

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1161

Introduced by Assembly Member Skinner

February 18, 2011

An act to amend Sections 1113, 12200, 12201, ~~12243, 12253, 12310, 12330, 12404, 12446, and 12461~~ of, and ~~12213, 12230, 12235, 12240, 12243, 12248, 12253, 12310, 12311, 12313, 12320, 12330, 12331, 12340, 12354, 12364, 12376, 12401, 12402, 12404, 12410, 12440, 12442, 12443, 12446, 12451, 12452, 12453, 12454, 12460, 12461, 12490, 12521, 12530, 12531, 12533, 12534, 12535, 12536, 12537, 12540.1, 12560, 12591, 12626, 12628, 12633, 12634, 12637, 12656, 12658, 12659, 12672, 12673, and 12674~~ of, to amend the heading of Part 2 (commencing with Section 12200) of Division 3 of, and to add Section 12246.5 to, the Corporations Code, relating to cooperative corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1161, as amended, Skinner. Cooperative corporations.

Existing law, the Consumer Cooperative Corporation Law, provides for the organization and operation of primarily consumer cooperatives, and is also applicable to other cooperatives. Existing law provides for, among other things, information to be included in a corporation's bylaws, definitions necessary for purposes of defining patrons, and requirements as to voting rights of members and time periods for sending notice of meetings at which members are entitled to vote.

This bill would rename the law as the Cooperative Corporation Law, and provide alternative provisions to which a cooperative corporation may elect to be subject by designating itself as a worker cooperative in

its bylaws. This bill would limit a member of a worker cooperative to only one vote on a matter to be voted on by all classes voting together as a single class, regardless of the number of voting classes in which the person is a member. The bill would also require notice of a meeting in which members of a worker cooperative are entitled to vote to be sent no more than 24 hours before the time of the meeting. The bill would also make conforming changes.

Existing law provides that members may elect a director at any time to fill a vacancy. Existing law requires a cooperative corporation to include in its name the word “cooperative.” Existing law provides that a member may not transfer a membership, unless authorized under the cooperative corporation’s articles or bylaws.

This bill would provide that, in the case of a corporation with no members, the board may fill the vacancy and would specify the manners in which vacancies may be filled by the sole remaining director or by directors then in office when that number is less than a quorum. The bill would require a worker cooperative corporation to include in its name the words “worker cooperative.” The bill would provide that a membership in a worker cooperative corporation is nontransferable.

Existing law limits a distribution by a cooperative corporation in any fiscal year to 15%, multiplied by contributions to capital. Under existing law, the board of a cooperative corporation may abandon a merger, at any time before the merger is effective, as specified. Existing law requires a cooperative corporation to prepare an annual report not later than 120 days after the close of the corporation’s fiscal year.

This bill would exclude distributions by a worker cooperative corporation from the distribution limit. The bill would prohibit the board of a worker cooperative corporation from abandoning a merger. The bill would require a worker cooperative corporation to prepare an annual report not later than 360 days after the close of the corporation’s fiscal year.

Violation of specified provisions of the existing law is a crime.

Because this bill would expand existing crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1113 of the Corporations Code is
2 amended to read:

3 1113. (a) Any one or more corporations may merge with one
4 or more other business entities (Section 174.5). One or more
5 domestic corporations (Section 167) not organized under this
6 division and one or more foreign corporations (Section 171) may
7 be parties to the merger. Notwithstanding the provisions of this
8 section, the merger of any number of corporations with any number
9 of other business entities may be effected only if:

10 (1) In a merger in which a domestic corporation not organized
11 under this division or a domestic other business entity is a party,
12 it is authorized by the laws under which it is organized to effect
13 the merger.

14 (2) In a merger in which a foreign corporation is a party, it is
15 authorized by the laws under which it is organized to effect the
16 merger.

17 (3) In a merger in which a foreign other business entity is a
18 party, it is authorized by the laws under which it is organized to
19 effect the merger.

20 (b) Each corporation and each other party which desires to merge
21 shall approve, and shall be a party to, an agreement of merger.
22 Other persons, including a parent party (Section 1200), may be
23 parties to the agreement of merger. The board of each corporation
24 which desires to merge, and, if required the shareholders, shall
25 approve the agreement of merger. The agreement of merger shall
26 be approved on behalf of each party by those persons required to
27 approve the merger by the laws under which it is organized. The
28 agreement of merger shall state:

29 (1) The terms and conditions of the merger.

30 (2) The name and place of incorporation or organization of each
31 party to the merger and the identity of the surviving party.

32 (3) The amendments, if any, subject to Sections 900 and 907,
33 to the articles of the surviving corporation, if applicable, to be
34 effected by the merger. If any amendment changes the name of
35 the surviving corporation, if applicable, the new name may be,

1 subject to subdivision (b) of Section 201, the same as or similar
2 to the name of a disappearing party to the merger.

3 (4) The manner of converting the shares of each constituent
4 corporation into shares, interests, or other securities of the surviving
5 party. If any shares of any constituent corporation are not to be
6 converted solely into shares, interests or other securities of the
7 surviving party, the agreement of merger shall state (i) the cash,
8 rights, securities, or other property which the holders of those
9 shares are to receive in exchange for the shares, which cash, rights,
10 securities, or other property may be in addition to or in lieu of
11 shares, interests or other securities of the surviving party, or (ii)
12 that the shares are canceled without consideration.

13 (5) Any other details or provisions required by the laws under
14 which any party to the merger is organized, including, if a public
15 benefit corporation or a religious corporation is a party to the
16 merger, Section 6019.1, or, if a mutual benefit corporation is a
17 party to the merger, Section 8019.1, or, if a cooperative corporation
18 is a party to the merger, Section 12540.1, or, if a domestic limited
19 partnership is a party to the merger, Section 15678.2 or 15911.12,
20 or, if a domestic partnership is a party to the merger, Section 16911,
21 or, if a domestic limited liability company is a party to the merger,
22 Section 17551.

23 (6) Any other details or provisions as are desired, including,
24 without limitation, a provision for the payment of cash in lieu of
25 fractional shares or for any other arrangement with respect thereto
26 consistent with the provisions of Section 407.

27 (c) Each share of the same class or series of any constituent
28 corporation (other than the cancellation of shares held by a party
29 to the merger or its parent, or a wholly owned subsidiary of either,
30 in another constituent corporation) shall, unless all shareholders
31 of the class or series consent and except as provided in Section
32 407, be treated equally with respect to any distribution of cash,
33 rights, securities, or other property. Notwithstanding paragraph
34 (4) of subdivision (b), the unredeemable common shares of a
35 constituent corporation may be converted only into unredeemable
36 common shares of a surviving corporation or a parent party
37 (Section 1200) or unredeemable equity securities of a surviving
38 party other than a corporation if another party to the merger or its
39 parent owns, directly or indirectly, prior to the merger shares of
40 that corporation representing more than 50 percent of the voting

1 power of that corporation, unless all of the shareholders of the
2 class consent and except as provided in Section 407.

3 (d) Notwithstanding its prior approval, an agreement of merger
4 may be amended prior to the filing of the agreement of merger or
5 the certificate of merger, as is applicable, if the amendment is
6 approved by the board of each constituent corporation and, if the
7 amendment changes any of the principal terms of the agreement,
8 by the outstanding shares (Section 152), if required by Chapter 12
9 (commencing with Section 1200), in the same manner as the
10 original agreement of merger. If the agreement of merger as so
11 amended and approved is also approved by each of the other parties
12 to the agreement of merger, the agreement of merger as so amended
13 shall then constitute the agreement of merger.

14 (e) The board of a constituent corporation may, in its discretion,
15 abandon a merger, subject to the contractual rights, if any, of third
16 parties, including other parties to the agreement of merger, without
17 further approval by the outstanding shares (Section 152), at any
18 time before the merger is effective.

19 (f) Each constituent corporation shall sign the agreement of
20 merger by its chairperson of the board, president or a vice president
21 and also by its secretary or an assistant secretary acting on behalf
22 of their respective corporations.

23 (g) (1) If the surviving party is a corporation or a foreign
24 corporation, or if a public benefit corporation (Section 5060), a
25 mutual benefit corporation (Section 5059), a religious corporation
26 (Section 5061), or a corporation organized under the Cooperative
27 Corporation Law (Section 12200) is a party to the merger, after
28 required approvals of the merger by each constituent corporation
29 through approval of the board (Section 151) and any approval of
30 the outstanding shares (Section 152) required by Chapter 12
31 (commencing with Section 1200) and by the other parties to the
32 merger, the surviving party shall file a copy of the agreement of
33 merger with an officers' certificate of each constituent domestic
34 and foreign corporation attached stating the total number of
35 outstanding shares or membership interests of each class entitled
36 to vote on the merger (and identifying any other person or persons
37 whose approval is required), that the agreement of merger in the
38 form attached or its principal terms, as required, were approved
39 by that corporation by a vote of a number of shares or membership
40 interests of each class that equaled or exceeded the vote required,

1 specifying each class entitled to vote and the percentage vote
2 required of each class and, if applicable, by that other person or
3 persons whose approval is required, or that the merger agreement
4 was entitled to be and was approved by the board alone (as
5 provided in Section 1201, in the case of corporations subject to
6 that section). If equity securities of a parent party (Section 1200)
7 are to be issued in the merger, the officers' certificate of that
8 controlled party shall state either that no vote of the shareholders
9 of the parent party was required or that the required vote was
10 obtained. In lieu of an officers' certificate, a certificate of merger,
11 on a form prescribed by the Secretary of State, shall be filed for
12 each constituent other business entity. The certificate of merger
13 shall be executed and acknowledged by each domestic constituent
14 limited liability company by all managers of the limited liability
15 company (unless a lesser number is specified in its articles of
16 organization or operating agreement) and by each domestic
17 constituent limited partnership by all general partners (unless a
18 lesser number is provided in its certificate of limited partnership
19 or partnership agreement) and by each domestic constituent general
20 partnership by two partners (unless a lesser number is provided in
21 its partnership agreement) and by each foreign constituent limited
22 liability company by one or more managers and by each foreign
23 constituent general partnership or foreign constituent limited
24 partnership by one or more general partners, and by each
25 constituent reciprocal insurer by the chairperson of the board,
26 president, or vice president, and by the secretary or assistant
27 secretary, or, if a constituent reciprocal insurer has not appointed
28 those officers, by the chairperson of the board, president, or vice
29 president, and by the secretary or assistant secretary of the
30 constituent reciprocal insurer's attorney-in-fact, and by each other
31 party to the merger by those persons required or authorized to
32 execute the certificate of merger by the laws under which that party
33 is organized, specifying for that party the provision of law or other
34 basis for the authority of the signing persons. The certificate of
35 merger shall set forth, if a vote of the shareholders, members,
36 partners, or other holders of interests of the constituent other
37 business entity was required, a statement setting forth the total
38 number of outstanding interests of each class entitled to vote on
39 the merger and that the agreement of merger in the form attached
40 or its principal terms, as required, were approved by a vote of the

1 number of interests of each class that equaled or exceeded the vote
2 required, specifying each class entitled to vote and the percentage
3 vote required of each class, and any other information required to
4 be set forth under the laws under which the constituent other
5 business entity is organized, including, if a domestic limited
6 partnership is a party to the merger, subdivision (a) of Section
7 15678.4 or subdivision (a) of Section 15911.14, if a domestic
8 partnership is a party to the merger, subdivision (b) of Section
9 16915, and, if a domestic limited liability company is a party to
10 the merger, subdivision (a) of Section 17552. The certificate of
11 merger for each constituent foreign other business entity, if any,
12 shall also set forth the statutory or other basis under which that
13 foreign other business entity is authorized by the laws under which
14 it is organized to effect the merger. The merger and any amendment
15 of the articles of the surviving corporation, if applicable, contained
16 in the agreement of merger shall be effective upon filing of the
17 agreement of merger with an officer's certificate of each constituent
18 domestic and foreign corporation and a certificate of merger for
19 each constituent other business entity, subject to subdivision (c)
20 of Section 110 and subject to the provisions of subdivision (j), and
21 the several parties thereto shall be one entity. If a domestic
22 reciprocal insurer organized after 1974 to provide medical
23 malpractice insurance is a party to the merger, the agreement of
24 merger or certificate of merger shall not be filed until there has
25 been filed the certificate issued by the Insurance Commissioner
26 approving the merger pursuant to Section 1555 of the Insurance
27 Code. The Secretary of State may certify a copy of the agreement
28 of merger separate from the officers' certificates and certificates
29 of merger attached thereto.

30 (2) If the surviving entity is an other business entity, and no
31 public benefit corporation (Section 5060), mutual benefit
32 corporation (Section 5059), religious corporation (Section 5061),
33 or corporation organized under the Cooperative Corporation Law
34 (Section 12200) is a party to the merger, after required approvals
35 of the merger by each constituent corporation through approval of
36 the board (Section 151) and any approval of the outstanding shares
37 (Section 152) required by Chapter 12 (commencing with Section
38 1200) and by the other parties to the merger, the parties to the
39 merger shall file a certificate of merger in the office of, and on a
40 form prescribed by, the Secretary of State. The certificate of merger

1 shall be executed and acknowledged by each constituent domestic
2 and foreign corporation by its chairperson of the board, president
3 or a vice president and also by its secretary or an assistant secretary
4 and by each domestic constituent limited liability company by all
5 managers of the limited liability company (unless a lesser number
6 is specified in its articles of organization or operating agreement)
7 and by each domestic constituent limited partnership by all general
8 partners (unless a lesser number is provided in its certificate of
9 limited partnership or partnership agreement) and by each domestic
10 constituent general partnership by two partners (unless a lesser
11 number is provided in its partnership agreement) and by each
12 foreign constituent limited liability company by one or more
13 managers and by each foreign constituent general partnership or
14 foreign constituent limited partnership by one or more general
15 partners, and by each constituent reciprocal insurer by the
16 chairperson of the board, president, or vice president, and by the
17 secretary or assistant secretary, or, if a constituent reciprocal insurer
18 has not appointed those officers, by the chairperson of the board,
19 president, or vice president, and by the secretary or assistant
20 secretary of the constituent reciprocal insurer's attorney-in-fact.
21 The certificate of merger shall be signed by each other party to the
22 merger by those persons required or authorized to execute the
23 certificate of merger by the laws under which that party is
24 organized, specifying for that party the provision of law or other
25 basis for the authority of the signing persons. The certificate of
26 merger shall set forth all of the following:

27 (A) The name, place of incorporation or organization, and the
28 Secretary of State's file number, if any, of each party to the merger,
29 separately identifying the disappearing parties and the surviving
30 party.

31 (B) If the approval of the outstanding shares of a constituent
32 corporation was required by Chapter 12 (commencing with Section
33 1200), a statement setting forth the total number of outstanding
34 shares of each class entitled to vote on the merger and that the
35 principal terms of the agreement of merger were approved by a
36 vote of the number of shares of each class entitled to vote and the
37 percentage vote required of each class.

38 (C) The future effective date or time, not more than 90 days
39 subsequent to the date of filing of the merger, if the merger is not

1 to be effective upon the filing of the certificate of merger with the
2 office of the Secretary of State.

3 (D) A statement, by each party to the merger which is a domestic
4 corporation not organized under this division, a foreign corporation,
5 or an other business entity, of the statutory or other basis under
6 which that party is authorized by the laws under which it is
7 organized to effect the merger.

8 (E) Any other information required to be stated in the certificate
9 of merger by the laws under which each party to the merger is
10 organized, including, if a domestic limited liability company is a
11 party to the merger, subdivision (a) of Section 17552, if a domestic
12 partnership is a party to the merger, subdivision (b) of Section
13 16915, and, if a domestic limited partnership is a party to the
14 merger, subdivision (a) of Section 15678.4 or subdivision (a) of
15 Section 15911.14.

16 (F) Any other details or provisions that may be desired.

17 Unless a future effective date or time is provided in a certificate
18 of merger, in which event the merger shall be effective at that
19 future effective date or time, a merger shall be effective upon the
20 filing of the certificate of merger in the office of the Secretary of
21 State and the several parties thereto shall be one entity. The
22 surviving other business entity shall keep a copy of the agreement
23 of merger at its principal place of business which, for purposes of
24 this subdivision, shall be the office referred to in Section 17057 if
25 a domestic limited liability company, at the business address
26 specified in paragraph (5) of subdivision (a) of Section 17552 if
27 a foreign limited liability company, at the office referred to in
28 subdivision (a) of Section 16403 if a domestic general partnership,
29 at the business address specified in subdivision (f) of Section 16911
30 if a foreign partnership, at the office referred to in subdivision (a)
31 of Section 15614 or in subdivision (a) of Section 15901.14 if a
32 domestic limited partnership, or at the business address specified
33 in paragraph (5) of subdivision (a) of Section 15678.4 or paragraph
34 (3) of subdivision (a) of Section 15909.02 if a foreign limited
35 partnership. Upon the request of a holder of equity securities of a
36 party to the merger, a person with authority to do so on behalf of
37 the surviving other business entity shall promptly deliver to that
38 holder, a copy of the agreement of merger. A waiver by that holder
39 of the rights provided in the foregoing sentence shall be
40 unenforceable. If a domestic reciprocal insurer organized after

1 1974 to provide medical malpractice insurance is a party to the
2 merger the agreement of merger or certificate of merger shall not
3 be filed until there has been filed the certificate issued by the
4 Insurance Commissioner approving the merger in accordance with
5 Section 1555 of the Insurance Code.

6 (h) (1) A copy of an agreement of merger certified on or after
7 the effective date by an official having custody thereof has the
8 same force in evidence as the original and, except as against the
9 state, is conclusive evidence of the performance of all conditions
10 precedent to the merger, the existence on the effective date of the
11 surviving party to the merger and the performance of the conditions
12 necessary to the adoption of any amendment to the articles, if
13 applicable, contained in the agreement of merger.

14 (2) For all purposes for a merger in which the surviving entity
15 is a domestic other business entity and the filing of a certificate of
16 merger is required by paragraph (2) of subdivision (g), a copy of
17 the certificate of merger duly certified by the Secretary of State is
18 conclusive evidence of the merger of the constituent corporations,
19 either by themselves or together with the other parties to the
20 merger, into the surviving other business entity.

21 (i) (1) Upon a merger pursuant to this section, the separate
22 existences of the disappearing parties to the merger cease and the
23 surviving party to the merger shall succeed, without other transfer,
24 to all the rights and property of each of the disappearing parties to
25 the merger and shall be subject to all the debts and liabilities of
26 each in the same manner as if the surviving party to the merger
27 had itself incurred them.

28 (2) All rights of creditors and all liens upon the property of each
29 of the constituent corporations and other parties to the merger shall
30 be preserved unimpaired, provided that those liens upon property
31 of a disappearing party shall be limited to the property affected
32 thereby immediately prior to the time the merger is effective.

33 (3) Any action or proceeding pending by or against any
34 disappearing corporation or disappearing party to the merger may
35 be prosecuted to judgment, which shall bind the surviving party,
36 or the surviving party may be proceeded against or substituted in
37 its place.

38 (4) If a limited partnership or a general partnership is a party to
39 the merger, nothing in this section is intended to affect the liability
40 a general partner of a disappearing limited partnership or general

1 partnership may have in connection with the debts and liabilities
2 of the disappearing limited partnership or general partnership
3 existing prior to the time the merger is effective.

4 (j) (1) The merger of domestic corporations with foreign
5 corporations or foreign other business entities in a merger in which
6 one or more other business entities is a party shall comply with
7 subdivision (a) and this subdivision.

8 (2) If the surviving party is a domestic corporation or domestic
9 other business entity, the merger proceedings with respect to that
10 party and any domestic disappearing corporation shall conform to
11 the provisions of this section. If the surviving party is a foreign
12 corporation or foreign other business entity, then, subject to the
13 requirements of subdivision (c), and of Section 407 and Chapter
14 12 (commencing with Section 1200) and Chapter 13 (commencing
15 with Section 1300), and, if applicable, corresponding provisions
16 of the Nonprofit Corporation Law or the Cooperative Corporation
17 Law, with respect to any domestic constituent corporations, Chapter
18 13 (commencing with Section 17600) of Title 2.5 with respect to
19 any domestic constituent limited liability companies, Article 6
20 (commencing with Section 16601) of Chapter 5 of Title 2 with
21 respect to any domestic constituent general partnerships, and
22 Article 7.6 (commencing with Section 15679.1) of Chapter 3, and
23 Article 11.5 (commencing with Section 15911.20) of Chapter 5.5
24 of Title 2 with respect to any domestic constituent limited
25 partnerships, the merger proceedings may be in accordance with
26 the laws of the state or place of incorporation or organization of
27 the surviving party.

28 (3) If the surviving party is a domestic corporation or domestic
29 other business entity, the certificate of merger or the agreement of
30 merger with attachments shall be filed as provided in subdivision
31 (g) and thereupon, subject to subdivision (c) of Section 110 or
32 paragraph (2) of subdivision (g), as is applicable, the merger shall
33 be effective as to each domestic constituent corporation and
34 domestic constituent other business entity.

35 (4) If the surviving party is a foreign corporation or foreign
36 other business entity, the merger shall become effective in
37 accordance with the law of the jurisdiction in which the surviving
38 party is organized, but, except as provided in paragraph (5), the
39 merger shall be effective as to any domestic disappearing
40 corporation as of the time of effectiveness in the foreign jurisdiction

1 upon the filing in this state of a copy of the agreement of merger
2 with an officers' certificate of each constituent foreign and
3 domestic corporation and a certificate of merger of each constituent
4 other business entity attached, which officers' certificates and
5 certificates of merger shall conform to the requirements of
6 paragraph (1) of subdivision (g). If one or more domestic other
7 business entities is a disappearing party in a merger pursuant to
8 this subdivision in which a foreign other business entity is the
9 surviving entity, a certificate of merger required by the laws under
10 which that domestic other business entity is organized, including
11 subdivision (a) of Section 15678.4, subdivision (a) of Section
12 15911.14, subdivision (b) of Section 16915, or subdivision (a) of
13 Section 17552, as is applicable, shall also be filed at the same time
14 as the filing of the agreement of merger.

15 (5) If the date of the filing in this state pursuant to this
16 subdivision is more than six months after the time of the
17 effectiveness in the foreign jurisdiction, or if the powers of a
18 domestic disappearing corporation are suspended at the time of
19 effectiveness in the foreign jurisdiction, the merger shall be
20 effective as to the domestic disappearing corporation as of the date
21 of filing in this state.

22 (6) In a merger described in paragraph (3) or (4), each foreign
23 disappearing corporation that is qualified for the transaction of
24 intrastate business shall by virtue of the filing pursuant to this
25 subdivision, subject to subdivision (c) of Section 110, automatically
26 surrender its right to transact intrastate business in this state. The
27 filing of the agreement of merger or certificate of merger, as is
28 applicable, pursuant to this subdivision, by a disappearing foreign
29 other business entity registered for the transaction of intrastate
30 business in this state shall, by virtue of that filing, subject to
31 subdivision (c) of Section 110, automatically cancels the
32 registration for that foreign other business entity, without the
33 necessity of the filing of a certificate of cancellation.

34 SEC. 2. Section 12200 of the Corporations Code is amended
35 to read:

36 12200. This part shall be known as the Cooperative Corporation
37 Law. This part is intended primarily to apply to the organization
38 and operation of consumer cooperatives and worker cooperatives.
39 It is also applicable to other cooperatives, including, but not limited

1 to, cooperatives formed for the purpose of recycling or treating
2 hazardous wastes, which elect to incorporate under it.

3 SEC. 3. Section 12201 of the Corporations Code is amended
4 to read:

5 12201. (a) Subject to any other provision of law of this state
6 applying to the particular class of corporation or line of activity,
7 a corporation may be formed under this part for any lawful purpose
8 provided that, *in the case of a worker cooperative, the workers of*
9 *the corporation shall constitute the members, or one class of*
10 *members, and, in the case of a consumer cooperative, it shall be*
11 *organized and shall conduct its business primarily for the mutual*
12 *benefit of its members as patrons of the corporation. The earnings,*
13 *savings, or benefits of the corporation shall be used for the general*
14 *welfare of the members or shall be proportionately and equitably*
15 *distributed to some or all of its members or its patrons, based upon*
16 *their patronage (Section 12243) of the corporation, in the form of*
17 *cash, property, evidences of indebtedness, capital credits,*
18 *memberships, or services.*

19 (b) Those corporations that are democratically controlled and
20 are not organized to make a profit for themselves, as such, or for
21 their members, as such, but primarily for their members as patrons
22 (Section 12243).

23 (c) A corporation organized under this part that has designated
24 in its bylaws that it is a worker cooperative shall also designate
25 that its workers constitute its members or one class of its members.

26 SEC. 4. Section 12213 of the Corporations Code is amended
27 to read:

28 12213. Any agreement, certificate, or other instrument filed
29 pursuant to the provisions of this part, may be corrected with
30 respect to any misstatement of fact contained therein, any defect
31 in the execution thereof or any other error or defect contained
32 therein, by filing a certificate of correction entitled "Certificate of
33 Correction of ____ (insert here the title of the agreement, certificate
34 or other instrument to be corrected and the name of the corporation
35 or corporations)." However, no such certificate of correction shall
36 alter the wording of any resolution which was in fact adopted by
37 the board or, *in the case of a corporation that is not a worker*
38 *cooperation, by the members or delegates and, in the case of a*
39 *corporation that is a worker cooperative, by the members or effect*
40 a corrected amendment of articles which amendment as so

1 corrected would not in all respects have complied with the
2 requirements of this part, at the time of filing of the agreement,
3 certificate or other instrument being corrected. Such certificate of
4 correction shall be signed and verified or acknowledged as provided
5 in this part with respect to the agreement, certificate or other
6 instrument being corrected. It shall set forth the following:

7 (a) The name or names of the corporation or corporations.

8 (b) The date the agreement, certificate or other instrument being
9 corrected was filed.

10 (c) The provision in the agreement, certificate or other
11 instrument as corrected and, if the execution was defective, wherein
12 it was defective.

13 The filing of the certificate of correction shall not alter the
14 effective time of the agreement, certificate or other instrument
15 being corrected, which shall remain as its original effective time,
16 and such filing shall not affect any right or liability accrued or
17 incurred before such filing, except that any right or liability accrued
18 or incurred by reason of the error or defect being corrected shall
19 be extinguished by such filing if the person having such right has
20 not detrimentally relied on the original instrument.

21 *SEC. 5. Section 12230 of the Corporations Code is amended*
22 *to read:*

23 12230. “Class” refers to those memberships *or shares* which:

24 (a) are identified in the articles or bylaws as being a different type
25 of membership *or share*; or (b) have the same rights with respect
26 to voting, dissolution, redemption, distributions and transfer. For
27 the purpose of this section, rights shall be considered the same if
28 they are determined by a formula applied uniformly.

29 *SEC. 6. Section 12235 of the Corporations Code is amended*
30 *to read:*

31 12235. “Distribution” means the distribution of any gains,
32 profits or dividends to any ~~member~~ *person* as such, but does not
33 include patronage distributions.

34 *SEC. 7. Section 12240 of the Corporations Code is amended*
35 *to read:*

36 12240. “Membership certificate,” as used in this part, means
37 a document evidencing a ~~proprietary~~ *membership* interest in a
38 corporation.

1 ~~SEC. 4.~~

2 *SEC. 8.* Section 12243 of the Corporations Code is amended
3 to read:

4 12243. (a) If the corporation is organized to provide goods or
5 services to its members, the corporation's "patrons" are those who
6 purchase those types of goods from, or use those types of service
7 of, the corporation. If the corporation is organized to market,
8 process or otherwise handle its members' products or services, the
9 corporation's "patrons" are those persons whose products or
10 services are so marketed, processed, or handled by the corporation.

11 (b) With respect to a corporation that is organized as a worker
12 cooperative, the corporation's "patrons" are its workers, those
13 persons who purchase goods or services from the corporation, and
14 those persons whose products or services are marketed, processed,
15 or handled by the corporation.

16 (c) "Patronage" of a patron is measured by the volume or value,
17 or both, of a patron's labor provided for, purchases of products
18 from, and use of services furnished by, the corporation, and by the
19 products and services provided by the patron to the corporation
20 for marketing.

21 *SEC. 9.* Section 12246.5 is added to the Corporations Code,
22 to read:

23 12246.5. "Share" means a unit of proprietary interest of a
24 shareholder.

25 *SEC. 10.* Section 12248 of the Corporations Code is amended
26 to read:

27 12248. "~~Share certificate~~" shall have the same meaning as
28 "~~membership certificate~~" as defined in Section 12240 *certificate*,"
29 as used in this part, means a document evidencing a proprietary
30 interest of a shareholder in a corporation.

31 ~~SEC. 5.~~

32 *SEC. 11.* Section 12253 of the Corporations Code is amended
33 to read:

34 12253. (a) "Voting power" means the power to vote for the
35 election of directors at the time any determination of voting power
36 is made and does not include the right to vote upon the happening
37 of some condition or event which has not yet occurred. In any case
38 where different classes of memberships are entitled to vote as
39 separate classes for different members of the board, the
40 determination of percentage of voting power shall be made on the

1 basis of the percentage of the total number of authorized directors
2 which the memberships in question (whether of one or more
3 classes) have the power to elect in an election at which all
4 memberships then entitled to vote for the election of any directors
5 are voted.

6 (b) If a worker cooperative corporation has authorized voting
7 rights for a worker member class and one or more additional classes
8 of members, then at least a majority of the authorized directors
9 shall be elected by the worker member class.

10 ~~SEC. 6.~~

11 *SEC. 12.* Section 12310 of the Corporations Code is amended
12 to read:

13 12310. The articles of incorporation of a corporation formed
14 under this part shall set forth:

15 (a) The name of the corporation.

16 (b) The following statement:

17 “This corporation is a cooperative corporation organized under
18 the Cooperative Corporation Law. The purpose of this corporation
19 is to engage in any lawful act or activity for which a corporation
20 may be organized under such law.”

21 [The articles may include a further description of the
22 corporation’s purposes.]

23 (c) The name and address in this state of the corporation’s initial
24 agent for service of process in accordance with subdivision (b) of
25 Section 12570.

26 (d) Whether the voting power or the proprietary interests of the
27 members *and shareholders* are equal or unequal. If the voting
28 power or proprietary interests of the members are unequal, the
29 articles shall state either (i) the general rule or rules by which the
30 voting power and proprietary interests of the members *and*
31 *shareholders* shall be determined or (ii) that such rule or rules shall
32 be prescribed in the corporation’s bylaws. Equal voting power
33 means voting power apportioned on the basis of one vote for each
34 member. Equal proprietary rights means property rights
35 apportioned on the basis of one proprietary unit for each member
36 *or shareholder*.

37 *SEC. 13.* Section 12311 of the Corporations Code is amended
38 to read:

39 12311. (a) The names of all corporations formed under this
40 part shall include *the word* “cooperative.” *The names of all*

1 *corporations formed under this part as a worker cooperative shall*
2 *include the words “worker cooperative.”* No corporation shall be
3 formed under this part unless there is affixed or prefixed to its
4 name some word or abbreviation which will indicate that it is a
5 corporation, as distinguished from a natural person, a firm, or an
6 unincorporated association.

7 (b) No person shall adopt or use the word “cooperative” or any
8 abbreviation or derivation thereof, or any word similar thereto, as
9 part of the name or designation under which it does business in
10 this state, unless incorporated as provided in this part or unless
11 incorporated as a nonprofit cooperative association under Chapter
12 1 (commencing with Section 54001) of Division 20 of the Food
13 and Agricultural Code, as a stock cooperative, as defined in Section
14 11003.2 of the Business and Professions Code, as a limited-equity
15 housing cooperative, as defined in Section 33007.5 of the Health
16 and Safety Code, as a credit union or organization owned for the
17 mutual benefit of credit unions, or under some other law of this
18 state enabling it to do so. However, the foregoing prohibition shall
19 be inapplicable to any credit union or organization owned for the
20 mutual benefit of credit unions, any housing cooperative, the
21 financing of which is insured, guaranteed, or provided, in whole
22 or in part, by a public or statutorily chartered entity pursuant to a
23 program created for housing cooperatives, a nonprofit corporation,
24 a majority of whose membership is composed of cooperative
25 corporations, or an academic institution that serves cooperative
26 corporations.

27 (c) A domestic or foreign corporation or association which did
28 business in this state under a name or designation including the
29 word “cooperative” prior to September 19, 1939, and which
30 conducts business on a cooperative basis substantially as set forth
31 in this part, may continue to do business under that name or
32 designation.

33 (d) Any person, firm, individual, partnership, trust, domestic
34 corporation, foreign corporation, or association which did business
35 in this state under a name or designation including the word
36 “cooperative” prior to September 19, 1939, but which does not
37 conduct business on a cooperative basis as contemplated by Section
38 12201 of this part, may continue to do business under that name
39 or designation if the words “not organized under the law relating

1 to cooperative corporations” are always placed immediately after
2 the name or designation wherever it is used.

3 (e) Any foreign corporation, organized under and complying
4 with the cooperative law of the state or other jurisdiction of its
5 creation, may use the term “cooperative” in this state if it has
6 complied with the laws of this state applicable to foreign
7 corporations, insofar as those laws are applicable to it, and if it is
8 doing business on a cooperative basis as contemplated by Section
9 12201.

10 *SEC. 14. Section 12313 of the Corporations Code is amended*
11 *to read:*

12 12313. (a) The articles of incorporation may set forth any or
13 all of the following provisions, which shall not be effective unless
14 expressly provided in the articles:

15 (1) A provision limiting the duration of the corporation’s
16 existence to a specified date.

17 (2) A provision providing for the distribution of the remaining
18 assets of the corporation, after payment or adequate provision for
19 all of its debts and liabilities, to a charitable trust.

20 (b) Nothing contained in subdivision (a) shall affect the
21 enforceability, as between the parties thereto, of any lawful
22 agreement not otherwise contrary to public policy.

23 (c) The articles of incorporation may set forth any or all of the
24 following provisions:

25 (1) The names and addresses of the persons appointed to act as
26 initial directors.

27 (2) Provisions concerning the transfer of memberships *or shares*,
28 in accordance with Section 12410.

29 (3) The classes of members *or shareholders*, if any, and if there
30 are two or more classes, the rights, privileges, preferences,
31 restrictions and conditions attaching to each class.

32 (4) Any other provision, not in conflict with law, for the
33 management of the activities and for the conduct of the affairs of
34 the corporation, including any provision which is required or
35 permitted by this part to be stated in the bylaws.

36 (5) A provision conferring upon members the right to determine
37 the consideration for which memberships shall be issued.

38 *SEC. 15. Section 12320 of the Corporations Code is amended*
39 *to read:*

1 12320. Subject to any limitations contained in the articles or
2 bylaws and to compliance with other provisions of this part and
3 any other applicable laws, a corporation, in carrying out its
4 activities, shall have all of the powers of a natural person,
5 including, without limitation, the power to:

- 6 (a) Adopt, use, and at will alter a corporate seal, but failure to
7 affix a seal does not affect the validity of any instrument.
- 8 (b) Adopt, amend, and repeal bylaws.
- 9 (c) Qualify to conduct its ~~activities~~ *activities* in any other state,
10 territory, dependency or foreign country.
- 11 (d) Issue, purchase, redeem, receive, take or otherwise acquire,
12 own, sell, lend, exchange, transfer or otherwise dispose of, pledge,
13 use and otherwise deal in and with its own memberships, *shares*,
14 bonds, debentures, notes and debt securities.
- 15 (e) Pay pensions, and establish and carry out pension, deferred
16 compensation, saving, thrift and other retirement, incentive and
17 benefit plans, trusts and provisions for any or all of its directors,
18 officers, employees, and persons providing services to it or any of
19 its subsidiary or related or associated corporations, and to
20 indemnify and purchase and maintain insurance on behalf of any
21 fiduciary of such plans, trusts, or provisions.
- 22 (f) Issue certificates evidencing membership *and shares* in
23 accordance with the provisions of Section 12401 and issue identity
24 cards to identify those persons eligible to use the corporation's
25 facilities.
- 26 (g) Levy dues, assessments, and membership and transfer fees.
- 27 (h) Make donations for the public welfare or for community
28 funds, hospital, charitable, educational, scientific, civic, religious
29 or similar purposes.
- 30 (i) Assume obligations, enter into contracts, including contracts
31 of guarantee or suretyship, incur liabilities, borrow or lend money
32 or otherwise use its credit, and secure any of its obligations,
33 contracts or liabilities by mortgage, pledge or other encumbrance
34 of all or any part of its property and income.
- 35 (j) Participate with others in any partnership, joint venture or
36 other association, transaction or arrangement of any kind whether
37 or not such participation involves sharing or delegation of control
38 with or to others.

1 (k) Act as trustee under any trust incidental to the principal
 2 objects of the corporation, and receive, hold, administer, exchange,
 3 and expend funds and property subject to such trust.

4 (l) Carry on a business at a profit and apply any profit that results
 5 from the business activity to any activity in which it may lawfully
 6 engage.

7 ~~SEC. 7.~~

8 *SEC. 16.* Section 12330 of the Corporations Code is amended
 9 to read:

10 12330. (a) Except as provided in subdivision (c) and Sections
 11 12331, 12360, 12364, 12462, and 12484, bylaws may be adopted,
 12 amended, or repealed by the board unless the action would:

13 (1) Materially and adversely affect the rights or obligations of
 14 members as to voting, dissolution, redemption, transfer,
 15 distributions, patronage distributions, patronage, property rights,
 16 or rights to repayment of contributed capital;

17 (2) Increase or decrease the number or members authorized in
 18 total or for any class;

19 (3) Effect an exchange, reclassification or cancellation of all or
 20 part of the memberships; or

21 (4) Authorize a new class of membership.

22 (b) Bylaws may be adopted, amended or repealed by approval
 23 of the members (Section 12224); provided, however, that adoption,
 24 amendment, or repeal also requires approval by the members of a
 25 class if that action would:

26 (1) Materially and adversely affect the rights or obligations of
 27 that class as to voting, dissolution, redemption, transfer,
 28 distributions, patronage distributions, patronage, property rights,
 29 or rights to repayment of contributed capital, in a manner different
 30 than such action affects another class;

31 (2) Materially and adversely affect such class as to voting,
 32 dissolution, redemption, transfer, distributions, patronage
 33 distributions, patronage, property rights, or rights to repayment of
 34 contributed capital, by changing the rights, privileges, preferences,
 35 restrictions or conditions of another class;

36 (3) Increase or decrease the number of memberships authorized
 37 for such class;

38 (4) Increase the number of memberships authorized for another
 39 class;

1 (5) Effect an exchange, reclassification or cancellation of all or
2 part of the memberships of such class; or

3 (6) Authorize a new class of memberships.

4 (c) The articles or bylaws may restrict or eliminate the power
5 of the board to adopt, amend or repeal any or all bylaws, subject
6 to subdivision (e) of Section 12331.

7 (d) Bylaws may also provide that repeal or amendment of those
8 bylaws, or the repeal or amendment of specified portions of those
9 bylaws, may occur only with the approval in writing of a specified
10 person or persons other than the board or members. However, this
11 approval requirement, unless the articles or the bylaws specify
12 otherwise, shall not apply if any of the following circumstances
13 exist:

14 (1) The specified person or persons have died or ceased to exist.

15 (2) If the right of the specified person or persons to approve is
16 in the capacity of an officer, trustee, or other status and the office,
17 trust, or status has ceased to exist.

18 (3) If the corporation has a specific proposal for amendment or
19 repeal, and the corporation has provided written notice of that
20 proposal, including a copy of the proposal, to the specified person
21 or persons at the most recent address for each of them, based on
22 the corporation's records, and the corporation has not received
23 written approval or nonapproval within the period specified in the
24 notice, which shall not be less than 10 nor more than 30 days
25 commencing at least 20 days after the notice has been provided.

26 (e) If the corporation elects to be governed by provisions of this
27 part pertaining specifically to a worker cooperative, the corporation
28 shall state in its bylaws that it is a worker cooperative.

29 *SEC. 17. Section 12331 of the Corporations Code is amended*
30 *to read:*

31 12331. (a) The bylaws shall set forth (unless such provision
32 is contained in the articles, in which case it may only be changed
33 by an amendment of the articles) the number of directors of the
34 corporation, or the method of determining the number of directors
35 of the corporation, or that the number of directors shall be not less
36 than a stated minimum or more than a stated maximum with the
37 exact number of directors to be fixed, within the limits specified,
38 by approval of the board or the members (Sections 12222 and
39 12224), in the manner provided in the bylaws, subject to
40 subdivision (e). The number or minimum number of directors shall

1 not be less than three. Alternate directors may be permitted, in
2 which event, the bylaws shall specify the manner and times of
3 their election and the conditions to their service in place of a
4 director.

5 (b) Once members have been admitted, a bylaw specifying or
6 changing a fixed number of directors or the maximum or minimum
7 number or changing from a fixed to a variable board or vice versa
8 may only be adopted by approval of the members.

9 (c) The bylaws may contain any provision, not in conflict with
10 law or the articles, for the management of the activities and for
11 the conduct of the affairs of the corporation, including but not
12 limited to:

13 (1) Any provision referred to in subdivision (c) of Section
14 12313.

15 (2) The time, place and manner of calling, conducting and giving
16 notice of members', directors', and committee meetings, or of
17 conducting mail ballots.

18 (3) The qualifications, duties and compensation of directors;
19 the time of their election; and the requirements of a quorum for
20 directors' and committee meetings.

21 (4) The appointment of committees, composed of directors or
22 nondirectors or both, by the board or any officer and the authority
23 of any such committees.

24 (5) The appointment, duties, compensation and tenure of
25 officers.

26 (6) The mode of determination of members *or shareholders* of
27 record.

28 (7) The making of reports and financial statements to members
29 *or shareholders*.

30 (8) Setting, imposing and collecting dues, assessments, and
31 membership and transfer fees.

32 (9) The time and manner of patronage distributions consistent
33 with this part.

34 (d) The bylaws may provide for eligibility, the manner of
35 admission, withdrawal, suspension, and expulsion of members,
36 and the suspension or termination of memberships consistent with
37 the requirements of Section 12431.

38 (e) The bylaws may require, for any or all corporate actions,
39 the vote of a larger proportion of, or all of, the members or the
40 members of any class, unit, or grouping of members or the vote

1 of a larger proportion of, or all of, the directors, than is otherwise
2 required by this part. Such a provision in the bylaws requiring such
3 greater vote shall not be altered, amended or repealed except by
4 such greater vote, unless otherwise provided in the bylaws.

5 (f) The bylaws may contain a provision limiting the number of
6 members *or shareholders*, in total or of any class, which the
7 corporation is authorized to admit.

8 (g) The bylaws may provide for the establishment by the
9 corporation of a program for the education of its members, officers,
10 employees and the general public in the principles and techniques
11 of cooperation.

12 *SEC. 18. Section 12340 of the Corporations Code is amended*
13 *to read:*

14 12340. Every corporation shall keep at its principal office in
15 this state the original or a copy of its articles and bylaws as
16 amended to date, which shall be open to inspection by the members
17 *and shareholders* at all reasonable times during office hours. If
18 the corporation has no office in this state, it shall upon the written
19 request of any member *or shareholder* furnish to such member *or*
20 *shareholder* a copy of the articles or bylaws as amended to date.

21 *SEC. 19. Section 12354 of the Corporations Code is amended*
22 *to read:*

23 12354. Subject to the provisions of subdivision (a) of Section
24 12321, any note, mortgage, evidence of indebtedness, contract,
25 conveyance or other instrument in writing, and any assignment or
26 endorsement thereof, executed or entered into between any
27 corporation and any other person, when signed by any one of the
28 ~~chairman~~ *chairperson* of the board, the president or any vice
29 president and by any one of the secretary, any assistant secretary,
30 the chief financial officer or any assistant treasurer of such
31 corporation, is not invalidated as to the corporation by any lack of
32 authority of the signing officers in the absence of actual knowledge
33 on the part of the other person that the signing officers had no
34 authority to execute the same.

35 *SEC. 20. Section 12364 of the Corporations Code is amended*
36 *to read:*

37 12364. (a) Unless otherwise provided in the articles or bylaws
38 and except for a vacancy created by the removal of a director,
39 vacancies on the board may be filled by approval of the board
40 (Section 12222) or, if the number of directors then in office is less

1 than a quorum, by (1) the unanimous written consent of the
 2 directors then in office, (2) the affirmative vote of a majority of
 3 the directors then in office at a meeting held pursuant to notice or
 4 waivers of notice complying with Section 12351, or (3) a sole
 5 remaining director. Unless the articles or a bylaw approved by the
 6 members (Section 12224) provide that the board may fill vacancies
 7 occurring in the board by reason of the removal of directors, such
 8 vacancies may be filled only by approval of the members (Section
 9 12224).

10 (b) The members may elect a director at any time to fill any
 11 vacancy not filled by the directors. *In the case of a corporation*
 12 *with no members, a vacancy on the board may be filled by approval*
 13 *of the board (Section 12222) or, if the number of directors then in*
 14 *office is less than a quorum, by any of the following:*

15 (1) *The unanimous written consent of the directors then in office.*

16 (2) *The affirmative vote of a majority of the directors then in*
 17 *office at a meeting held pursuant to notice or waivers of notice*
 18 *complying with Section 12351.*

19 (3) *A sole remaining director.*

20 (c) Any director may resign effective upon giving written notice
 21 to the ~~chairman~~ *chairperson* of the board, the president, the
 22 secretary or the board of directors of the corporation, unless the
 23 notice specifies a later time for the effectiveness of such
 24 resignation. If the resignation is effective at a future time, a
 25 successor may be elected to take office when the resignation
 26 becomes effective.

27 *SEC. 21. Section 12376 of the Corporations Code is amended*
 28 *to read:*

29 12376. (a) Subject to the provisions of Section 12371, directors
 30 of a corporation who approve any of the following corporate
 31 actions are jointly and severally liable to the corporation for the
 32 benefit of all of the creditors entitled to institute an action under
 33 paragraph (1) or (2) of subdivision (c) or to the corporation in an
 34 action by members under paragraph (3) of subdivision (c):

35 (1) The making of any distribution or purchase or redemption
 36 of memberships *or shares* contrary to Chapter 4 (commencing
 37 with Section 12450).

38 (2) The distribution of assets after institution of dissolution
 39 proceedings of the corporation, without paying or adequately
 40 providing for all known liabilities of the corporation, excluding

1 any claims not filed by creditors within the time limit set by the
2 court in a notice given to creditors under Chapters 15 (commencing
3 with Section 12620), 16 (commencing with Section 12630), and
4 17 (commencing with Section 12650).

5 (3) The making of any loan or guarantee contrary to Section
6 12375.

7 (b) A director who is present at a meeting of the board, or any
8 committee thereof, at which action specified in subdivision (a) is
9 taken and who abstains from voting shall be considered to have
10 approved the action.

11 (c) Suit may be brought in the name of the corporation to enforce
12 the liability:

13 (1) Under paragraph (1) of subdivision (a) against any or all
14 directors liable by the persons entitled to sue under subdivision
15 (c) of Section 12455.

16 (2) Under paragraph (2) or (3) of subdivision (a) against any or
17 all directors liable by any one or more creditors of the corporation
18 whose debts or claims arose prior to the time of the corporate action
19 who have not consented to the corporate action, whether or not
20 they have reduced their claims to judgment.

21 (3) Under paragraph (3) of subdivision (a) against any or all
22 directors liable by any one or more members at the time of any
23 corporate action specified in paragraph (3) of subdivision (a) who
24 have not consented to the corporate action, without regard to the
25 provisions of Section 12490.

26 (d) The damages recoverable from a director under this section
27 shall be the amount of the illegal distribution, or if the illegal
28 distribution consists of property, the fair market value of that
29 property at the time of the illegal distribution, plus interest thereon
30 from the date of the distribution at the legal rate on judgments until
31 paid, together with all reasonably incurred costs of appraisal or
32 other valuation, if any, of that property, or the loss suffered by the
33 corporation as a result of the illegal loan or guarantee, but not
34 exceeding, in the case of an action for the benefit of creditors, the
35 liabilities of the corporation owed to nonconsenting creditors at
36 the time of the violation.

37 (e) Any director sued under this section may implead all other
38 directors liable and may compel contribution, either in that action
39 or in an independent action against directors not joined in that
40 action.

1 (f) Directors liable under this section shall also be entitled to
2 be subrogated to the rights of the corporation:

3 (1) With respect to paragraph (1) of subdivision (a), against the
4 persons who received the distribution.

5 (2) With respect to paragraph (2) of subdivision (a), against the
6 persons who received the distribution.

7 (3) With respect to paragraph (3) of subdivision (a), against the
8 person who received the loan or guarantee.

9 Any director sued under this section may file a cross-complaint
10 against the person or persons who are liable to the director as a
11 result of the subrogation provided for in this subdivision or may
12 proceed against them in an independent action.

13 *SEC. 22. Section 12401 of the Corporations Code is amended*
14 *to read:*

15 12401. (a) A corporation may issue, but is not required to
16 issue, membership *or share* certificates. In the event that
17 membership certificates are issued, the certificates shall state the
18 information required to be contained in the disclosure document
19 described in subdivision (b). Nothing in this section shall restrict
20 a corporation from issuing identity cards or similar devices to
21 members which serve to identify members qualifying to use
22 facilities or services of the corporation.

23 (b) Except as provided in subdivision (e), prior to issuing a
24 membership, the corporation shall provide ~~the purchaser of a~~
25 ~~membership~~ *a prospective member* with a disclosure document.
26 The disclosure document may be a prospectus, offering circular,
27 brochure, or similar document, a specimen copy of the membership
28 certificate, or a receipt which the corporation proposes to issue.
29 The disclosure document shall contain the following information:

30 (1) A statement that the corporation is a cooperative corporation,
31 *and, in the case of a worker cooperative corporation, a statement*
32 *to that effect.*

33 (2) A statement that a copy of the corporation's articles and
34 bylaws will be furnished without charge to a member or prospective
35 member upon written request, and the address of the office of the
36 corporation and the address to which such a written request is to
37 be directed.

38 (3) If there are restrictions imposed by the corporation upon the
39 transfer of membership *or shares*, a statement to that effect and
40 the restrictions imposed on transfer.

1 (4) If the corporation may levy dues, assessments, or
2 membership or transfer fees, a statement to that effect and the
3 conditions under which the corporation may make such a levy.

4 (5) If the member is required to contribute services to the
5 corporation, a statement to that effect and the amount and nature
6 of the services to be contributed to the corporation.

7 (6) Whether the membership *or share* is redeemable and the
8 conditions under which the membership *or share* may be redeemed
9 at the option of the corporation or the member *or shareholder*.

10 (7) If the voting power or the proprietary interests of the
11 members *and shareholders* is unequal, a statement to that effect
12 and the rule or rules by which the voting power and proprietary
13 rights are to be determined.

14 (8) In lieu of specifying verbatim in the disclosure document
15 the restrictions on the transfer of a membership *and shares*,
16 conditions of levy, amount and nature of services to be contributed,
17 conditions under which memberships are redeemable, or the rules
18 by which the voting power and proprietary rights of members *and*
19 *shareholders* are to be determined, the disclosure document may
20 contain a statement that such information will be provided free of
21 charge to a member or prospective member *or shareholder or*
22 *prospective shareholder* who requests it in writing. If the disclosure
23 document contains such a statement it shall also set forth the
24 address of the office of the corporation and the address to which
25 such a request is to be directed.

26 (c) If the articles or bylaws are amended so that any statement
27 required by subdivision (a) on outstanding membership certificates
28 is no longer accurate, the board may cancel the outstanding
29 certificates and issue in their place new certificates conforming to
30 the articles or bylaws amendments.

31 (d) When new membership certificates are issued in accordance
32 with subdivision (c), the board may order holders of outstanding
33 certificates to surrender and exchange them for new certificates
34 within a reasonable time fixed by the board. The board may further
35 provide that the holder of the certificate to be surrendered shall
36 not be entitled to exercise any of the rights of membership until
37 the certificate is surrendered, but such rights shall be suspended
38 only after notice of the order is given to the holder of the certificate
39 and only until the certificate is surrendered. The requirement to
40 surrender outstanding certificates may be enforced by civil action.

1 (e) A corporation shall issue a membership certificate, receipt,
2 or written advice of purchase to anyone purchasing a membership
3 upon the member's first purchase of a membership of any class.
4 No disclosure document need be provided to an existing member
5 prior to the purchase of additional memberships if that member
6 has previously been provided with a disclosure document which
7 is accurate and correct as of the date of the purchase of the
8 additional memberships.

9 (f) If a corporation does not issue new certificates as
10 contemplated by subdivisions (c) and (d), and if a transferee of a
11 membership certificate has not previously been provided with a
12 disclosure statement which is accurate and correct as of the date
13 of registration of the transfer, then the corporation shall provide a
14 disclosure document to the transferee upon registration with the
15 corporation of the transfer of the certificate.

16 *SEC. 23. Section 12402 of the Corporations Code is amended*
17 *to read:*

18 12402. (a) A corporation may issue a new membership *or*
19 *share* certificate in the place of any certificate theretofore issued
20 by it, alleged to have been lost, stolen or destroyed, and the
21 corporation may require the owner of the lost, stolen or destroyed
22 certificate or the owner's legal representative to give the
23 corporation a bond (or other adequate security) sufficient to
24 indemnify it against any claim that may be made against it
25 (including any expense or liability) on account of the alleged loss,
26 theft or destruction of any such certificate or the issuance of such
27 new certificate.

28 (b) If a corporation refuses to issue a new membership *or share*
29 certificate or other certificate in place of one theretofore issued by
30 it, or by any corporation of which it is the lawful successor, alleged
31 to have been lost, stolen or destroyed, the owner of the lost, stolen
32 or destroyed certificate or the owner's legal representative may
33 bring an action in the superior court of the proper county for an
34 order requiring the corporation to issue a new certificate in place
35 of the one lost, stolen or destroyed.

36 ~~SEC. 8.~~

37 *SEC. 24. Section 12404 of the Corporations Code is amended*
38 *to read:*

39 12404. (a) Except as permitted in Section 12314, the voting
40 power of members having voting rights shall be equal.

1 (b) Within each class in which a member of a worker
2 cooperative has voting rights, each member shall have one vote
3 on any matter put before the class for a vote; provided, however,
4 that when members are entitled to vote together as a single class
5 on a matter, each member shall have only one vote regardless of
6 the number of voting classes to which the member belongs.

7 *SEC. 25. Section 12410 of the Corporations Code is amended*
8 *to read:*

9 12410. (a) Unless the articles or bylaws otherwise provide,
10 *and except as provided by subdivision (d):*

11 (1) No member *or shareholder* may transfer a membership *or*
12 *share* or any right arising therefrom; and

13 (2) Subject to the provisions of subdivision (b), Section 12422,
14 and Section 12445, all rights as a member of the corporation cease
15 upon the member's death or dissolution or the dissolution of a
16 member which is a business entity.

17 (b) The articles or bylaws may provide for, or may authorize
18 the board to provide for, the transfer of memberships, or of
19 memberships *or shares* within any class or classes, with or without
20 restriction or limitation, including transfer upon the death,
21 dissolution, merger, or reorganization of a member *or shareholder*.

22 (c) Where transfer rights have been provided, no restriction of
23 them shall be binding with respect to memberships issued prior to
24 the adoption of the restriction, unless the holders of such
25 memberships *or shares* voted in favor of the restriction.

26 (d) *A membership in a worker cooperative corporation shall*
27 *be nontransferable.*

28 *SEC. 26. Section 12440 of the Corporations Code is amended*
29 *to read:*

30 12440. (a) A member *or shareholder* of a corporation is not,
31 as such, personally liable for the debts, liabilities, or obligations
32 of the corporation.

33 (b) No person is liable for any obligation arising from
34 membership unless the person was admitted to membership upon
35 the person's application or with the person's consent.

36 (c) The ownership of an interest in real property, when a
37 condition of its ownership is membership in a corporation, shall
38 be considered consent to such membership for the purpose of this
39 section.

1 SEC. 27. Section 12442 of the Corporations Code is amended
2 to read:

3 12442. A person holding a membership *or share* as pledgee
4 or a membership *or share* as executor, administrator, guardian,
5 trustee, receiver or in any representative or fiduciary capacity is
6 not personally liable for any unpaid balance of the purchase price
7 of the membership *or share*, or for any amount owing to the
8 corporation by the member *or shareholder*, because the
9 membership *or share* is so held, but the estate and funds in the
10 hands of such fiduciary or representative are liable and the
11 membership *or share* subject to sale therefor.

12 SEC. 28. Section 12443 of the Corporations Code is amended
13 to read:

14 12443. (a) No action shall be brought by or on behalf of any
15 creditor to reach and apply the liability, if any, of a member *or*
16 *shareholder* to the corporation to pay the amount due on such
17 member's membership *or shareholder's shares* or otherwise due
18 to the corporation unless final judgment has been rendered in favor
19 of the creditor against the corporation and execution has been
20 returned unsatisfied in whole or in part or unless such proceedings
21 would be useless.

22 (b) All creditors of the corporation, with or without reducing
23 their claims to judgment, may intervene in any such creditor's
24 action to reach and apply unpaid amounts due the corporation and
25 any or all members *or shareholders* who owe amounts to the
26 corporation may be joined in such action. Several judgments may
27 be rendered for and against the parties to the action or in favor of
28 a receiver for the benefit of the respective parties thereto.

29 (c) All amounts paid by any member *or shareholder* in any such
30 action shall be credited on the unpaid balance due the corporation
31 by such member *or shareholder*.

32 ~~SEC. 9.~~

33 SEC. 29. Section 12446 of the Corporations Code is amended
34 to read:

35 12446. (a) Subject to the provisions of subdivision (b), the
36 provisions of Chapter 7 (commencing with Section 1500) of Title
37 10 of Part 3 of the Code of Civil Procedure shall not apply to any
38 proprietary interest in a cooperative corporation. Any proprietary
39 interest that would otherwise escheat to the state pursuant to
40 Chapter 7 (commencing with Section 1500) of Title 10 of Part 3

1 of the Code of Civil Procedure shall instead become the property
2 of the corporation.

3 (b) Notwithstanding the provisions of subdivision (a), no
4 proprietary interest shall become the property of the corporation
5 under this section unless the following requirements are satisfied:

6 (1) The articles or bylaws shall specifically provide for the
7 transfer of ownership of the otherwise escheated proprietary
8 interests to the corporation.

9 (2) At least 60 days prior notice of the proposed transfer of the
10 proprietary interest to the corporation is given to the affected
11 member by first-class or second-class mail to the last address of
12 the member shown on the corporation's records, and by publication
13 in a newspaper of general circulation in the county in which the
14 corporation has its principal office. Notice given in the foregoing
15 manner shall be deemed actual notice.

16 (3) No proprietary interest shall become the property of the
17 corporation under this section if written notice objecting thereto
18 is received by the corporation from the affected member prior to
19 the date of the proposed transfer.

20 (c) For purposes of this section, a "proprietary interest" shall
21 mean and include any membership, membership certificate,
22 membership share, or share certificate of any class representing a
23 proprietary interest in, and issued by, the corporation together with
24 all accrued and unpaid dividends and patronage distributions
25 relating thereto.

26 *SEC. 30. Section 12451 of the Corporations Code is amended*
27 *to read:*

28 12451. ~~Distributions~~ *Except in the case of a worker cooperative*
29 *corporation, distributions* (Section 12235) in any fiscal year shall
30 not exceed 15 percent, multiplied by contributions (whether by
31 membership fees, capital credits, or otherwise) to capital.

32 *SEC. 31. Section 12452 of the Corporations Code is amended*
33 *to read:*

34 12452. A corporation may, subject to meeting the requirements
35 of Section 12453 and any additional restrictions authorized by
36 Section 12454, purchase or redeem memberships *or shares*.

37 *SEC. 32. Section 12453 of the Corporations Code is amended*
38 *to read:*

39 12453. Neither a corporation nor any of its subsidiaries shall
40 purchase or redeem memberships *or shares*, or make a patronage

1 distribution to members out of earnings of the corporation on
 2 nonmember patronage, or make a distribution, if the corporation
 3 or the subsidiary purchasing or redeeming memberships or making
 4 the distribution is, or as a result thereof would be, likely to be
 5 unable to meet its liabilities (except those whose payment is
 6 otherwise adequately provided for) as they mature.

7 *SEC. 33. Section 12454 of the Corporations Code is amended*
 8 *to read:*

9 12454. Nothing in this chapter prohibits additional restrictions
 10 upon the purchase or redemption of a membership *or share*, upon
 11 distributions, or upon patronage distributions, by provision in a
 12 corporation’s articles or bylaws or agreement entered into by the
 13 corporation.

14 *SEC. 34. Section 12460 of the Corporations Code is amended*
 15 *to read:*

16 12460. (a) Meetings of members may be held at a place within
 17 or without this state that is stated in or fixed in accordance with
 18 the bylaws. If no other place is so stated or fixed, meetings of
 19 members shall be held at the principal executive office of the
 20 corporation. Unless prohibited by the bylaws of the corporation,
 21 if authorized by the board of directors in its sole discretion, and
 22 subject to the requirement of consent in clause (b) of Section 20
 23 and those guidelines and procedures as the board of directors may
 24 adopt, members not physically present in person at a meeting of
 25 members may, by electronic transmission by and to the corporation
 26 (Sections 20 and 21) or by electronic video screen communication,
 27 participate in a meeting of members, be deemed present in person,
 28 and vote at a meeting of members whether that meeting is to be
 29 held at a designated place or in whole or in part by means of
 30 electronic transmission by and to the corporation or by electronic
 31 video screen communication, in accordance with subdivision (f).

32 (b) A regular meeting of members shall be held annually. In
 33 any year in which directors are elected, the election shall be held
 34 at the regular meeting unless the directors are chosen in some other
 35 manner authorized by law. Any other proper business may be
 36 transacted at the meeting.

37 (c) If a corporation fails to hold the regular meeting for a period
 38 of 60 days after the date designated therefor or, if no date has been
 39 designated, for a period of 15 months after the formation of the
 40 corporation or after its last regular meeting, or if the corporation

1 fails to hold a written ballot for a period of 60 days after the date
2 designated therefor, then the superior court of the proper county
3 may summarily order the meeting to be held or the ballot to be
4 conducted upon the application of a member, after notice to the
5 corporation giving it an opportunity to be heard.

6 (d) The votes represented at a meeting called or by written ballot
7 ordered pursuant to subdivision (c) and entitled to be cast on the
8 business to be transacted shall constitute a quorum, notwithstanding
9 any provision of the articles or bylaws or in this part to the contrary.
10 The court may issue such orders as may be appropriate including,
11 without limitation, orders designating the time and place of the
12 meeting, the record date for determination of members entitled to
13 vote, and the form of notice of the meeting.

14 (e) Special meetings of members for any lawful purpose may
15 be called by the board, the ~~chairman~~ *chairperson* of the board, the
16 president, or such other persons, if any, as are specified in the
17 bylaws. In addition, special meetings of members for any lawful
18 purpose may be called by 5 percent or more of the members.

19 (f) A meeting of the members may be conducted, in whole or
20 in part, by electronic transmission by and to the corporation or by
21 electronic video screen communication (1) if the corporation
22 implements reasonable measures to provide members a reasonable
23 opportunity to participate in the meeting and to vote on matters
24 submitted to the members, including an opportunity to read or hear
25 the proceedings of the meeting concurrently with those
26 proceedings, and (2) if any member votes or takes other action at
27 the meeting by means of electronic transmission to the corporation
28 or electronic video screen communication, a record of that vote or
29 action is maintained by the corporation. Any request by a
30 corporation to a member pursuant to clause (b) of Section 20 for
31 consent to conduct a meeting of members by electronic
32 transmission by and to the corporation, shall include a notice that
33 absent consent of the member pursuant to clause (b) of Section
34 20, the meeting shall be held at a physical location in accordance
35 with subdivision (a).

36 ~~SEC. 10.~~

37 *SEC. 35.* Section 12461 of the Corporations Code is amended
38 to read:

39 12461. (a) (1) Whenever members who are not worker
40 members of a worker cooperative are required or permitted to take

1 any action at a meeting, a written notice of the meeting shall be
2 given not less than 10 nor more than 90 days before the date of
3 the meeting to each nonworker member who, on the record date
4 for notice of the meeting, is entitled to vote at the meeting;
5 provided, however, that if notice is given by mail, and the notice
6 is not mailed by first-class, registered, or certified mail, that notice
7 shall be given not less than 20 days before the meeting.

8 (2) Whenever worker members of a worker cooperative are
9 required or permitted to take any action at a meeting, notice of the
10 meeting shall be given not less than 24 hours before the time of
11 the meeting to each worker member who, on the record date for
12 notice of the meeting, is entitled to vote at the meeting.

13 (3) Subject to subdivision (f), and subdivision (b) of Section
14 12462, that notice shall state the place, date and time of the
15 meeting, the means of electronic transmission by and to the
16 corporation (Sections 20 and 21) or electronic video screen
17 communication, if any, by which members may participate in that
18 meeting, and (1) in the case of a special meeting, the general nature
19 of the business to be transacted, and no other business may be
20 transacted, or (2) in the case of the regular meeting, those matters
21 which the board, at the time the notice is given, intends to present
22 for action by the members, but, except as provided in subdivision
23 (b) of Section 12462, any proper matter may be presented at the
24 meeting for such action. The notice of any meeting at which
25 directors are to be elected shall include the names of all those who
26 are nominees at the time the notice is given to members.

27 (b) Notice of a members' meeting or any report shall be given
28 personally, by electronic transmission by the corporation, or by
29 mail or other means of written communication, addressed to a
30 member at the address of such member appearing on the books of
31 the corporation or given by the member to the corporation for
32 purpose of notice; or if no such address appears or is given, at the
33 place where the principal office of the corporation is located or by
34 publication at least once in a newspaper of general circulation in
35 the county in which the principal office is located. An affidavit of
36 giving of any notice or report in accordance with the provisions
37 of this part, executed by the secretary, assistant secretary or any
38 transfer agent, shall be prima facie evidence of the giving of the
39 notice or report.

1 If any notice or report addressed to the member at the address
2 of such member appearing on the books of the corporation is
3 returned to the corporation by the United States Postal Service
4 marked to indicate the United States Postal Service is unable to
5 deliver the notice or report to the member at such address, all future
6 notices or reports shall be deemed to have been duly given without
7 further mailing if the same shall be available for the member upon
8 written demand of the member at the principal office of the
9 corporation for a period of one year from the date of the giving of
10 the notice or report to all other members.

11 Notice given by electronic transmission by the corporation under
12 this subdivision shall be valid only if it complies with Section 20.
13 Notwithstanding the foregoing, notice shall not be given by
14 electronic transmission by the corporation under this subdivision
15 after either of the following:

16 (1) The corporation is unable to deliver two consecutive notices
17 to the member by that means.

18 (2) The inability to so deliver the notices to the member becomes
19 known to the secretary, any assistant secretary, the transfer agent,
20 or other person responsible for the giving of the notice.

21 (c) Upon request in writing to the corporation addressed to the
22 attention of the ~~chairman~~ *chairperson* of the board, president, vice
23 president or secretary by any person (other than the board) entitled
24 to call a special meeting of members, the officer forthwith shall
25 cause notice to be given to the members entitled to vote that a
26 meeting will be held at a time fixed by the board not less than 35
27 nor more than 90 days after the receipt of the request. If the notice
28 is not given within 20 days after receipt of the request, the persons
29 entitled to call the meeting may give the notice or the superior
30 court of the proper county shall summarily order the giving of the
31 notice, after notice to the corporation giving it an opportunity to
32 be heard. The court may issue such orders as may be appropriate,
33 including, without limitation, orders designating the time and place
34 of the meeting, the record date for determination of members
35 entitled to vote and the form of notice.

36 (d) When a members' meeting is adjourned to another time or
37 place, unless the bylaws otherwise require and except as provided
38 in this subdivision, notice need not be given of the adjourned
39 meeting if the time and place thereof (or the means of electronic
40 transmission by and to the corporation or electronic video screen

1 communication, if any, by which members may participate) are
2 announced at the meeting at which the adjournment is taken. At
3 the adjourned meeting the corporation may transact any business
4 which might have been transacted at the original meeting. If the
5 adjournment is for more than 45 days or if after the adjournment
6 a new record date is fixed for the adjourned meeting, a notice of
7 the adjourned meeting shall be given to each member of record
8 entitled to vote at the meeting.

9 (e) The transactions of any meeting of members however called
10 and noticed, and wherever held, are as valid as though had at a
11 meeting duly held after regular call and notice, if a quorum is
12 present, and if, either before or after the meeting, each of the
13 persons entitled to vote, not present in person, provides a waiver
14 of notice or consent to the holding of the meeting or an approval
15 of the minutes thereof in writing. All such waivers, consents and
16 approvals shall be filed with the corporate records or made a part
17 of the minutes of the meeting. Attendance of a person at a meeting
18 shall constitute a waiver of notice of and presence at such meeting,
19 except when the person objects, at the beginning of the meeting,
20 to the transaction of any business because the meeting is not
21 lawfully called or convened and except that attendance at a meeting
22 is not a waiver of any right to object to the consideration of matters
23 required by this part to be included in the notice but not so
24 included, if such objection is expressly made at the meeting.
25 Neither the business to be transacted at nor the purpose of any
26 regular or special meeting of members need be specified in any
27 written waiver of notice, consent to the holding of the meeting or
28 approval of the minutes thereof, unless otherwise provided in the
29 articles or bylaws, except as provided in subdivision (f).

30 (f) Any approval of the members required under Section 12362,
31 12364, 12373, 12502 or 12658 other than unanimous approval by
32 those entitled to vote, shall be valid only if the general nature of
33 the proposal so approved was stated in the notice of meeting or in
34 any written waiver of notice.

35 (g) A court may find that notice not given in conformity with
36 this section is still valid, if it was given in a fair and reasonable
37 manner.

38 (h) Subject to the provisions of subdivision (i), and unless
39 prohibited by the articles or bylaws, prior to any regular or special
40 meeting of members, the board may authorize distribution of a

1 written ballot to every member entitled to vote at the meeting.
2 Such ballot shall set forth the action proposed to be taken at the
3 meeting, shall provide an opportunity to specify approval or
4 disapproval of the proposed action, and shall state that unless
5 revoked by the member voting in person at the meeting, the ballot
6 will be counted if received by the corporation on or before the time
7 of the meeting with respect to which it was sent. If ballots are so
8 distributed with respect to a meeting, the number of members
9 voting at the meeting by unrevoked written ballots shall be deemed
10 present at the meeting for purposes of determining the existence
11 of a quorum pursuant to subdivision (a) of Section 12462 but only
12 with respect to the proposed action referred to in the ballots. These
13 ballots shall be distributed in a manner consistent with the
14 requirements of subdivision (b) and Section 12464.

15 (i) Unless prohibited by the articles or bylaws, written ballots
16 may be distributed in a manner contemplated by subdivision (h)
17 with respect to the election of directors, except, *in the case of a*
18 *cooperative corporation that is not a worker cooperative*
19 *corporation*, that no ballots may be so distributed with respect to
20 the election of directors if cumulative voting is permitted pursuant
21 to Section 12484.

22 *SEC. 36. Section 12490 of the Corporations Code is amended*
23 *to read:*

24 12490. (a) Subdivisions (c) through (f) notwithstanding, no
25 motion to require security shall be granted in an action brought by
26 the lesser of 100 members *or shareholders* or 5 percent of the
27 members *or shareholders*.

28 (b) No action may be instituted or maintained in the right of
29 any corporation by any member *or shareholder* of ~~such~~ *the*
30 corporation unless both of the following conditions exist:

31 (1) The plaintiff alleges in the complaint that plaintiff was a
32 member *or shareholder* at the time of the transaction or any part
33 thereof of which plaintiff complains, or that plaintiff's membership
34 *or shareownership* thereafter devolved upon plaintiff by operation
35 of law from a holder who was a holder at the time of transaction
36 or any part thereof complained of; and

37 (2) The plaintiff alleges in the complaint with particularity
38 plaintiff's efforts to secure from the board such action as plaintiff
39 desires, or the reasons for not making such effort, and alleges
40 further that plaintiff has either informed the corporation or the

1 board in writing of the ultimate facts of each cause of action against
2 each defendant or delivered to the corporation or the board a true
3 copy of the complaint which plaintiff proposes to file.

4 (c) Subject to subdivision (a), in any action referred to in
5 subdivision (b), at any time within 30 days after service of
6 summons upon the corporation or upon any defendant who is an
7 officer or director of the corporation, or held such office at the
8 time of the acts complained of, the corporation or such defendant
9 may move the court for an order, upon notice and hearing, requiring
10 the plaintiff to furnish security as hereinafter provided. The motion
11 shall be based upon one or both of the following grounds:

12 (1) That there is no reasonable possibility that the prosecution
13 of the cause of action alleged in the complaint against the moving
14 party will benefit the corporation or its members *or shareholders*
15 economically or otherwise.

16 (2) That the moving party, if other than the corporation, did not
17 participate in the transaction complained of in any capacity.

18 The court on application of the corporation or any defendant
19 may, for good cause shown, extend the 30-day period for an
20 additional period or periods not exceeding 60 days.

21 (d) At the hearing upon any motion pursuant to subdivision (c),
22 the court shall consider such evidence, written or oral, by witnesses
23 or affidavit, as may be material (1) to the ground or grounds upon
24 which the motion is based, or (2) to a determination of the probable
25 reasonable expenses, including attorneys' fees, of the corporation
26 and the moving party which will be incurred in the defense of the
27 action. If the court determines, after hearing the evidence adduced
28 by the parties, that the moving party has established a probability
29 in support of any of the grounds upon which the motion is based,
30 the court shall fix the nature and amount of security, not to exceed
31 fifty thousand dollars (\$50,000), to be furnished by the plaintiff
32 for reasonable expenses, including attorneys' fees, which may be
33 incurred by the moving party and the corporation in connection
34 with the action, including expenses for which the corporation may
35 become liable pursuant to Section 12377. A ruling by the court on
36 the motion shall not be a determination of any issue in the action
37 or of the merits thereof. The amount of the security may thereafter
38 be increased or decreased in the discretion of the court upon a
39 showing that the security provided has or may become inadequate
40 or is excessive, but the court may not in any event increase the

1 total amount of the security beyond fifty thousand dollars (\$50,000)
2 in the aggregate for all defendants. If the court, upon any such
3 motion, makes a determination that security shall be furnished by
4 the plaintiff as to any one or more defendants, the action shall be
5 dismissed as to such defendant or defendants, unless the security
6 required by the court shall have been furnished within such
7 reasonable time as may be fixed by the court. The corporation and
8 the moving party shall have recourse to the security in such amount
9 as the court shall determine upon the termination of the action.

10 (e) If the plaintiff shall, either before or after a motion is made
11 pursuant to subdivision (c), or any order or determination pursuant
12 to such motion, post good and sufficient bond or bonds in the
13 aggregate amount of fifty thousand dollars (\$50,000) to secure the
14 reasonable expenses of the parties entitled to make the motion, the
15 plaintiff has complied with the requirements of this section and
16 with any order for security theretofore made pursuant hereto, and
17 any such motion then pending shall be dismissed and no further
18 or additional bond or other security shall be required.

19 (f) If a motion is filed pursuant to subdivision (c), no pleadings
20 need be filed by the corporation or any other defendant and the
21 prosecution of the action shall be stayed until 10 days after the
22 motion has been disposed of.

23 *SEC. 37. Section 12521 of the Corporations Code is amended*
24 *to read:*

25 12521. (a) A corporation may sell, lease, convey, exchange,
26 transfer, or otherwise dispose of all or substantially all of its assets
27 when the ~~principal~~ terms and conditions, including, without
28 limitation, the consideration, are:

29 (1) Approved by the board; ~~and~~.

30 (2) Unless the transaction is in the usual and regular course of
31 its activities approved by the members (Section 12224) and, in the
32 case of a worker cooperative corporation, by the worker-member
33 class, either before or after approval by the board and before or
34 after the transaction.

35 (b) ~~Notwithstanding~~ Except in the case of a worker cooperative
36 corporation, notwithstanding approval by the members (Section
37 12224), the board may abandon the proposed transaction without
38 further action by the members, subject to the contractual rights, if
39 any, of third parties.

1 (c) ~~Such~~ Except in the case of a worker cooperative corporation,
2 a sale, lease, conveyance, exchange, transfer, or other disposition
3 pursuant to this section may be made upon ~~such~~ the terms and
4 conditions and for ~~such~~ the consideration as the board may deem
5 in the best interests of the corporation.

6 SEC. 38. Section 12530 of the Corporations Code is amended
7 to read:

8 12530. Any corporation may merge with another domestic
9 corporation, foreign corporation, or other business entity (Section
10 12242.5) pursuant to an agreement of merger that shall be
11 approved by the board and by the members (Section 12224) and,
12 in the case of a worker cooperative corporation, either before or
13 after approval by the board. However, a merger with a public
14 benefit corporation or a religious corporation must have the prior
15 written consent of the Attorney General.

16 SEC. 39. Section 12531 of the Corporations Code is amended
17 to read:

18 12531. ~~The board of each corporation that desires to merge~~
19 ~~shall approve an agreement of merger.~~ The constituent corporations
20 shall be parties to the agreement of merger and other persons may
21 be parties to the agreement of merger. The agreement shall state
22 all of the following:

23 (a) The terms and conditions of the merger.

24 (b) The amendments, subject to Sections 12500 and 12505 to
25 the articles of the surviving corporation to be effected by the
26 merger, if any; if any amendment changes the name of the
27 surviving corporation, the new name may be the same as or similar
28 to the name of a disappearing corporation, subject to subdivision
29 (c) of Section 12302.

30 (c) The amendments to the bylaws of the surviving corporation
31 to be effected by the merger, if any.

32 (d) The name and place of incorporation of each constituent
33 corporation and which of the constituent corporations is the
34 surviving corporation.

35 (e) The manner, if any, of converting memberships or securities
36 of the constituent corporations into memberships or securities of
37 the surviving corporation and, if any memberships or securities of
38 any of the constituent corporations are not to be converted solely
39 into memberships or securities of the surviving corporation, the
40 cash, property, rights or securities of any corporation that the

1 holders of those memberships or securities are to receive in
2 exchange for the memberships or securities, which cash, property,
3 rights or securities of any corporation may be in addition to or in
4 lieu of memberships or securities of the surviving corporation or
5 that the memberships are to be canceled without consideration.

6 (f) Other details or provisions as are desired, if any, including,
7 without limitation, if not prohibited by this chapter, a provision
8 for the payment of cash in lieu of fractional memberships or for
9 any other arrangement with respect thereto.

10 *SEC. 40. Section 12533 of the Corporations Code is amended*
11 *to read:*

12 ~~12533. (a) The principal terms of the merger shall be approved~~
13 ~~by the members (Section 12224) of each class of each corporation~~
14 ~~which desires to merge. The approval by the members may be~~
15 ~~given before or after the approval by the board.~~

16 ~~(b)~~

17 *12533. Any member of any constituent corporation who voted*
18 *against the merger may, without prior notice, but within 30 days*
19 *following the effective date of the merger, resign from membership*
20 *and, in the event of resignation, shall be both of the following:*

21 ~~(1)~~

22 *(a) Thereafter excused from all contractual obligations to the*
23 *corporation which have not accrued prior to resignation; and.*

24 ~~(2)~~

25 *(b) Shall be entitled to the same rights as would have existed if*
26 *there had been no merger and the membership had been terminated.*

27 *SEC. 41. Section 12534 of the Corporations Code is amended*
28 *to read:*

29 *12534. Each constituent corporation shall sign the agreement*
30 *by the ~~chairman~~ chairperson of its board, president or a vice*
31 *president and secretary or an assistant secretary acting on behalf*
32 *of their respective corporations.*

33 *SEC. 42. Section 12535 of the Corporations Code is amended*
34 *to read:*

35 *12535. After approval of a merger by the board and any*
36 *approval by the members under Section ~~12533~~ 12530, the surviving*
37 *corporation shall file a copy of the agreement of merger with an*
38 *officers' certificate of each constituent corporation attached stating*
39 *the total number of memberships of each class entitled to vote on*
40 *the merger, and that the principal terms of the agreement in the*

1 form attached were duly approved by the required vote of the
 2 members. The merger and any amendment of the articles of the
 3 surviving corporation contained in the merger agreement shall
 4 thereupon be effective (subject to subdivision (c) of Section 12214
 5 and subject to the provisions of Section 12539) and the several
 6 parties thereto shall be one corporation. The Secretary of State
 7 may certify a copy of the merger agreement separate from the
 8 officers' certificates attached thereto.

9 *SEC. 43. Section 12536 of the Corporations Code is amended*
 10 *to read:*

11 12536. (a) ~~Any~~ *In the case of a corporation other than a*
 12 *worker cooperative corporation, any amendment to the agreement*
 13 *may be adopted and the agreement so amended may be approved*
 14 *by the board and, if it changes any of the principal terms of the*
 15 *agreement, by the members, as required by Section ~~12533~~ 12530*
 16 *of any constituent corporation in the same manner as the original*
 17 *agreement.*

18 (b) *In the case of a worker cooperative corporation, any*
 19 *amendment to the agreement may be adopted and the agreement*
 20 *so amended may be approved by the board and by the members,*
 21 *as required by Section 12530 of any constituent corporation.*

22 (b)
 23 (c) *If the agreement so amended is approved as provided in*
 24 *subdivision (a), the agreement so amended shall then constitute*
 25 *the agreement of merger.*

26 *SEC. 44. Section 12537 of the Corporations Code is amended*
 27 *to read:*

28 12537. ~~The~~ *Except in the case of a worker cooperative*
 29 *corporation, the board may, in its discretion, abandon a merger,*
 30 *subject to the contractual rights, if any, of third parties, including*
 31 *other constituent corporations, without further approval by the*
 32 *members at any time before the merger is effective.*

33 *SEC. 45. Section 12540.1 of the Corporations Code is amended*
 34 *to read:*

35 12540.1. (a) *Any one or more corporations may merge with*
 36 *one or more other business entities (Section 12242.5). Subject to*
 37 *the provisions of Section 12530, one or more other domestic*
 38 *corporations or foreign corporations (Section 12237) may be parties*
 39 *to the merger.*

1 Notwithstanding the provisions of this section, such a merger
2 may be effected only if:

3 (1) In a merger in which a domestic corporation or domestic
4 other business entity is a party, it is authorized by the laws under
5 which it is organized to effect the merger.

6 (2) In a merger in which a foreign corporation is a party, it is
7 authorized by the laws under which it is organized to effect the
8 merger.

9 (3) In a merger in which a foreign other business entity is a
10 party, it is authorized by the laws under which it is organized to
11 effect the merger.

12 (b) Each corporation, other domestic corporation, foreign
13 corporation, and other business entity which desires to merge shall
14 approve an agreement of merger. The board and the members of
15 each corporation which desires to merge shall approve (Sections
16 12222 and 12224) the agreement of merger. The agreement of
17 merger shall be approved on behalf of each other constituent party
18 by those persons authorized or required to approve the merger by
19 the laws under which it is organized.

20 The parties desiring to merge shall be parties to the agreement
21 of merger and other persons, including a parent party (Section
22 12242.6), may be parties to the agreement of merger. The
23 agreement of merger shall state all of the following:

24 (1) The terms and conditions of the merger.

25 (2) The name and place of incorporation or organization of each
26 party and the identity of the surviving party.

27 (3) The amendments, if any, subject to Sections 12500 and
28 12507, to the articles of the surviving corporation, if applicable,
29 to be effected by the merger. The name of the surviving corporation
30 may be, subject to subdivisions (b) and (c) of Section 12302, the
31 same as, or similar to, the name of a disappearing party to the
32 merger.

33 (4) The manner, if any, of converting the memberships or
34 securities of each of the constituent corporations into shares,
35 memberships, interests, or other securities of the surviving party
36 and, if any memberships or securities of any of the constituent
37 corporations are not to be converted solely into shares,
38 memberships, interests, or other securities of the surviving party,
39 the cash, rights, securities, or other property which the holders of
40 those memberships or securities are to receive in exchange for the

1 memberships or securities, which cash, rights, securities, or other
2 property may be in addition to or in lieu of shares, memberships,
3 interests, or other securities of the surviving party.

4 (5) Any other details or provisions required by the laws under
5 which any party to the merger is organized, including, if a domestic
6 limited partnership is a party to the merger, subdivision (a) of
7 Section 15678.2 or 15911.12, or, if a domestic general partnership
8 is a party to the merger, subdivision (a) of Section 16911, or, if a
9 domestic limited liability company is a party to the merger,
10 subdivision (a) of Section 17551.

11 (6) Any other details or provisions as are desired.

12 (c) Each membership of the same class of any constituent
13 corporation (other than the cancellation of memberships held by
14 a party to the merger or its parent or a wholly owned subsidiary
15 of either in another constituent corporation) shall be treated equally
16 with respect to any distribution of cash, property, rights, or
17 securities unless (i) all members of the class consent or (ii) the
18 commissioner has approved the terms and conditions of the
19 transaction and the fairness of those terms pursuant to Section
20 25142.

21 (d) Notwithstanding its prior approval, an agreement of merger
22 may be amended prior to the filing of the agreement of merger if
23 the amendment is approved by each constituent corporation in the
24 same manner as the original agreement of merger. If the agreement
25 of merger as so amended and approved is also approved by each
26 of the other parties to the agreement of merger, as so amended it
27 shall then constitute the agreement of merger.

28 (e) ~~The~~ *Except in the case of a worker cooperative corporation,*
29 *the* board of a constituent corporation may, in its discretion,
30 abandon a merger, subject to the contractual rights, if any, of third
31 parties, including other parties to the agreement of merger, without
32 further approval by the members (Section 12224), at any time
33 before the merger is effective.

34 (f) Each constituent corporation shall sign the agreement of
35 merger by its chairperson of the board, president, or a vice president
36 and also by its secretary or an assistant secretary acting on behalf
37 of their respective corporations.

38 (g) After required approvals of the merger by each constituent
39 corporation and each other party to the merger, the surviving party
40 shall file a copy of the agreement of merger with an officers'

1 certificate of each constituent domestic and foreign corporation
2 attached stating the total number of outstanding shares or
3 membership interests of each class entitled to vote on the merger
4 (and identifying any other person or persons whose approval is
5 required), that the agreement of merger in the form attached or its
6 principal terms, as required, were approved by that corporation by
7 a vote of a number of shares or membership interests of each class
8 which equaled or exceeded the vote required, specifying each class
9 entitled to vote and the percentage vote required of each class,
10 and, if applicable, by that other person or persons whose approval
11 is required.

12 If equity securities of a parent party (Section 12242.6) are to be
13 issued in the merger, the officers' certificate or certificate of merger
14 of the controlled party shall state either that no vote of the
15 shareholders of the parent party was required or that the required
16 vote was obtained. The merger and any amendment of the articles
17 of the surviving corporation, if applicable, contained in the
18 agreement of merger shall be effective upon the filing of the
19 agreement of merger, subject to the provisions of subdivision (i).
20 If a domestic reciprocal insurer organized after 1974 to provide
21 medical malpractice insurance is a party to the merger, the
22 agreement of merger or certificate of merger shall not be filed until
23 there has been filed the certificate issued by the Insurance
24 Commissioner approving the merger pursuant to Section 1555 of
25 the Insurance Code.

26 In lieu of an officers' certificate, a certificate of merger, on a
27 form prescribed by the Secretary of State, shall be filed for each
28 constituent other business entity. The certificate of merger shall
29 be executed and acknowledged by each domestic constituent
30 limited liability company by all of the managers of the limited
31 liability company (unless a lesser number is specified in its articles
32 of organization or operating agreement) and by each domestic
33 constituent limited partnership by all general partners (unless a
34 lesser number is provided in its certificate of limited partnership
35 or partnership agreement) and by each domestic constituent general
36 partnership by two partners (unless a lesser number is provided in
37 its partnership agreement) and by each foreign constituent general
38 partnership or foreign constituent limited liability company by one
39 or more managers and by each foreign constituent limited
40 partnership by one or more general partners, and by each

1 constituent reciprocal insurer by the chairperson of the board,
2 president, or vice president, and by the secretary or assistant
3 secretary, or, if a constituent reciprocal insurer has not appointed
4 such officers, by the chairperson of the board, president, or vice
5 president, and by the secretary or assistant secretary of the
6 constituent reciprocal insurer’s attorney-in-fact, and by each other
7 party to the merger by those persons required or authorized to
8 execute the certificate of merger by the laws under which that party
9 is organized, specifying for such party the provision of law or other
10 basis for the authority of the signing persons.

11 The certificate of merger shall set forth, if a vote of the
12 shareholders, members, partners, or other holders of interests of
13 the constituent other business entity was required, a statement
14 setting forth the total number of outstanding interests of each class
15 entitled to vote on the merger and that the agreement of merger or
16 its principal terms, as required, were approved by a vote of the
17 number of interests of each class which equaled or exceeded the
18 vote required, specifying each class entitled to vote and the
19 percentage vote required of each class, and any other information
20 required to be set forth under the laws under which the constituent
21 other business entity is organized, including, if a domestic limited
22 partnership is a party to the merger, subdivision (a) of Section
23 15678.4 or 15911.14, if a domestic general partnership is a party
24 to the merger, subdivision (b) of Section 16915, and, if a domestic
25 limited liability company is a party to the merger, subdivision (a)
26 of Section 17552. The certificate of merger for each constituent
27 foreign other business entity, if any, shall also set forth the statutory
28 or other basis under which that foreign other business entity is
29 authorized by the laws under which it is organized to effect the
30 merger.

31 The Secretary of State may certify a copy of the agreement of
32 merger separate from the officers’ certificates and certificates of
33 merger attached thereto.

34 (h) A copy of an agreement of merger certified on or after the
35 effective date by an official having custody thereof has the same
36 force in evidence as the original and, except as against the state,
37 is conclusive evidence of the performance of all conditions
38 precedent to the merger, the existence on the effective date of the
39 surviving party to the merger, the performance of the conditions
40 necessary to the adoption of any amendment to the articles, if

1 applicable, contained in the agreement of merger, and of the merger
2 of the constituent corporations, either by themselves or together
3 with other constituent parties, into the surviving party to the
4 merger.

5 (i) (1) The merger of domestic corporations with foreign
6 corporations or foreign other business entities in a merger in which
7 one or more other business entities is a party shall comply with
8 subdivisions (a) and (g) and this subdivision.

9 (2) Subject to subdivision (c) of Section 12214 and paragraph
10 (3), the merger shall be effective as to each domestic constituent
11 corporation and domestic constituent other business entity upon
12 filing of the agreement of merger with attachments as provided in
13 subdivision (g).

14 (3) If the surviving party is a foreign corporation or foreign
15 other business entity, except as provided in paragraph (4), the
16 merger shall be effective as to any domestic disappearing
17 corporation as of the time of effectiveness in the foreign jurisdiction
18 upon the filing in this state of a copy of the agreement of merger
19 with an officers' certificate of the surviving foreign corporation
20 and of each constituent foreign and domestic corporation and a
21 certificate of merger of each constituent other business entity
22 attached, which officers' certificates and certificates of merger
23 shall conform to the requirements of subdivision (g).

24 If one or more domestic other business entities is a disappearing
25 party in a merger pursuant to this subdivision in which a foreign
26 other business entity is the surviving entity, a certificate of merger
27 required by the laws under which each domestic other business
28 entity is organized, including subdivision (a) of Section 15678.4
29 or 15911.14, subdivision (b) of Section 16915 or subdivision (a)
30 of Section 17552, if applicable, shall also be filed at the same time
31 as the filing of the agreement of merger.

32 (4) If the date of the filing in this state pursuant to this
33 subdivision is more than six months after the time of the
34 effectiveness in the foreign jurisdiction, or if the powers of a
35 domestic disappearing corporation are suspended at the time of
36 effectiveness in the foreign jurisdiction, the merger shall be
37 effective as to the domestic disappearing corporation as of the date
38 of filing in this state.

39 (5) Each foreign disappearing corporation that is qualified for
40 the transaction of intrastate business shall automatically by the

1 filing pursuant to subdivision (g) surrender its right to transact
 2 intrastate business as of the date of filing in this state or, if later,
 3 the effective date of the merger. With respect to each foreign
 4 disappearing other business entity previously registered for the
 5 transaction of intrastate business in this state, the filing of the
 6 agreement of merger pursuant to subdivision (g) automatically has
 7 the effect of a cancellation of registration for that foreign other
 8 business entity without the necessity of the filing of a certificate
 9 of cancellation.

10 *SEC. 46. Section 12560 of the Corporations Code is amended*
 11 *to read:*

12 12560. Any proceeding, initiated with respect to a corporation,
 13 under any applicable statute of the United States, as now existing
 14 or hereafter enacted, relating to reorganizations of corporations,
 15 shall be governed by the provisions of Chapter 14 (commencing
 16 with Section 1400) of Division 1 of Title 1, and for this purpose
 17 the reference in Chapter 14 to “shareholders” shall be deemed to
 18 be a reference to members *and shareholders* and the reference to
 19 “this division” shall be deemed to be a reference to this part.

20 *SEC. 47. Section 12591 of the Corporations Code is amended*
 21 *to read:*

22 12591. (a) A corporation shall notify each member yearly of
 23 the member’s right to receive a financial report pursuant to this
 24 subdivision. Except as provided in subdivision (c), upon written
 25 request of a member, the board shall promptly cause the most
 26 recent annual report to be sent to the requesting member. ~~An~~ *In*
 27 *the case of a corporation that is not a worker cooperative*
 28 *corporation, an annual report shall be prepared not later than 120*
 29 *days after the close of the corporation’s fiscal year. In the case of*
 30 *a worker cooperative corporation, an annual report shall be*
 31 *prepare not later than 360 days after the close of a the*
 32 *corporation’s fiscal year. Unless otherwise provided by the articles*
 33 *or bylaws and if approved by the board of directors, that report*
 34 *and any accompanying material sent pursuant to this section may*
 35 *be sent by electronic transmission by the corporation (Section 20).*
 36 *That report shall contain in appropriate detail the following:*

- 37 (1) A balance sheet as of the end of that fiscal year and an
- 38 income statement and a statement of cashflows for that fiscal year.
- 39 (2) A statement of the place where the names and addresses of
- 40 the current members are located.

1 (3) Any information required by Section 12592.

2 (b) The report required by subdivision (a) shall be accompanied
3 by any report thereon of independent accountants, or, if there is
4 no report, the certificate of an authorized officer of the corporation
5 that the statements were prepared without audit from the books
6 and records of the corporation.

7 (c) This section does not apply to corporations that do not have
8 more than 25 members at any time during the fiscal year.

9 *SEC. 48. Section 12626 of the Corporations Code is amended*
10 *to read:*

11 12626. When an involuntary proceeding for winding up has
12 been commenced, the jurisdiction of the court includes:

13 (a) The requirement of the proof of all claims and demands
14 against the corporation, whether due or not yet due, contingent,
15 unliquidated, or sounding only in damages, and the barring from
16 participation of creditors and claimants failing to make and present
17 claims and proof as required by any order.

18 (b) The determination or compromise of all claims of every
19 nature against the corporation or any of its property, and the
20 determination of the amount of money or assets required to be
21 retained to pay or provide for the payment of claims.

22 (c) The determination of the rights of members *and shareholders*
23 and of all classes of members *and shareholders* in and to the assets
24 of the corporation.

25 (d) The presentation and filing of intermediate and final accounts
26 of the directors or other persons appointed to conduct the winding
27 up and hearing thereon, the allowance, disallowance, or settlement
28 thereof, and the discharge of the directors or such other persons
29 from their duties and liabilities.

30 (e) The appointment of a commissioner to hear and determine
31 any or all matters, with such power or authority as the court may
32 deem proper.

33 (f) The filing of any vacancies on the board which the directors
34 or the members are unable to fill.

35 (g) The removal of any director if it appears that the director
36 has been guilty of dishonesty, misconduct, neglect, or breach of
37 trust in conducting the winding up or if the director is unable to
38 act. The court may order an election to fill the vacancy so caused,
39 and may enjoin, for such time as it considers proper, the reelection
40 of the director so removed; or the court, in lieu of ordering an

1 election, may appoint a director to fill the vacancy caused by such
2 removal. Any director so appointed by the court shall serve until
3 the next regular meeting of members or until a successor is elected
4 or appointed.

5 (h) The staying of the prosecution of any suit, proceeding, or
6 action against the corporation and requiring the parties to present
7 and prove their claims in the manner required of other creditors.

8 (i) The determination of whether adequate provision has been
9 made for payment or satisfaction of all debts and liabilities not
10 actually paid.

11 (j) The making of orders for the withdrawal or termination of
12 proceedings, to wind up and dissolve, subject to conditions for the
13 protection of members, *shareholders*, and creditors.

14 (k) The making of an order, upon the allowance or settlement
15 of the final accounts of the directors or such other persons, that
16 the corporation has been duly wound up and is dissolved. Upon
17 the making of such order, the corporate existence shall cease except
18 for purposes of further winding up if needed.

19 (l) The making of orders for the bringing in of new parties as
20 the court deems proper for the determination of all questions and
21 matters.

22 (m) The disposition of assets held in charitable trust.

23 *SEC. 49. Section 12628 of the Corporations Code is amended*
24 *to read:*

25 12628. (a) Upon the final settlement of the accounts of the
26 directors or other persons appointed pursuant to Section 12625
27 and the determination that the corporation's affairs are in condition
28 for it to be dissolved, the court may make an order declaring the
29 corporation duly wound up and dissolved. The order shall declare:

30 (1) That the corporation has been duly wound up, that a final
31 franchise tax return, as described by Section 23332 of the Revenue
32 and Taxation Code, has been filed with the Franchise Tax Board,
33 as required under Part 10.2 (commencing with Section 18401) of
34 Division 2 of the Revenue and Taxation Code and that its known
35 debts and liabilities have been paid or adequately provided for, or
36 that those debts and liabilities have been paid as far as its assets
37 permitted, as the case may be. If there are known debts or liabilities
38 for payment of which adequate provision has been made, the order
39 shall state what provision has been made, setting forth the name
40 and address of the corporation, person, or governmental agency

1 that has assumed or guaranteed the payment, or the name and
2 address of the depositary with which deposit has been made or
3 such other information as may be necessary to enable the creditor
4 or other person to whom payment is to be made to appear and
5 claim payment of the debt or liability.

6 (2) That its known assets have been distributed to the persons
7 entitled thereto or that it acquired no known assets, as the case
8 may be.

9 (3) That the accounts of directors or such other persons have
10 been settled and that they are discharged from their duties and
11 liabilities to creditors, *shareholders*, and members.

12 (4) That the corporation is dissolved.

13 (b) The court may make such additional orders and grant such
14 further relief as it deems proper upon the evidence submitted.

15 (c) Upon the making of the order declaring the corporation
16 dissolved, corporate existence shall cease except for the purposes
17 of further winding up if needed; and the directors or such other
18 persons shall be discharged from their duties and liabilities, except
19 in respect to completion of the winding up.

20 *SEC. 50. Section 12633 of the Corporations Code is amended*
21 *to read:*

22 12633. (a) Voluntary proceedings for winding up the
23 corporation commence upon the adoption of the resolution required
24 by Section 12630 by the members or by the board, electing to wind
25 up and dissolve.

26 (b) When a voluntary proceeding for winding up has
27 commenced, the board shall continue to act as a board and shall
28 have full powers to wind up and settle its affairs, both before and
29 after the filing of the certificate of dissolution.

30 (c) When a voluntary proceeding for winding up has
31 commenced, the corporation shall cease to conduct its activities
32 except to the extent necessary for the beneficial winding up thereof,
33 to the extent necessary to carry out its purposes, and except during
34 such period as the board may deem necessary to preserve the
35 corporation's goodwill or going-concern value pending a sale or
36 other disposition of its assets, or both, in whole or in part. The
37 board shall cause written notice of the commencement of the
38 proceeding for voluntary winding up to be given by mail to all its
39 members (except no notice need be given to the members who
40 voted in favor of winding up and dissolving the corporation), to

1 all known creditors *and shareholders*, and claimants whose
2 addresses appear on the records of the corporation.

3 *SEC. 51. Section 12634 of the Corporations Code is amended*
4 *to read:*

5 12634. If a corporation is in the process of voluntary winding
6 up, the superior court of the proper county, upon the petition of
7 (a) the corporation, or (b) a member or members possessing 5
8 percent or more of the voting power, or (c) three or more creditors,
9 and upon such notice to the corporation and to other persons
10 interested in the corporation as members and creditors as the court
11 may order, may take jurisdiction over such voluntary winding up
12 proceeding if that appears necessary for the protection of any
13 parties in interest. The court, if it assumes jurisdiction, may make
14 such orders as to any and all matters concerning the winding up
15 of the affairs of the corporation and the protection of its members,
16 *shareholders*, and creditors as justice and equity may require. The
17 provisions of Chapter 15 (commencing with Section 12620) (except
18 Sections 12620 and 12621) shall apply to such court proceedings.

19 *SEC. 52. Section 12637 of the Corporations Code, as added*
20 *by Section 3 of Chapter 1625 of the Statutes of 1982, is amended*
21 *to read:*

22 12637. (a) The board, in lieu of filing the certificate of
23 dissolution, may petition the superior court of the proper county
24 for an order declaring the corporation duly wound up and dissolved.
25 Such petition shall be filed in the name of the corporation.

26 (b) Upon the filing of the petition, the court shall make an order
27 requiring all interested persons to show cause why an order shall
28 not be made declaring the corporation duly wound up and dissolved
29 and shall direct that the order be served by notice to all creditors,
30 claimants, *shareholders*, and members in the same manner as the
31 notice given under subdivision (b) of Section 12627.

32 (c) Any person claiming to be interested as member,
33 *shareholder*, creditor, or otherwise may appear in the proceeding
34 at any time before the expiration of 30 days from the completion
35 of publication of the order to show cause and contest the petition,
36 and upon failure to appear such person's claim shall be barred.

37 (d) Thereafter an order shall be entered and filed and have the
38 effect as prescribed in Sections 12628 and 12629.

39 *SEC. 53. Section 12656 of the Corporations Code is amended*
40 *to read:*

1 12656. After complying with the provisions of Section 12653
2 and except as otherwise provided in Section 12655, assets held by
3 a corporation shall be disposed of on dissolution as follows:

4 (a) If the articles or bylaws provide the manner of disposition,
5 the assets shall be disposed of in that manner.

6 (b) If the articles or bylaws do not provide the manner of
7 disposition, the assets shall be distributed among the members *and*
8 *shareholders* in accordance with their respective rights therein.

9 *SEC. 54. Section 12658 of the Corporations Code is amended*
10 *to read:*

11 12658. (a) If a corporation in process of winding up has more
12 than one class of memberships *or shares* outstanding, a plan of
13 distribution of the memberships, obligations, or securities of any
14 other corporation, domestic or foreign, or assets other than money
15 which is not in accordance with the liquidation rights of any class
16 or classes as specified in the articles or bylaws may nevertheless
17 be adopted if approved by (1) the board and (2) by approval by
18 the members (Section 12224) of each class. The plan may provide
19 that such distribution is in complete or partial satisfaction of the
20 rights of any of such members *or shareholders* upon distribution
21 and liquidation of the assets.

22 (b) A plan of distribution so approved shall be binding upon all
23 the members *and shareholders*. The board shall cause notice of
24 the adoption of the plan to be given by mail within 20 days after
25 its adoption to all *shareholders and* holders of memberships having
26 a liquidation preference.

27 *SEC. 55. Section 12659 of the Corporations Code is amended*
28 *to read:*

29 12659. (a) If any members, *shareholders*, creditors, or other
30 persons are unknown or fail or refuse to accept their payment or
31 distribution in cash or property or their whereabouts cannot be
32 ascertained after diligent inquiry, or the existence or amount of a
33 claim of a creditor, member, *shareholder*, or other person is
34 contingent, contested, or not determined, or if the ownership of
35 any memberships *or shares* is in dispute, the corporation may
36 deposit any such payment, distribution, or the maximum amount
37 of the claim with the Controller in trust for the benefit of those
38 lawfully entitled to the payment, distribution, or the amount of the
39 claim. The payment or distribution shall be paid over by the

1 depository to the lawful owners, their representatives or assigns,
2 upon satisfactory proof of title.

3 (b) For the purpose of providing for the transmittal, receipt,
4 accounting for, claiming, management, and investment of all
5 money or other property deposited with the Controller under
6 subdivision (a), the money or other property shall be deemed to
7 be paid or delivered for deposit with the Controller under Chapter
8 7 (commencing with Section 1500) of Title 10 of Part 3 of the
9 Code of Civil Procedure, and may be recovered in the manner
10 prescribed in that chapter.

11 *SEC. 56. Section 12672 of the Corporations Code, as added*
12 *by Section 3 of Chapter 1625 of the Statutes of 1982, is amended*
13 *to read:*

14 12672. Any director of any corporation who concurs in any
15 vote or act of the directors of the corporation or any of them,
16 knowingly and with dishonest or fraudulent purpose, to make any
17 distribution of assets, except in the case and in the manner allowed
18 by this part, either with the design of defrauding creditors,
19 *shareholders*, or members or of giving a false appearance to the
20 value of the membership and thereby defrauding purchasers is
21 guilty of a crime. Each such crime is punishable by imprisonment
22 in a state prison, or by a fine of not more than one thousand dollars
23 (\$1,000) or imprisonment in county jail for not more than one year,
24 or by both such fine and imprisonment.

25 *SEC. 57. Section 12673 of the Corporations Code is amended*
26 *to read:*

27 12673. (a) Every director or officer of any corporation is guilty
28 of a crime if such director or officer knowingly concurs in making
29 or publishing, either generally or privately, to members,
30 *shareholders*, or other persons (1) any materially false report or
31 statement as to the financial condition of the corporation, or (2)
32 any willfully or fraudulently exaggerated report, prospectus,
33 account, or statement of operations, financial condition, or
34 prospects, or (3) any other paper intended to give, and having a
35 tendency to give, a membership *or share* in such corporation a
36 greater or lesser value than it really possesses.

37 (b) Every director or officer of any corporation is guilty of a
38 crime who refuses to make or direct to be made any book entry or
39 the posting of any notice required by law in the manner required
40 by law.

1 (c) A violation of subdivision (a) or (b) of this section shall be
2 punishable by imprisonment in state prison or by a fine of not more
3 than one thousand dollars (\$1,000) or imprisonment in the county
4 jail for not more than one year or both such fine and imprisonment.

5 *SEC. 58. Section 12674 of the Corporations Code is amended*
6 *to read:*

7 12674. (a) Every director, officer or agent of any corporation,
8 who knowingly receives or acquires possession of any property
9 of the corporation, otherwise than in payment of a just demand,
10 and, with intent to defraud, omits to make, or to cause or direct to
11 be made, a full and true entry thereof in the books or accounts of
12 the corporation is guilty of a crime.

13 (b) Every director, officer, agent, *shareholder*, or member of
14 any corporation who, with intent to defraud, destroys, alters,
15 mutilates or falsifies any of the books, papers, writings, or
16 securities belonging to the corporation or makes or concurs in
17 omitting to make any material entry in any book of accounts or
18 other record or document kept by the corporation is guilty of a
19 crime.

20 (c) Each crime specified in this section is punishable by
21 imprisonment in state prison, or by imprisonment in a county jail
22 for not exceeding one year, or a fine not exceeding one thousand
23 dollars (\$1,000), or both such fine and imprisonment.

24 ~~SEC. 11.~~

25 *SEC. 59.* The heading of Part 2 (commencing with Section
26 12200) of Division 3 of Title 1 of the Corporations Code is
27 amended to read:

28
29 PART 2. COOPERATIVE CORPORATIONS
30

31 ~~SEC. 12.~~

32 *SEC. 60.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O