

Senate Bill No. 896

Passed the Senate May 19, 2014

Secretary of the Senate

Passed the Assembly August 4, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 896, Correa. Finance lenders: nonprofit organizations: zero-interest, low-cost 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, low-cost 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 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, low-cost 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, low-cost 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, low-cost 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.

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

SECTION 1. Section 22066 is added to the Financial Code, to read:

22066. (a) The Legislature finds and declares that nonprofit organizations have an important role to play in helping individuals obtain access to affordable, credit-building small dollar loans. California law should refrain from creating statutory barriers that risk slowing the growth of these loans. This section shall be liberally construed to encourage nonprofit organizations to help facilitate the making of zero-interest, low-cost loans, through lending circles and other programs and services that allow

individuals to establish and build credit histories or to improve their credit scores.

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

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

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

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

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

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

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

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

(A) The loan shall be unsecured.

(B) No interest may be imposed.

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

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

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

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

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

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

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

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

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

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

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

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

(H) The loan shall not be refinanced.

(I) Neither the organization nor any of its wholly owned subsidiaries shall sell or assign unpaid debt to an independent party for collection before at least 90 has passed since the start of the delinquency.

(7) Prior to disbursement of loan proceeds, the organization shall either (A) offer a credit education program or seminar to the borrower that has been previously reviewed and approved by the commissioner for use in complying with this section, or (B) invite the borrower to a credit education program or seminar offered by an independent third party that has been previously reviewed and approved by the commissioner for use in complying with this section. A credit education program or seminar offered pursuant to this paragraph shall be provided at no cost to the borrower.

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

(9) The organization shall underwrite each loan and shall ensure that a loan is not made if, through its underwriting, the organization determines that the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the organization,

exceed 50 percent of the borrower's gross monthly household income except as specified in clause (iii) of subparagraph (D).

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

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

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

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

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

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

(iii) A signed statement from the borrower stating sources and amounts of income, if the borrower's actual income cannot be independently verified using electronic means or services, Internal Revenue Service forms, tax returns, payroll receipts, bank statements, or other third-party documents. If income is verified using a signed statement from a borrower, a loan shall not be made if the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit, exceed 25 percent of the borrower's gross monthly household income.

(10) The organization shall notify each borrower, at least two days prior to each payment due date, informing the borrower of

the amount due and the payment due date. Notification may be provided by any means mutually acceptable to the borrower and the organization. A borrower shall have the right to opt out of this notification at any time, upon electronic or written request to the organization. The organization shall notify each borrower of this right prior to disbursing loan proceeds.

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

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

(13) No organization shall refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the commissioner or any court or other public entity. The exercise of a person’s right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

(14) This section shall not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any

agreement to arbitrate a claim or dispute, after a claim or dispute has arisen. Nothing in this section shall affect the enforceability or validity of any other provision of the contract.

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

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

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

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

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

(5) Upon a determination that a partnering organization has acted in violation of this section or any regulation adopted thereunder, the commissioner may disqualify that partnering organization from performing services under this section, bar that organization from performing services at one or more specific locations of that organization, terminate a written agreement between a partnering organization and an exempt organization, and, if the commissioner deems such action to be in the public

interest, prohibit the use of that partnering organization by all organizations granted exemptions by the commissioner pursuant to subdivision (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Medical.

(B) Other emergency.

(C) Vehicle repair.

(D) Vehicle purchase.

(E) To pay bills.

(F) To consolidate debt.

(G) To build or repair credit history.

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

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

(J) Other.

(9) The number of borrowers who self-report that they had a bank account at the time of their loan application, the number of borrowers who self-report that they had a bank account and used check-cashing services, and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

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

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

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

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

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

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

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

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

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

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

(15) Recommendations, if any, for improving the program.

SEC. 3. The Legislature finds and declares that Section 2 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the

interest protected by this limitation and the need for protecting that interest:

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

Approved _____, 2014

Governor