.

### **Student Loan Servicer Licensing Fund**

- Establishes the Student Loan Servicer Licensing Fund, consisting of all license, renewal, and investigation fees, and fines issued by the Superintendent.
- Dedicates the moneys in the Fund to pay for the student loan borrower education course.

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## **Table of Contents**

General overview .....	3
Student Loan Ombudsperson .....	3
Student loan borrower course .....	3
Assisting borrowers .....	4
Annual report from the Superintendent.....	5
Student loan servicer license .....	5
Student loan servicer license application.....	6
License renewal .....	7
Requirements and restrictions.....	8
Business location and name.....	8
Ceasing to engage in student loan servicing .....	8
Fraud, deception, and mishandling student loans.....	9
Records.....	10
Superintendent investigation .....	10
Discipline regarding a student loan servicer license .....	11
Student Loan Servicer Licensing Fund.....	11



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## CONTENT AND OPERATION

### General overview

The bill creates the position of the Student Loan Ombudsperson in the Division of Financial Institutions to create a student loan borrower course and provide assistance to student loan borrowers.

In addition, the bill establishes a license for student loan servicers. A "student loan servicer," as defined in the bill, is any person responsible for servicing a student education loan to a student borrower.<sup>1</sup> The bill sets procedures and requirements for obtaining and maintaining a student loan servicer license, and requires the Department of Commerce Division of Financial Institutions to issue the license and regulate student loan servicers licensed under the bill.

The bill also establishes the Student Loan Servicer Licensing Fund to hold all student loan servicer license and renewal fees, investigation fees, and any other fees and fines collected by the Superintendent of Financial Institutions in relation to the bill's provisions. The moneys in the Fund are to pay for the student loan borrower course.

Lastly, the Superintendent is required to adopt rules by April 1, 2019, as necessary, to implement the bill's provisions.<sup>2</sup>

### Student Loan Ombudsperson

The bill creates the position of Student Loan Ombudsperson within the Division of Financial Institutions. The Superintendent is required to appoint the Ombudsperson, whom must work in consultation with the Superintendent. The Ombudsperson is required to provide timely assistance to any student loan borrower and establish a student loan borrower education course. A "student loan borrower" is any Ohio resident who has received or agreed to pay a student education loan, or any person who shares responsibility with the resident for repaying the student education loan. The bill defines "student education loan" as any loan primarily used to finance education and other school-related expenses.

#### Student loan borrower course

The Ombudsperson is required to establish a student loan borrower education course to include educational presentations and materials regarding student education

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<sup>1</sup> R.C. 1323.01(E).

<sup>2</sup> R.C. 1323.16.



loans. The course must include information regarding student education loans, including (1) an explanation of key loan terms, (2) prescribed documentation requirements, (3) monthly payment obligations, (4) income-based repayment options, (5) loan forgiveness, and (6) disclosure requirements.

### **Assisting borrowers**

In addition to the course, the Ombudsperson must do all of the following:

- Receive, review, and assist in resolving complaints from student loan borrowers, including attempts to resolve complaints in collaboration with higher education institutions, student loan servicers, and any other participants in student loan lending;
- Compile and analyze data on student loan borrower complaints and any subsequent resolutions;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public regarding the problems for and concerns of student loan borrowers and make recommendations to the Superintendent for resolving those problems and concerns;
- Analyze and monitor the development and implementation of federal, state, and local laws, ordinances, regulations, and policies relating to student loan borrowers and recommend any related necessary changes;
- Review complete student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information to student loan borrowers, potential student loan borrowers, public institutions of higher education, student loan servicers, and any other participant in student education loan lending;
- Ensure all state employees are informed of the right to public service loan forgiveness;
- Any other task designated by the Superintendent or the Ohio Revised Code.<sup>3</sup>

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<sup>3</sup> R.C. 1323.01(C) and (D) and 1323.13.

## Annual report from the Superintendent

Beginning on January 1, 2018, the Superintendent is required to prepare an annual report on the work of the Student Loan Ombudsperson. The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, the clerks of the House of Representatives and the Senate, and the chairs of the House of Representatives and Senate committees having jurisdiction over student loan matters. The report must include the number and type of complaints received by the Ombudsperson from student loan borrowers and any recommendations to improve the effectiveness of the Student Loan Ombudsperson position.<sup>4</sup>

## Student loan servicer license

Beginning January 1, 2019, the bill prohibits a person from acting as student loan servicer, directly or indirectly, without a student loan servicer license established under the bill.<sup>5</sup> Financial institutions such as a bank, savings bank, trust company, savings and loan association, or credit union, or subsidiary of any of these entities, which subsidiary is regulated by a federal banking agency and is owned and controlled by a depository institution are not required to obtain a student loan servicer license, but are subject to records requirement (see, "**Records**," below).<sup>6</sup> "Servicing" under the bill is defined as receiving a scheduled periodic payment from a borrower pursuant to the terms of the student education loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as required. "Servicing" includes applying the payments of principal and interest and other payments with respect to the amounts received from a student loan borrower as required pursuant to the terms of the loan and performing other administrative services with respect to a student education loan.<sup>7</sup>

If the Superintendent determines that a person is acting as a student loan servicer without a license, the Superintendent must issue a cease and desist order ordering the person to cease engaging in the prohibited activity. If the person fails to comply with the order, the Superintendent may bring a civil action in a court of competent jurisdiction seeking an injunction.<sup>8</sup> Each licensee must comply with all applicable

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<sup>4</sup> R.C. 1323.15.

<sup>5</sup> R.C. 1323.02(A) and Section 2.

<sup>6</sup> R.C. 1323.02(B) and 1323.09.

<sup>7</sup> R.C. 1323.01(B).

<sup>8</sup> R.C. 1323.11(D).



federal laws and regulations relating to student loan servicing. Any violation of federal law or regulations is deemed to be a violation under the bill and is a basis upon which the Superintendent may take enforcement action.<sup>9</sup>

### **Student loan servicer license application**

To apply for a student loan servicer license, a person must submit a written application to the Superintendent, accompanied by all of the following:

- \$1,000 nonrefundable license fee;
- A nonrefundable investigation fee, in an amount established annually by the Superintendent;
- Upon request by the Superintendent, a financial statement prepared by a public accountant, a criminal records check, or any other information the Superintendent considers necessary.<sup>10</sup>

The Superintendent is required to investigate the financial condition and responsibility, financial and business experience, and the character and general fitness of the applicant and must issue a student loan servicer license if all the following are true:

- The applicant's financial condition is sound;
- The applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently in accordance with the bill's provisions;
- The individual, each partner in a partnership, or each member in a limited liability company is in all respects properly qualified and of good character;
- 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, each director and trustee, and each shareholder holding 10% or more of each class of the securities of the corporation is in all respects properly qualified and of good character;

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<sup>9</sup> R.C. 1323.12.

<sup>10</sup> R.C. 1323.03(A).



- 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 the bill;
- No person on behalf of the applicant has knowingly failed to state any material fact necessary to give the Superintendent any information required under the bill;
- The applicant has paid the license and investigation fees required;
- The applicant has met any other requirements determined by the Superintendent.<sup>11</sup>

The applicant has 60 days to respond to an information request by the Superintendent. If the applicant fails to do so, then the application is considered abandoned and any fees paid will not be refunded. But, an abandoned application does not disqualify the applicant from re-applying.<sup>12</sup>

Any reckless violation of any of the application requirements stated above is a first degree misdemeanor for the first offense and a fifth degree felony for any subsequent offense. In addition, if the violation is committed by an organization, the organization is subject to criminal liability.<sup>13</sup>

### **License renewal**

The license is valid for one year and may be renewed annually by submitting an application to the Superintendent along with a renewal fee, to be determined by the Superintendent by rule, and any supplemental materials required by the Superintendent at least 30 days prior to the expiration of the current license. The Superintendent may assess a late fee for renewal applications filed less than 30 days prior to the license's expiration date. However, as long as the renewal application has been filed on or before the date of the license expiration, the license continues in full force and effect until the Superintendent renews the license or notifies the licensee of the refusal to renew. The Superintendent may refuse to renew a license for any reason that the Superintendent may refuse an initial license. Any notice from the Superintendent refusing a renewal must state the ground for refusal.<sup>14</sup>

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<sup>11</sup> R.C. 1323.03(B) and (C).

<sup>12</sup> R.C. 1323.03(D).

<sup>13</sup> R.C. 1323.17(A) and 1323.99(A); R.C. 2901.23 and 2929.31, not in the bill.

<sup>14</sup> R.C. 1323.04 and 1323.06.



## **Requirements and restrictions**

### **Business location and name**

The license is valid for one business location and is not transferable or assignable. The licensee must provide written notice to the Superintendent prior to any change in location of the business.<sup>15</sup> Any reckless violation of these requirements is a first degree misdemeanor for the first offense and a fifth degree felony for any subsequent offense. In addition, if the violation is committed by an organization, the organization is subject to criminal liability.<sup>16</sup>

The licensee cannot engage in business as a student loan servicer under any name or place of business other than that named in the license or operate more than one place of business under the same license.<sup>17</sup> A licensee that violates this prohibition is subject to a civil fine between \$100 and \$500 for the first offense and between \$500 and \$1,000 on each subsequent offense.<sup>18</sup>

### **Ceasing to engage in student loan servicing**

A licensee is required to notify the Superintendent not later than 15 days after the licensee ceases to engage in the business of student loan servicing in Ohio for any reason, including terminating operations in Ohio, license revocation, bankruptcy, or voluntary dissolution. The licensee must provide written notice of surrender to the Superintendent and must surrender the license for each business location at which the licensee is ceasing to engage in student loan servicing. The licensee must provide the Superintendent information regarding where the records will be stored and contact information of an individual authorized to provide access to those records. Surrendering a license does not limit the licensee's criminal or civil liability arising from acts or omissions occurring prior to the surrender.<sup>19</sup> A licensee that fails to comply with these requirements is subject to a civil fine between \$100 and \$500 for the first offense and between \$500 and \$1,000 on each subsequent offense.<sup>20</sup>

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<sup>15</sup> R.C. 1323.03(E).

<sup>16</sup> R.C. 1323.17(A) and 1323.99(A); R.C. 2901.23 and 2929.31, not in the bill.

<sup>17</sup> R.C. 1323.08.

<sup>18</sup> R.C. 1323.17(B) and 1323.99(B).

<sup>19</sup> R.C. 1323.05.

<sup>20</sup> R.C. 1323.17(B) and 1323.99(B).



## **Fraud, deception, and mishandling student loans**

A licensee is prohibited from doing any of the following:

- Directly or indirectly employing any scheme, device, or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person or misrepresent or omitting any material information in connection with the servicing of a student education loan, including misrepresenting the amount, nature, or terms of any fee or payment due on a student education loan, the terms and conditions of the loan agreement, or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Recklessly providing inaccurate information to a credit bureau, thereby harming the student loan borrower's creditworthiness;
- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower;
- Negligently making any false statement or knowingly and willfully make any omission of a material fact in connection with any information on reports filed with a governmental agency or in connection with any investigation conducted by the Superintendent or another governmental agency.<sup>21</sup>

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<sup>21</sup> R.C. 1323.07.

A reckless violation of any of the above is a first degree misdemeanor for the first offense and a fifth degree felony on each subsequent offense. In addition, if the violation is committed by an organization, the organization is subject to criminal liability.<sup>22</sup>

### **Records**

All student loan servicers, both licensed and exempt from licensing under the bill, must maintain adequate records of each student education loan transaction for at least two years following the final payment on the loan or assignment of the loan, whichever occurs first, or longer if required by any other provision of law. The Superintendent may require a licensee or exempt student loan servicer to make the records available for inspection. The licensee or exempt student loan servicer must make the records available for inspection within five days of receipt of a request. The Superintendent may grant a licensee or exempt student loan servicer additional time to make the records available as necessary.<sup>23</sup>

A licensee that violates the bill's records provisions is subject to a civil fine between \$100 and \$500 for the first offense and between \$500 and \$1,000 on each subsequent offense.<sup>24</sup>

### **Superintendent investigation**

The Superintendent can conduct an investigation for initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance with the bill's provisions. In doing so, the Superintendent may access, receive, and use any documents, records, or other evidence of or pertaining to the student loan servicer. The Superintendent may access the documents and records of the student loan servicer or person under investigation. During such an investigation, the student loan servicer must have access to the documents and records as necessary to conduct its ordinary business affairs, unless the Superintendent has reasonable grounds to believe the documents or records of the student loan servicer licensee or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of the bill's provisions. The Superintendent can also investigate any violations or complaints arising under the bill's provisions.

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<sup>22</sup> R.C. 1323.17(A) and 1323.99(A); R.C. 2901.23 and 2929.31, not in the bill.

<sup>23</sup> R.C. 1323.09.

<sup>24</sup> R.C. 1323.17(B) and 1323.99(B).



A person subject to investigation is prohibited from knowingly withholding, removing, mutilating, destroying, or altering any books, records, computer records, or other information. Whoever violates any of the above is subject to a charge of tampering with evidence, a third degree felony.<sup>25</sup>

### **Discipline regarding a student loan servicer license**

The Superintendent may suspend, revoke, or refuse to renew a student loan servicer license if the Superintendent finds either of the following is true:

(1) The licensee has violated any provision of the bill or any rule adopted by the Superintendent;

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

The Superintendent is prohibited from refunding any portion of the license or renewal fee if the license is surrendered, revoked, or suspended prior to the expiration of the term for which it was issued. The Superintendent may investigate and bring a civil action in a court of competent jurisdiction seeking an injunction and damages if the either of the following is true:

(1) That a person has violated any of the bill's provisions or corresponding rules;

(2) That any person associated with the licensee has committed any fraud, engaged in dishonest activities, or made any misrepresentation.<sup>26</sup>

### **Student Loan Servicer Licensing Fund**

The bill establishes The Student Loan Servicer Licensing Fund, which must consist of all student loan servicer license and renewal fees, investigation fees, and any other fees and fines collected by the Superintendent in relation to the bill's provisions. Money in the fund must be used by the Division and the Student Loan Ombudsperson to fund the student loan borrower education course (see "**Student loan borrower course**," above).<sup>27</sup>

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<sup>25</sup> R.C. 1323.10 and R.C. 2921.12, not in the bill.

<sup>26</sup> 1323.11(A), (B), and (C).

<sup>27</sup> R.C. 1323.14.



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## HISTORY

ACTION

DATE

Introduced

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