

Introduced by Senator CorreaJanuary 13, 2014

An act to add Sections 22066 and 22067 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 896, as introduced, Correa. Finance lenders: nonprofit organizations: zero interest loans: exemptions.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight who is the chief officer of the Department of Business Oversight.

Existing law prohibits a person from engaging in the business of a finance lender or broker without obtaining a license from the commissioner. Under existing law, a finance lender includes any person who is engaged in the business of making consumer loans or making commercial loans and the business of making those loans includes lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission. Under existing law, a broker includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender.

Existing law makes certain persons and entities exempt from, or not subject to, the law if certain requirements are met. In any proceeding,

under this law, the burden of proving an exemption is upon the person or entity claiming it.

This bill would make exempt from this law a nonprofit organization that facilitates one or more zero interest loans with a minimum principal amount upon origination of \$250 and a maximum principal amount upon origination of \$2,500 if certain requirements are met, including, among other things, that the organization is exempt from federal income taxes, no part of the net earnings of the organization inures to the benefit of private persons, and that the loan terms meet certain requirements. The bill would authorize any organization wishing to operate pursuant to an exemption to file a specified application with, and pay a fee in an amount to be determined by, the commissioner. The bill would authorize the commissioner to refuse to grant an exemption, or to suspend or revoke an exemption, if he or she makes a specified finding and finds that such action is in the best interests of the public.

The bill would require an organization granted an exemption, referred to as an exempt organization, to, among other things, offer a borrower a voluntary credit education program or seminar at no cost to the borrower, report each borrower's payment performance to at least one consumer reporting agency, and underwrite each loan and ensure that a loan is not made if the organization determines that the borrower's total monthly debt service payments exceeds a specified amount.

This bill would make the law inapplicable to a nonprofit organization that partners with an exempt organization for the purpose of facilitating zero interest loans, if certain requirements are met, including, but not limited to, that this nonprofit organization, to be known as the partnering organization, meet specified requirements for federal income tax exemption, that no part of the net earnings of the organization shall inure to the benefit of private persons, and that the loan terms meet certain requirements. The bill would require the partnership of each exempt organization and each partnering organization to be formalized through a specified written agreement to be provided to the commissioner upon his or her request.

The bill would require each exempt organization to provide the commissioner with notice and certain information upon entering into a written agreement with a partnering organization. Upon a determination that a partnering organization has acted in violation of certain requirements, the bill would authorize the commissioner to, among other things, disqualify that partnering organization from facilitating zero interest loans, bar that partnering organization from

performing services at one or more specific locations, terminate a written agreement, and prohibit the use of that partnering organization by all organizations granted exemptions if the commissioner determines it is in the public interest.

The bill would authorize the commissioner to examine each exempt organization and each partnering organization for compliance with these provisions upon reasonable notice. The bill would require any examined organization to make available to the commissioner all books and records requested by the commissioner. The bill would require the cost of any such examination to be paid by the exempt organization.

The bill would require every exempt organization whose exemption is approved to file an annual report with the commissioner on or before March 15 containing specified information. The bill would also require an exempt organization to include information regarding the loans facilitated by a partnering organization in this annual report.

On or before July 1 annually, the bill would require the commissioner to post a report on the department's Internet Web site that summarizes information relating to exempt organizations, partnering organizations, and the facilitation of these zero interest loans including that information compiled by the commissioner from the annual reports submitted by the exempt organizations.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22066 is added to the Financial Code, to
- 2 read:
- 3 22066. (a) The Legislature finds and declares that nonprofit
- 4 organizations have an important role to play in helping individuals
- 5 obtain access to affordable, credit-building small dollar loans.
- 6 California law should refrain from creating statutory barriers that
- 7 risk slowing the growth of these loans. This section shall be
- 8 liberally construed to encourage nonprofit organizations to help

1 facilitate the making of zero interest loans, through lending circles
2 and other programs and services that allow individuals to establish
3 and build credit histories or to improve their credit scores.

4 (b) For the purposes of this section, an organization described
5 in subdivision (c) shall be known as an exempt organization, and
6 an organization described in subdivision (d) shall be known as a
7 partnering organization.

8 (c) There shall be exempted from this division a nonprofit
9 organization that facilitates one or more zero interest loans,
10 provided all of the following conditions are met:

11 (1) The organization is exempt from federal income taxes under
12 Section 501(c)(3) of the Internal Revenue Code and is organized
13 and operated exclusively for one or more of the purposes described
14 in Section 501(c)(3) of the Internal Revenue Code.

15 (2) No part of the net earnings of the organization inures to the
16 benefit of a private shareholder or individual.

17 (3) No broker's fee is paid in connection with the making of
18 the loan that is facilitated by the organization.

19 (4) Any organization wishing to operate pursuant to an
20 exemption granted under this section shall file an application for
21 exemption with the commissioner, in a manner prescribed by the
22 commissioner, and shall pay a fee to the commissioner, in an
23 amount calculated by the commissioner to cover his or her costs
24 to administer this section and Section 22067. The commissioner
25 may refuse to grant an exemption, or to suspend or revoke a
26 previously issued exemption if he or she finds that one or more of
27 the provisions of this section were not met or are not being met
28 by the organization and that denial, suspension, or revocation of
29 the exemption is in the best interests of the public.

30 (5) Every organization whose exemption is approved by the
31 commissioner shall file an annual report with the commissioner
32 on or before March 15 of each year, containing relevant information
33 that the commissioner reasonably requires concerning lending
34 facilitated by the organization within the state during the preceding
35 calendar year at all locations at which the organization facilitates
36 lending. The commissioner shall compile the information submitted
37 pursuant to this paragraph for use in preparing the report required
38 by Section 22067.

39 (6) Any loan made pursuant to this section shall comply with
40 the following requirements:

1 (A) The loan shall be unsecured.

2 (B) No interest may be imposed.

3 (C) An administrative fee may be charged in an amount not to
4 exceed the following:

5 (i) Seven percent of the principal amount, exclusive of the
6 administrative fee, or ninety dollars (\$90), whichever is less, on
7 the first loan made to a borrower.

8 (ii) Six percent of the principal amount, exclusive of the
9 administrative fee, or seventy-five dollars (\$75), whichever is less,
10 on the second and subsequent loans made to that borrower.

11 (D) An organization shall not charge the same borrower an
12 administrative fee more than once in any four-month period. Each
13 administrative fee shall be fully earned immediately upon
14 consummation of a loan agreement.

15 (E) Notwithstanding subdivision (a) of Section 22320.5 and in
16 lieu of any other type of delinquency fee or late fee, an organization
17 may require reimbursement from a borrower of up to ten dollars
18 (\$10) to cover an insufficient funds fee incurred by that
19 organization due to actions of the borrower. No organization shall
20 charge more than two insufficient funds fees to the same borrower
21 in a single month.

22 (F) The following information shall be disclosed to the consumer
23 in writing, in a type face no smaller than 12-point type, at the time
24 of the loan application:

25 (i) The amount to be borrowed, the total dollar cost of the loan
26 to the consumer if the loan is paid back on time, including the sum
27 of the administrative fee and principal amount borrowed, the
28 corresponding annual percentage rate, calculated in accordance
29 with Federal Reserve Board Regulation Z (12 C.F.R. 226.1), the
30 periodic payment amount, the payment frequency, and the
31 insufficient funds fee, if applicable.

32 (ii) An explanation of whether, and under what circumstances,
33 a borrower may exit a loan agreement.

34 (G) The loan shall have a minimum principal amount upon
35 origination of two hundred fifty dollars (\$250) and a maximum
36 principal amount upon origination of two thousand five hundred
37 dollars (\$2,500), and a term of not less than the following:

38 (i) Ninety days for loans whose principal balance upon
39 origination is less than five hundred dollars (\$500).

1 (ii) One hundred twenty days for loans whose principal balance
2 upon origination is at least five hundred dollars (\$500), but is less
3 than one thousand five hundred dollars (\$1,500).

4 (iii) One hundred eighty days for loans whose principal balance
5 upon origination is at least one thousand five hundred dollars
6 (\$1,500).

7 (H) The loan shall not be refinanced.

8 (I) Neither the organization nor any of its wholly owned
9 subsidiaries shall attempt to collect a delinquent payment for a
10 period of at least 30 days following the start of the delinquency
11 before selling or assigning that unpaid debt to an independent party
12 for collection.

13 (7) Prior to disbursement of loan proceeds, the organization
14 shall either (A) offer a credit education program or seminar to the
15 borrower that has been previously reviewed and approved by the
16 commissioner for use in complying with this section, or (B) invite
17 the borrower to a credit education program or seminar offered by
18 an independent third party that has been previously reviewed and
19 approved by the commissioner for use in complying with this
20 section. The borrower shall not be required to participate in either
21 of these education programs or seminars. A credit education
22 program or seminar offered pursuant to this paragraph shall be
23 provided at no cost to the borrower.

24 (8) The organization shall report each borrower's payment
25 performance to at least one consumer reporting agency that
26 compiles and maintains files on consumers on a nationwide basis,
27 upon acceptance as a data furnisher by that consumer reporting
28 agency. For purposes of this section, a consumer reporting agency
29 that compiles and maintains files on consumers on a nationwide
30 basis is one that meets the definition in Section 603(p) of the
31 federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). Any
32 organization that is accepted as a data furnisher after being granted
33 an exemption by the commissioner pursuant to this subdivision
34 shall report all borrower payment performance since its inception
35 of lending under the program, as soon as practicable after its
36 acceptance into the program, but in no event more than six months
37 after its acceptance into the program.

38 (9) The organization shall underwrite each loan and shall ensure
39 that a loan is not made if, through its underwriting, the organization
40 determines that the borrower's total monthly debt service payments,

1 at the time of loan origination, including the loan for which the
2 borrower is being considered, and across all outstanding forms of
3 credit that can be independently verified by the organization,
4 exceed 50 percent of the borrower's gross monthly household
5 income except as specified in clause (iii) of subparagraph (D).

6 (A) The organization shall seek information and documentation
7 pertaining to all of a borrower's outstanding debt obligations during
8 the loan application and underwriting process, including loans that
9 are self-reported by the borrower but not available through
10 independent verification. The organization shall verify that
11 information using a credit report from at least one consumer
12 reporting agency that compiles and maintains files on consumers
13 on a nationwide basis or through other available electronic debt
14 verification services that provide reliable evidence of a borrower's
15 outstanding debt obligations.

16 (B) The organization shall also request from the borrower and
17 include all information obtained from the borrower regarding
18 outstanding deferred deposit transactions in the calculation of the
19 borrower's outstanding debt obligations.

20 (C) The organization shall not be required to consider, for
21 purposes of debt-to-income ratio evaluation, loans from friends or
22 family.

23 (D) The organization shall also verify the borrower's household
24 income that the organization relies on to determine the borrower's
25 debt-to-income ratio using information from any of the following:

26 (i) Electronic means or services that provide reliable evidence
27 of the borrower's actual income.

28 (ii) Internal Revenue Service Form W-2, tax returns, payroll
29 receipts, bank statements, or other third-party documents that
30 provide reasonably reliable evidence of the borrower's actual
31 income.

32 (iii) A signed statement from the borrower stating sources and
33 amounts of income, if the borrower's actual income cannot be
34 independently verified using electronic means or services, Internal
35 Revenue Service Forms, tax returns, payroll receipts, bank
36 statements, or other third-party documents. If income is verified
37 using a signed statement from a borrower, a loan shall not be made
38 if the borrower's total monthly debt service payments, at the time
39 of loan origination, including the loan for which the borrower is

1 being considered, and across all outstanding forms of credit, exceed
2 25 percent of the borrower's gross monthly household income.

3 (10) The organization shall notify each borrower, at least two
4 days prior to each payment due date, informing the borrower of
5 the amount due and the payment due date. Notification may be
6 provided by any means mutually acceptable to the borrower and
7 the organization. A borrower shall have the right to opt out of this
8 notification at any time, upon electronic or written request to the
9 organization. The organization shall notify each borrower of this
10 right prior to disbursing loan proceeds.

11 (11) Notwithstanding Sections 22311 to 22315, inclusive, no
12 organization, in connection with, or incidental to, the facilitating
13 of any loan made pursuant to this section, may offer, sell, or require
14 a borrower to contract for "credit insurance" as defined in
15 paragraph (1) of subdivision (a) of Section 22314 or insurance on
16 tangible personal or real property of the type specified in Section
17 22313.

18 (12) No organization shall require, as a condition of making a
19 loan, that a borrower waive any right, penalty, remedy, forum, or
20 procedure provided for in any law applicable to the loan, including
21 the right to file and pursue a civil action or file a complaint with
22 or otherwise communicate with the commissioner or any court or
23 other public entity, or that the borrower agree to resolve disputes
24 in a jurisdiction outside of California or to the application of laws
25 other than those of California, as provided by law. Any waiver by
26 a borrower must be knowing, voluntary, and in writing, and
27 expressly not made a condition of doing business with the
28 organization. Any waiver that is required as a condition of doing
29 business with the organization shall be presumed involuntary,
30 unconscionable, against public policy, and unenforceable. The
31 organization has the burden of proving that a waiver of any rights,
32 penalties, forums, or procedures was knowing, voluntary, and not
33 made a condition of the contract with the borrower.

34 (13) No organization shall refuse to do business with or
35 discriminate against a borrower or applicant on the basis that the
36 borrower or applicant refuses to waive any right, penalty, remedy,
37 forum, or procedure, including the right to file and pursue a civil
38 action or complaint with, or otherwise notify, the commissioner
39 or any court or other public entity. The exercise of a person's right
40 to refuse to waive any right, penalty, remedy, forum, or procedure,

1 including a rejection of a contract requiring a waiver, shall not
2 affect any otherwise legal terms of a contract or an agreement.

3 (14) This section shall not apply to any agreement to waive any
4 right, penalty, remedy, forum, or procedure, including any
5 agreement to arbitrate a claim or dispute, after a claim or dispute
6 has arisen. Nothing in this section shall affect the enforceability
7 or validity of any other provision of the contract.

8 (d) This division does not apply to a nonprofit organization that
9 partners with an organization granted an exemption pursuant to
10 subdivision (c) for the purpose of facilitating zero interest loans,
11 provided that the requirements of paragraphs (6) to (14), inclusive,
12 of subdivision (c), and the following additional conditions are met:

13 (1) The partnership of each exempt organization and each
14 partnering organization shall be formalized through a written
15 agreement that specifies the obligations of each party. Each written
16 agreement shall contain a provision establishing that the partnering
17 organization agrees to comply with the provisions of this section
18 and any regulations that may be adopted by the commissioner
19 pursuant to this section. Each such agreement shall be provided
20 to the commissioner upon request.

21 (2) Each partnering organization shall meet the requirements
22 for federal income tax exemption under Section 501(c)(3) of the
23 Internal Revenue Code and shall be organized and operated
24 exclusively for one or more of the purposes described in Section
25 501(c)(3) of the Internal Revenue Code.

26 (3) No part of the net earnings of the partnering organization
27 shall inure to the benefit of a private shareholder or individual.

28 (4) Each exempt organization shall notify the commissioner
29 within 30 days of entering into a written agreement with a
30 partnering organization, on such form and in such manner as the
31 commissioner may prescribe. At a minimum, this notification shall
32 include the name of the partnering organization, the contact
33 information for a person responsible for the lending activities
34 facilitated by that partnering organization, and the address or
35 addresses at which the organization facilitates lending activities.

36 (5) Upon a determination that a partnering organization has
37 acted in violation of this section or any regulation adopted
38 thereunder, the commissioner may disqualify that partnering
39 organization from performing services under this section, bar that
40 organization from performing services at one or more specific

1 locations of that organization, terminate a written agreement
2 between a partnering organization and an exempt organization,
3 and, if the commissioner deems such action to be in the public
4 interest, prohibit the use of that partnering organization by all
5 organizations granted exemptions by the commissioner pursuant
6 to subdivision (c).

7 (6) The exempt organization shall include information regarding
8 the loans facilitated by the partnering organization in the annual
9 report required pursuant to paragraph (5) of subdivision (c).

10 (e) The commissioner may examine each exempt organization
11 and each partnering organization for compliance with the
12 provisions of this section, upon reasonable notice to the party
13 responsible for the lending activities facilitated by that
14 organization. Any organization so examined shall make available
15 to the commissioner or his or her representative all books and
16 records requested by the commissioner related to the lending
17 activities facilitated by that organization. The cost of any such
18 examination shall be paid by the exempt organization.

19 (f) This section shall not apply to any loan of a bona fide
20 principal amount of two thousand five hundred dollars (\$2,500)
21 or more as determined in accordance with Section 22251. For
22 purposes of this subdivision, “bona fide principal amount” shall
23 be determined in accordance with Section 22251.

24 SEC. 2. Section 22067 is added to the Financial Code, to read:

25 22067. (a) On or before July 1 of each year, the commissioner
26 shall post a report on the department’s Internet Web site
27 summarizing the information described in subdivision (b). The
28 information disclosed to the commissioner for the commissioner’s
29 use in preparing the report described in this section is exempted
30 from any requirement of public disclosure by paragraph (2) of
31 subdivision (d) of Section 6254 of the Government Code.

32 (b) The report required by this section shall specify the time
33 period to which the report corresponds, and shall include, but not
34 be limited to, the following for that time period:

35 (1) The number of organizations that applied for exemptions
36 pursuant to subdivision (c) of Section 22066, and the number of
37 organizations that entered into partnerships with exempt
38 organizations in accordance with subdivision (d) of Section 22066.

39 (2) The number of organizations granted exemptions and the
40 types of exemptions granted.

1 (3) The reason or reasons for denying applications for
2 exemptions, if applicable. This information shall be provided in a
3 manner that does not identify the entity or entities denied.

4 (4) The number of borrowers who applied for loans through
5 exempt or partnering organizations, the number of borrowers
6 granted loans facilitated by exempt or partnering organizations,
7 the total amount loaned, and the distribution of loan lengths upon
8 origination.

9 (5) The number of borrowers who obtained more than one loan
10 through an exempt or partnering organization and the distribution
11 of the number of loans per borrower.

12 (6) Of the number of borrowers who obtained more than one
13 loan facilitated by an exempt or a partnering organization, the
14 percentage of those borrowers whose credit scores increased
15 between successive loans, based on information from at least one
16 major credit bureau, and the average size of the increase.

17 (7) The income distribution of borrowers upon loan origination,
18 including the number of borrowers who obtained at least one loan
19 and who resided in a low-to-moderate-income census tract at the
20 time of their loan application.

21 (8) The number of borrowers who obtained loans facilitated by
22 an exempt or a partnering organization for the following purposes,
23 based on borrower responses at the time of their loan applications
24 indicating the primary purpose for which the loan was obtained:

25 (A) Medical.

26 (B) Other emergency.

27 (C) Vehicle repair.

28 (D) Vehicle purchase.

29 (E) To pay bills.

30 (F) To consolidate debt.

31 (G) To build or repair credit history.

32 (H) To finance a purchase of goods or services other than a
33 vehicle.

34 (I) For other than personal, family, or household purposes.

35 (J) Other.

36 (9) The number of borrowers who self-report that they had a
37 bank account at the time of their loan application, the number of
38 borrowers who self-report that they had a bank account and used
39 check-cashing services, and the number of borrowers who

1 self-report that they did not have a bank account at the time of
2 their loan application.

3 (10) (A) The performance of loans under Section 22066, as
4 reflected by all of the following:

5 (i) The number and percentage of borrowers who experienced
6 at least one late payment lasting between seven and 29 days and
7 who subsequently brought his or her loan current, and the
8 distribution of principal loan amounts corresponding to those late
9 payments.

10 (ii) The number and percentage of borrowers who experienced
11 at least one late payment lasting between 30 and 59 days and who
12 subsequently brought his or her loan current, and the distribution
13 of principal loan amounts corresponding to those late payments.

14 (iii) The number and percentage of borrowers who experienced
15 at least one late payment lasting 60 days or more and who
16 subsequently brought his or her loan current, and the distribution
17 of principal loan amounts corresponding to those late payments.

18 (iv) The number and percentage of borrowers who experienced
19 at least one late payment of greater than seven days and who did
20 not subsequently bring his or her loan current.

21 (v) Among loans that were ever late for seven days or more, the
22 average number of times borrowers experienced a late payment
23 of seven days or more.

24 (11) The number and types of violations of Section 22066 by
25 exempt organizations, which were documented by the
26 commissioner.

27 (12) The number and types of violations of Section 22066 by
28 partnering organizations, which were documented by the
29 commissioner.

30 (13) The number of times the commissioner suspended or
31 revoked an exemption granted to an exempt organization pursuant
32 to paragraph (4) of subdivision (c) of Section 22066 and the
33 number of times a partnering organization was sanctioned by the
34 commissioner pursuant to paragraph (5) of subdivision (d) of
35 Section 22066.

36 (14) The number of complaints received by the commissioner
37 about an exempt organization or a partnering organization, and
38 the nature of those complaints.

39 (15) Recommendations for improving the program.

1 SEC. 3. The Legislature finds and declares that Section 2 of
2 this act imposes a limitation on the public's right of access to the
3 meetings of public bodies or the writings of public officials and
4 agencies within the meaning of Section 3 of Article I of the
5 California Constitution. Pursuant to that constitutional provision,
6 the Legislature makes the following findings to demonstrate the
7 interest protected by this limitation and the need for protecting
8 that interest:

9 In order to allow the Commissioner of Business Oversight of
10 the Department of Business Oversight to fully accomplish his or
11 her goals, it is imperative to protect the interests of those persons
12 submitting information to the department to ensure that any
13 personal or sensitive business information that this act requires
14 those persons to submit is protected as confidential information.

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