

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 432**

**Representatives Boggs, Kelly**

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

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**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