

**SENATE FINANCIAL INSTITUTIONS
AND TECHNOLOGY COMMITTEE****Proponent Testimony
House Bill 133**

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Chairman Wilson, Vice Chair Hottinger, Ranking Member Maharath, and members of the Senate Financial Institutions and Technology Committee, thank you for the opportunity to support House Bill 133. If enacted, this legislation would further empower credit unions to best meet unique member needs through flexible service for borrowers challenged by the current economy, member business loan pricing parity through linked-deposit programs, and the elimination of antiquated paper check printing requirements.

The Ohio Credit Union League is the state trade association representing the collective interests of Ohio's 243 federal and state-chartered credit unions and their more than three million members. With the "people helping people" philosophy at the heart of member-owned financial cooperatives, ensuring people, families, businesses, and communities have access to safe and affordable financial services remains a priority for credit unions.

House Bill 133 is a reintroduction of Substitute House Bill 38 from the 133rd General Assembly, in which it received a 91-1 House vote and 30-1 Senate vote before both chambers adjourned sine die. While the legislation includes many positive business-related initiatives, the Ohio Credit Union League is specifically supportive of the provisions pertaining directly to credit unions and other financial institutions that accomplish the following:

- Modifies ORC 135.77, empowering the State Treasurer to offer flexible Business Linked Deposit loan pricing for credit unions in line with current bank loan pricing within the Grow Now linked deposit program.
- Repeals ORC 1349.16, which requires the opening date of a checking account to be printed on the checks corresponding to the account.
- Modifies ORC 1349.72, which dictates debt notification requirements for junior liens

While the two House Bill 133 provisions that would enable credit unions to offer more beneficial member business loans and modernized financial products are important to flexible member service during a challenging time, the provision pertaining to debt collection practices is of utmost importance to fortifying the credit union service model and meeting members' needs.

Clear and consistent member communication is currently challenged by ORC 1349.72 as the references "collects" or "attempts to collect" are not clearly defined in statute. A Legislative Services Committee analysis indicating the lack of clarity is included for your review. The ambiguity and currently broad interpretation, and the resulting practice elicited by this section, yield that a lender shall provide such a notice before and after every communication with a delinquent borrower. This is unnecessary and is alarming, frustrating, and ineffective for both parties. Additionally, the specificity of the content included in the notice letter removes the former personalization and sensitivity of delinquent member communications common to member-focused credit unions, hindering the relationship between debtor (member) and creditor (credit union). To further illustrate this crucial distinction, sample letters from Superior Credit Union are included for your consideration.

We would like to thank Representative Brett Hillyer for his leadership in reenergizing efforts to enact these provisions to further empower financial cooperatives to better serve more than three million members. We would also like to thank Senator Hackett for leading the bill's companion efforts in Senate Bill 62.

Thank you for the opportunity to speak to House Bill 133, I am happy to provide additional information or field questions in support of the Committee's work.



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OHIO LEGISLATIVE SERVICE COMMISSION

Mark Flanders, Director

Office of Research
and Drafting

Legislative Budget
Office

R-133-0136

To: The Honorable Louis Terhar
Ohio Senate

From: Carla Napolitano, Attorney *cn*

Date: February 5, 2019

Subject: H.B. 489/132nd questions

You asked LSC questions related to a provision of H.B. 489 from the 132nd General Assembly. The provision under R.C. 1349.72 states that before a person collecting a debt secured by residential real property collects or attempts to collect any part of the debt, the person must first send a written notice with the information specified in the statute to the debtor. The notice requirement only applies if (1) the debt is a second mortgage or junior lien on the debtor's residential real property and (2) the debt is in default.

Your questions are (1) what qualifies as *collects or attempts to collect* on the debt, (2) is the statute applicable only in foreclosure situations, (3) does collecting a payment qualify as collecting a debt (if it is in default), (4) does the notice have to be sent each time before said collection, (5) what qualifies as a compliance failure, and (6) does this capture HELOCs or only other products outside of HELOCs.

LSC cannot give definitive answers to these questions – only a court can say for certain. I have below tried to point out the pertinent provisions of the bill or other pertinent information.

What qualifies as collects or attempts to collect?

R.C. 1349.72(A) requires that before a person collecting a debt secured by a residential real property *collects or attempt to collect* any part of the debt, a notice must be sent. *Collects or attempt to collect* are not defined terms in the act. In the absence of a statutory definition, the common meaning of the term is used. *Black's Law Dictionary* defines "collect a debt or claim" as to obtain payment or liquidation of it, either by personal solicitation or legal proceedings.¹ Consequently, the question would appear to be whether the communication with the debtor is to obtain, or attempt to obtain payment. The content of the communication of what constitutes an "attempt to collect" is left open to interpretation. Only a court could decide the scope of this provision for certain.

¹ *What is COLLECT*, The Law Dictionary Featuring Black's Dictionary Free Online Legal Dictionary 2nd Ed., <https://thelawdictionary.org/collect/> (accessed February 5, 2019).

Is this applicable only to foreclosure situations?

There is nothing in the statute that provides that this provision is limited to foreclosure situations. The public testimony on the act suggests that the statute is intended to protect debtors that are "threatened" with foreclosure, but the statute itself does not limit the protection to only those debtors facing foreclosure. See "**Public testimony**," below.

Does collecting a payment qualify as collecting a debt (if it is in default)?

As described above, the statute does not define "collecting or attempting to collect debt." *Black's Law Dictionary* defines collecting a debt as obtaining payment.

Does the notice have to be sent each time before said collection?

Again, the statute does not provide any limitation on how many times the notice must be sent out. If the statute is interpreted broadly, then each time a collection is made, would trigger the notice requirement. Interpreted more narrowly, the notice would need to be sent once, when the person begins to collect or attempt to collect on the debt. Only a court could say for certain.

What qualifies as a compliance failure?

"Compliance failure" is used in R.C. 1349.72(D) and it is not specifically defined, however the subject of division (D) is any owner of debt subject to divisions (A), (B), and (C). It would seem that the compliance failure is the owner of debt subject to division (A), (B), and (C) that does not comply with any act required in those divisions.

Does this capture HELOCs?

The act does not make any other qualification for the debt other than what has already been described above. If the home equity line of credit (HELOC) is a second mortgage or a junior lien on the debtor's residential property, it would seem to be subject to the statute's provisions.

Public testimony

Marc Dann from Dann Law Firm offered proponent testimony to the House Committee on Government Accountability and Oversight on March 7, 2018 (see attached document), Mr. Dann states the following:

The bill also provides relief to borrowers victimized by a particularly odious kind of mortgage servicer: companies that service underwater second mortgages. Many of these loans were first made by predatory lenders like Washington Mutual, Countrywide, Argent, and New Century and were used to provide the down payment for the first mortgage on a home that had been appraised at a price that far exceeded the property's actual value. These loans, as the collapse of the housing market here in Ohio and across the nation starkly demonstrated, were destined to fail.

Today, many of those second mortgages have fallen into the hands of unscrupulous debt buyers who use the threat of foreclosure to extort payments from Ohio borrowers. HB 489 will force these predators to register with the Department of Commerce, maintain a presence in Ohio, provide borrowers with a warning notice that includes a recommendation to consult a lawyer, provide proof of their right to collect the note.

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CREDIT UNION, INC.

March 16, 2019



At Superior Credit Union, we strive to bring the best products and rates to our members. We also pride ourselves on our efforts to provide excellent service. We are determined to keep our members informed. It is with these thoughts in mind that we must bring to your attention that your mortgage loan is presently past-due for the current month's payment.

Perhaps you have simply forgotten to pay this payment. Then we will look for your payment soon. Perhaps there is a good reason for your payment to be late. If so, let us know so we can plan accordingly. Call us to discuss your account. You will find us ready to work with you to bring your loan up to date. Now is the time to call, as your loan is not yet seriously delinquent. You can still prevent major damage to your credit standing.

If your payment has passed this letter in the mail, we thank you and apologize for the inconvenience. Once again thank you for your business and your interest in your Superior Credit Union.

Sincerely,



NOTICE:

A list of HUD approved organizations that provide homeownership counseling is available by calling the HUD toll-free number:

800-569-4287

NOTICE:

Service members or their dependants may call the following number if they require further assistance:

800-342-9647

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CREDIT UNION, INC.

4230 Elida Rd, Lima OH 45807 | 419-223-9746

June 25, 2019



RE: XXXXXX



Your account referenced above is past due for one or more payments. Since this places your account in default, we are obligated to advise you of your rights, before we begin collection efforts.

Your first right is to cure the default by paying the current payment(s) due.

You have a right to consult an attorney.

You may qualify for debt relief under Chapter 7 and Chapter 13 of the US Bankruptcy Code, 11 U.S.C. Chapter 7 or 13 as amended.

You have the right to protection of your property from foreclosure if you qualify under U.S.C Chapter 13 plan of the United States Bankruptcy Code.

Also: You are hereby notified that the principal balance on the above loan is [REDACTED].

Please call the undersigned with any remarks or questions.

Sincerely



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Toll free: 877.717.2271

