

ASSEMBLY BILL

No. 816

Introduced by Assembly Member Bonta

February 26, 2015

An act to amend Sections 12200, 12243, 12253, 12310, 12404, 12420, 12460, 12530, 12653, 25017, 25019, and 25100 of, to amend the heading of Part 2 (commencing with Section 12200) of Division 3 of Title 1 of, and to add Sections 12201.5, 12228.3, 12230.5, 12253.5, 12310.5, 12317, 12454.5, 12460.5, 12530.5, and 12656.5 to, the Corporations Code relating to cooperative corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as introduced, Bonta. Cooperative corporations: worker cooperatives.

Existing law, the Consumer Cooperative Corporation Law, governs the organization and operation of consumer cooperative corporations. The law specifies the provisions that may be set forth in the articles of incorporation of a consumer cooperative. 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. Except as specified, existing law requires that the voting power of members having voting rights in a cooperative corporation be equal. Existing law also requires cooperative corporations to hold a meeting of members annually. Existing law makes the violation of specified provisions a crime.

This bill would rename the law the General Cooperative Corporation Law, and authorize a cooperative corporation to elect to designate itself as a worker cooperative in its articles of incorporation. The bill would authorize a worker cooperative to apportion and distribute its net

earnings and losses at the time and in the manner specified in the articles of incorporation or bylaws. The bill would define the patrons of a worker cooperative as worker-members and authorize their patronage to be measured by work performed or personal services contributed. The bill would exempt worker cooperatives from the requirement that voting power of members be equal. The bill would authorize a worker cooperative to issue only one type of indivisible membership having the same rights, privileges, preferences, restrictions or conditions as all other worker members as provided in the articles or bylaws.

This bill would also authorize a worker cooperative to establish itself as a capital account cooperative in its articles or bylaws, in which case the entire net book value of the corporation would be reflected in member capital accounts, one for each member, and an unallocated capital account, if any, as specified.

This bill would also authorize a worker cooperative to establish itself as a collective board worker cooperative, in which all worker members serve on the board. A collective board worker cooperative would not be required to hold an annual meeting of members.

This bill would authorize two or more worker cooperatives to consolidate, as specified, proscribe the actions to be taken upon the dissolution of a worker cooperative, and make other conforming changes.

The Corporate Securities Law of 1968 generally regulates the offer and sale of securities in this state. That law requires the offer and sale of securities to be qualified with the Commissioner of Business Oversight, and exempts specified transactions or securities from the qualification, and certain interests from the definition of a security. That law makes it unlawful for a person in connection with the offer or sale of a security to engage in fraudulent or misleading acts of omissions.

The issuance of shares or memberships by a corporation subject to the Consumer Cooperative Corporation Law is exempt from, the qualification requirement, if the investment does not exceed \$300.

The bill would increase the investment limitation of the above-referenced exemption from qualification from \$300 to \$1,000. The bill would exclude any written notice of allocation, as defined, issued by a specified type of organization, and a membership interest in a collective board worker cooperative, from the definition of a security. The bill would exclude shares or memberships issued by a worker cooperative from qualification, provided that the aggregate investment of any shareholder or member does not exceed \$5,000.

Because this bill would change the definition of 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. The Legislature finds and declares all of the
2 following:

3 (a) A worker cooperative has the purpose of creating and
4 maintaining sustainable jobs and generating wealth in order to
5 improve the quality of life of its worker-members, dignify human
6 work, allow workers' democratic self-management, and promote
7 community and local development.

8 (b) The purpose of this act is to amend the Consumer
9 Cooperative Corporation Law to clarify that the law applies to
10 cooperatives in general, not just consumer cooperatives, and to
11 create more visibility for worker cooperatives. This act is intended
12 to provide a definition of worker cooperative for purposes of this
13 act, and not for purposes of other laws.

14 SEC. 2. The heading of Part 2 (commencing with Section
15 12200) of Division 3 of Title 1 of the Corporations Code is
16 amended to read:

17
18 PART 2. ~~CONSUMER~~ GENERAL COOPERATIVE
19 CORPORATIONS
20

21 SEC. 3. Section 12200 of the Corporations Code is amended
22 to read:

23 12200. This part shall be known as the ~~Consumer General~~
24 Cooperative Corporation Law. This part is intended primarily to
25 apply to the organization and operation of ~~consumer cooperatives.~~
26 ~~It is also applicable to other cooperatives, including, but not limited~~
27 ~~to, cooperatives formed for the purpose of recycling or treating~~
28 ~~hazardous wastes, which elect to incorporate under it.~~ *cooperatives,*

1 *including, but not limited to, consumer cooperatives, worker*
2 *cooperatives, and cooperatives formed for the purpose of recycling*
3 *or treating hazardous waste that elect to incorporate under its*
4 *provisions.*

5 SEC. 4. Section 12201.5 is added to the Corporations Code,
6 to read:

7 12201.5. (a) Notwithstanding Section 12201, the net earnings
8 and losses of a worker cooperative shall be apportioned and
9 distributed at the time and in the manner specified in the articles
10 of incorporation or bylaws.

11 (b) Net earnings declared as patronage distributions with respect
12 to a period of time, and paid to a creditor or member, shall be
13 apportioned among the members in accordance with the ratio that
14 each member's patronage during the period bears to total patronage
15 by all members during the period.

16 (c) The apportionment, distribution, and payment of net earnings
17 required by subdivision (a) may be paid in cash, credits, written
18 notices of allocation, or capital stock issued by the worker
19 cooperative.

20 SEC. 5. Section 12228.3 is added to the Corporations Code,
21 to read:

22 12228.3. "Capital account cooperative" is a worker cooperative
23 in which the entire net book value is reflected in member capital
24 accounts, one for each member, and an unallocated capital account,
25 if any.

26 SEC. 6. Section 12230.5 is added to the Corporations Code,
27 to read:

28 12230.5. "Collective board worker cooperative" means a
29 worker cooperative in which there is only one class of members
30 consisting of worker-members, all of whom are members of the
31 board.

32 SEC. 7. Section 12243 of the Corporations Code is amended
33 to read:

34 12243. (a) (1) If the corporation is organized to provide goods
35 or services to its members, the corporation's "patrons" are those
36 who purchase those types of goods from, or use those types of
37 service of, the corporation. If the corporation is organized to
38 market, process or otherwise handle its members' products or
39 services, the corporation's "patrons" are those persons whose

1 products or services are so marketed, processed, or handled by the
2 corporation.

3 “Patronage”

4 (2) “Patronage” of a patron is measured by the volume or value,
5 or both, of a patron’s purchases of ~~such~~ products from, and use of
6 ~~such~~ services furnished by, the corporation, and by ~~such~~ products
7 and services provided by the patron to the corporation for
8 marketing.

9 (b) (1) *If the corporation is organized as a worker cooperative,*
10 *the corporation’s “patrons” are its worker-members.*

11 (2) *If the corporation is organized as a worker cooperative,*
12 *“patronage” may be measured by work performed or personal*
13 *services contributed, including wages earned, number of hours*
14 *worked, seniority in the cooperative, number of jobs created in*
15 *the previous taxable year, or some combination of these measures.*

16 SEC. 8. Section 12253 of the Corporations Code is amended
17 to read:

18 12253. (a) “Voting power” means the power to vote for the
19 election of directors at the time any determination of voting power
20 is made and does not include the right to vote upon the happening
21 of some condition or event ~~which~~ *that* has not yet occurred. ~~In any~~
22 ~~case where~~

23 (b) *If* different classes of memberships are entitled to vote as
24 separate classes for different members of the board, the
25 determination of percentage of voting power shall be made on the
26 basis of the percentage of the total number of authorized directors
27 ~~which~~ *that* the memberships in question (whether of one or more
28 classes) have the power to elect in an election at which all
29 memberships then entitled to vote for the election of any directors
30 are voted.

31 SEC. 9. Section 12253.5 is added to the Corporations Code,
32 to read:

33 12253.5. “Worker cooperative” means a corporation formed
34 under this part that includes a class of worker-members who are
35 natural persons whose patronage consists of labor contributed to,
36 personal services performed for, or other work performed for the
37 corporation.

38 SEC. 10. Section 12310 of the Corporations Code is amended
39 to read:

1 12310. The articles of incorporation of a corporation formed
 2 under this part shall set forth:

- 3 (a) The name of the corporation.
- 4 (b) The following statement:

5
 6 “This corporation is a cooperative corporation organized under
 7 the ~~Consumer~~ *General* Cooperative Corporation Law. The purpose
 8 of this corporation is to engage in any lawful act or activity for
 9 which a corporation may be organized under ~~such~~ *the* law.”

10 [The articles may include a further description of the
 11 corporation’s purpose.]

- 12
- 13 (c) The name and street address in this state of the corporation’s
- 14 initial agent for service of process in accordance with subdivision
- 15 (b) of Section 12570.

16 (d) The initial street address of the corporation.

17 (e) The initial mailing address of the corporation, if different
 18 from the initial street address.

19 (f) Whether the voting power or the proprietary interests of the
 20 members are equal or unequal. If the voting power or proprietary
 21 interests of the members are unequal, the articles shall state either
 22 (i) the general rule or rules by which the voting power and
 23 proprietary interests of the members shall be determined or (ii)
 24 that such rule or rules shall be prescribed in the corporation’s
 25 bylaws. Equal voting power means voting power apportioned on
 26 the basis of one vote for each member. Equal proprietary rights
 27 means property rights apportioned on the basis of one proprietary
 28 unit for each member.

29 (g) *Pursuant to Section 12310.5, the articles of incorporation*
 30 *may state whether the cooperative has elected to be governed as*
 31 *worker cooperative.*

32 SEC. 11. Section 12310.5 is added to the Corporations Code,
 33 to read:

34 12310.5. (a) A corporation organized under this part may elect
 35 to be governed as a worker cooperative by making the following
 36 statement in its articles of incorporation or its amended articles of
 37 incorporation:

38 “This corporation is a worker cooperative corporation organized
 39 under the General Cooperative Corporation Law.

1 (b) A corporation that makes the election to be governed as a
2 worker cooperative, unless expressly exempted, shall be governed
3 by all the provisions of this part.

4 SEC. 12. Section 12317 is added to the Corporations Code, to
5 read:

6 12317. (a) A worker cooperative may, in its articles or bylaws,
7 establish itself as a capital account cooperative.

8 (b) In a capital account cooperative, each member shall have
9 only one vote in any matter requiring a vote of the membership.

10 (c) The articles or bylaws of a capital account cooperative may
11 authorize assignment of a portion of retained net earnings and net
12 losses to an unallocated capital account. The unallocated capital
13 account in a capital account cooperative shall reflect any paid-in
14 capital, net losses, and retained net earnings not allocated to
15 individual members. Earnings assigned to the unallocated capital
16 account may be used for any and all corporate purposes, as
17 determined by the board of directors.

18 (d) The system of member and unallocated capital accounts
19 may be used to determine the redemption price of member shares,
20 capital stock, and written notices of allocation. The articles or
21 bylaws may provide for the capital account cooperative worker
22 cooperative to pay or credit interest on the balance in each
23 member's capital account.

24 (e) The articles or bylaws of a capital account cooperative may
25 permit the periodic redemption of written notices of allocation and
26 capital stock and shall provide for recall and redemption of
27 membership shares upon termination of membership in the
28 cooperative. However, no redemption may occur that would result
29 in the liability of any director or officer pursuant to Article 2
30 (commencing with Section 12370) of Chapter 2.

31 (f) As used in this section, "written notice of allocation" has the
32 same meaning as defined in Section 1388 (b) of the Internal
33 Revenue Code.

34 SEC. 13. Section 12404 of the Corporations Code is amended
35 to read:

36 12404. Except as permitted in Section 12314, the voting power
37 of members having voting rights, *other than members of a worker*
38 *cooperative*, shall be equal.

39 SEC. 14. Section 12420 of the Corporations Code is amended
40 to read:

1 12420. ~~A~~—(a) *Except as provided in subdivision (b), a*
2 corporation may issue memberships having different rights,
3 privileges, preferences, restrictions, or conditions, as provided in
4 its articles or bylaws. If the articles or bylaws authorize at least
5 one class of voting memberships, a corporation may also authorize
6 and issue additional classes of memberships, preferred or otherwise,
7 that are divisible into a series or are nonvoting or both.

8 (b) *A worker cooperative may issue only one type of*
9 *membership. All worker-members shall have the rights, privileges,*
10 *preferences, restrictions or conditions as provided in the articles*
11 *or bylaws. This membership shall be indivisible.*

12 SEC. 15. Section 12454.5 is added to the Corporations Code,
13 to read:

14 12454.5. (a) A worker cooperative is authorized to create an
15 indivisible reserves account that shall not be distributed to
16 members.

17 (b) Funds in the indivisible reserves account shall, in a manner
18 provided in the articles or bylaws, or by the board, be used as
19 capital for the cooperative.

20 SEC. 16. Section 12460 of the Corporations Code is amended
21 to read:

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

38 (b) ~~A~~—*Except as provided in Section 12460.5, a regular meeting*
39 *of members shall be held annually. In any year in which directors*
40 *are elected, the election shall be held at the regular meeting unless*

1 the directors are chosen in some other manner authorized by law.
2 Any other proper business may be transacted at the meeting.

3 (c) If a corporation fails to hold the regular meeting for a period
4 of 60 days after the date designated therefor or, if no date has been
5 designated, for a period of 15 months after the formation of the
6 corporation or after its last regular meeting, or if the corporation
7 fails to hold a written ballot for a period of 60 days after the date
8 designated therefor, then the superior court of the proper county
9 may summarily order the meeting to be held or the ballot to be
10 conducted upon the application of a member, after notice to the
11 corporation giving it an opportunity to be heard.

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

20 (e) Special meetings of members for any lawful purpose may
21 be called by the board, the chairman of the board, the president,
22 or such other persons, if any, as are specified in the bylaws. In
23 addition, special meetings of members for any lawful purpose may
24 be called by 5 percent or more of the members.

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

1 20, the meeting shall be held at a physical location in accordance
2 with subdivision (a).

3 SEC. 17. Section 12460.5 is added to the Corporations Code,
4 to read:

5 12460.5. Notwithstanding Section 12460, a collective board
6 worker cooperative shall not be required to hold an annual meeting
7 of members.

8 SEC. 18. Section 12530 of the Corporations Code is amended
9 to read:

10 12530. ~~Any~~ *Except as provided in Section 12530.5, any*
11 *corporation may merge with another domestic corporation, foreign*
12 *corporation, or other business entity* ~~(Section 12242.5)~~. However,
13 a merger with a *nonprofit* public benefit corporation or a *nonprofit*
14 religious corporation must have the prior written consent of the
15 Attorney General.

16 SEC. 19. Section 12530.5 is added to the Corporations Code,
17 to read:

18 12530.5. Notwithstanding Section 12530, a worker cooperative
19 that has not revoked its election to be governed as a worker
20 cooperative under Section 12310.5 shall not consolidate or merge
21 with another corporation other than another worker cooperative.
22 Two or more worker cooperatives may merge or consolidate in a
23 manner consistent with this chapter.

24 SEC. 20. Section 12653 of the Corporations Code is amended
25 to read:

26 12653. (a) After determining that all the known debts and
27 liabilities of a corporation in the process of winding up have been
28 paid or adequately provided for, the board shall distribute all the
29 remaining corporate assets in the manner provided in Sections
30 ~~12655 and 12656~~ *12655, 12656, and 12656.5*.

31 (b) If the winding up is by court proceeding or subject to court
32 supervision, the distribution shall not be made until after the
33 expiration of any period for the presentation of claims that has
34 been prescribed by order of the court.

35 (c) Anything to the contrary notwithstanding, assets, if any,
36 ~~which~~ *that* are not subject to attachment, execution or sale for the
37 corporation's debts and liabilities may be distributed pursuant to
38 Sections ~~12655 and 12656~~ *12655, 12656, and 12656.5* even though
39 all debts and liabilities have not been paid or adequately provided
40 for.

1 SEC. 21. Section 12656.5 is added to the Corporations Code,
2 to read:

3 12656.5. (a) After complying with the provisions of Section
4 12653, and except as otherwise provided in Section 12655, upon
5 dissolution of a worker cooperative the majority of the unallocated
6 capital account shall be distributed to members on the basis of the
7 following:

8 (1) Patronage,

9 (2) Capital contributions, or

10 (3) A combination of patronage and capital contributions.

11 (b) A worker cooperative is authorized to include patronage
12 provided by past and current members in its distribution of the
13 unallocated capital account.

14 (c) Subdivision (a) shall not apply to any amounts in the
15 indivisible reserve account. Any amounts in the indivisible reserve
16 account shall, upon dissolution, be allocated to an International
17 Cooperative Alliance approved national federation or a regional
18 body in this state designated in the articles of incorporation or the
19 bylaws.

20 SEC. 22. Section 25017 of the Corporations Code is amended
21 to read:

22 25017. (a) “Sale” or “sell” includes every contract of sale of,
23 contract to sell, or disposition of, a security or interest in a security
24 for value. “Sale” or “sell” includes any exchange of securities and
25 any change in the rights, preferences, privileges, or restrictions of
26 or on outstanding securities.

27 (b) “Offer” or “offer to sell” includes every attempt or offer to
28 dispose of, or solicitation of an offer to buy, a security or interest
29 in a security for value.

30 (c) Any security given or delivered with, or as a bonus on
31 account of, any purchase of securities or any other thing constitutes
32 a part of the subject of the purchase and is considered to have been
33 offered and sold for value.

34 (d) A purported gift of assessable stock involves an offer and
35 sale.

36 (e) Every sale or offer of a warrant or right to purchase or
37 subscribe to another security of the same or another issuer, as well
38 as every sale or offer of a security which gives the holder a present
39 or future right or privilege to convert the security into another
40 security of the same or another issuer, includes an offer and sale

1 of the other security only at the time of the offer or sale of the
2 warrant or right or convertible security; but neither the exercise
3 of the right to purchase or subscribe or to convert nor the issuance
4 of securities pursuant thereto is an offer or sale.

5 (f) The terms defined in this section do not include: (1) any bona
6 fide secured transaction in or loan of outstanding securities; (2)
7 any stock dividend payable with respect to common stock of a
8 corporation solely (except for any cash or scrip paid for fractional
9 shares) in shares of such common stock, if the corporation has no
10 other class of voting stock outstanding; provided, that shares issued
11 in any such dividend shall be subject to any conditions previously
12 imposed by the commissioner applicable to the shares with respect
13 to which they are issued; ~~or~~ (3) any act incident to a transaction
14 or reorganization approved by a state or federal court in which
15 securities are issued and exchanged for one or more outstanding
16 securities, claims, or property interests, or partly in that exchange
17 and partly for cash, and nothing in this division shall be construed
18 to prohibit a court from applying the protections described in
19 Section 25014.7 or 25140 and the regulations adopted thereunder
20 when approving any transaction involving a rollup ~~participant~~.
21 *participant; or (4) any written notice of allocation, as defined in*
22 *Section 1388(b) of the Internal Revenue Code, issued by an*
23 *organization described in Section 1381(a) of the Internal Revenue*
24 *Code.*

25 SEC. 23. Section 25019 of the Corporations Code is amended
26 to read:

27 25019. "Security" means any note; stock; treasury stock;
28 membership in an incorporated or unincorporated association;
29 bond; debenture; evidence of indebtedness; certificate of interest
30 or participation in any profit-sharing agreement; collateral trust
31 certificate; preorganization certificate or subscription; transferable
32 share; investment contract; viatical settlement contract or a
33 fractionalized or pooled interest therein; life settlement contract
34 or a fractionalized or pooled interest therein; voting trust certificate;
35 certificate of deposit for a security; interest in a limited liability
36 company and any class or series of those interests (including any
37 fractional or other interest in that interest), except a membership
38 interest in a limited liability company in which the person claiming
39 this exception can prove that all of the members are actively
40 engaged in the management of the limited liability company;

1 provided that evidence that members vote or have the right to vote,
2 or the right to information concerning the business and affairs of
3 the limited liability company, or the right to participate in
4 management, shall not establish, without more, that all members
5 are actively engaged in the management of the limited liability
6 company; certificate of interest or participation in an oil, gas or
7 mining title or lease or in payments out of production under that
8 title or lease; put, call, straddle, option, or privilege on any security,
9 certificate of deposit, or group or index of securities (including
10 any interest therein or based on the value thereof); or any put, call,
11 straddle, option, or privilege entered into on a national securities
12 exchange relating to foreign currency; any beneficial interest or
13 other security issued in connection with a funded employees'
14 pension, profit sharing, stock bonus, or similar benefit plan; or, in
15 general, any interest or instrument commonly known as a
16 "security"; or any certificate of interest or participation in,
17 temporary or interim certificate for, receipt for, guarantee of, or
18 warrant or right to subscribe to or purchase, any of the foregoing.
19 All of the foregoing are securities whether or not evidenced by a
20 written document. "Security" does not include: (1) any beneficial
21 interest in any voluntary inter vivos trust which is not created for
22 the purpose of carrying on any business or solely for the purpose
23 of voting, or (2) any beneficial interest in any testamentary trust,
24 ~~or~~ (3) any insurance or endowment policy or annuity contract under
25 which an insurance company admitted in this state promises to
26 pay a sum of money (whether or not based upon the investment
27 performance of a segregated fund) either in a lump sum or
28 periodically for life or some other specified period, ~~or~~ (4) any
29 franchise subject to registration under the Franchise Investment
30 Law (Division 5 (commencing with Section 31000)), or exempted
31 from registration by Section 31100 or ~~31101~~, 31101, or (5) a
32 membership or share interest in a collective board worker
33 cooperative, as defined in Section 12230.5.

34 SEC. 24. Section 25100 of the Corporations Code is amended
35 to read:

36 25100. The following securities are exempted from Sections
37 25110, 25120, and 25130:

38 (a) Any security (including a revenue obligation) issued or
39 guaranteed by the United States, any state, any city, county, city
40 and county, public district, public authority, public corporation,

1 public entity, or political subdivision of a state or any agency or
2 corporate or other instrumentality of any one or more of the
3 foregoing; or any certificate of deposit for any of the foregoing.

4 (b) Any security issued or guaranteed by Canada, any Canadian
5 province, any political subdivision or municipality of that province,
6 or by any other foreign government with which the United States
7 currently maintains diplomatic relations, if the security is
8 recognized as a valid obligation by the issuer or guarantor; or any
9 certificate of deposit for any of the foregoing.

10 (c) Any security issued or guaranteed by and representing an
11 interest in or a direct obligation of a national bank or a bank or
12 trust company incorporated under the laws of this state, and any
13 security issued by a bank to one or more other banks and
14 representing an interest in an asset of the issuing bank.

15 (d) Any security issued or guaranteed by a federal savings
16 association or federal savings bank or federal land bank or joint
17 land bank or national farm loan association or by any savings
18 association, as defined in subdivision (a) of Section 5102 of the
19 Financial Code, which is subject to the supervision and regulation
20 of the Commissioner of Financial Institutions of this state.

21 (e) Any security (other than an interest in all or portions of a
22 parcel or parcels of real property which are subdivided land or a
23 subdivision or in a real estate development), the issuance of which
24 is subject to authorization by the Insurance Commissioner, the
25 Public Utilities Commission, or the Real Estate Commissioner of
26 this state.

27 (f) Any security consisting of any interest in all or portions of
28 a parcel or parcels of real property which are subdivided lands or
29 a subdivision or in a real estate development; provided that the
30 exemption in this subdivision shall not be applicable to: (1) any
31 investment contract sold or offered for sale with, or as part of, that
32 interest, or (2) any person engaged in the business of selling,
33 distributing, or supplying water for irrigation purposes or domestic
34 use that is not a public utility except that the exemption is
35 applicable to any security of a mutual water company (other than
36 an investment contract as described in paragraph (1)) offered or
37 sold in connection with subdivided lands pursuant to Chapter 2
38 (commencing with Section 14310) of Part 7 of Division 3 of Title
39 1.

1 (g) Any mutual capital certificates or savings accounts, as
2 defined in the Savings Association Law, issued by a savings
3 association, as defined by subdivision (a) of Section 5102 of the
4 Financial Code, and holding a license or certificate of authority
5 then in force from the Commissioner of Financial Institutions of
6 this state.

7 (h) Any security issued or guaranteed by any federal credit
8 union, or by any credit union organized and supervised, or
9 regulated, under the Credit Union Law.

10 (i) Any security issued or guaranteed by any railroad, other
11 common carrier, public utility, or public utility holding company
12 which is (1) subject to the jurisdiction of the Interstate Commerce
13 Commission or its successor or (2) a holding company registered
14 with the Securities and Exchange Commission under the Public
15 Utility Holding Company Act of 1935 or a subsidiary of that
16 company within the meaning of that act or (3) regulated in respect
17 of the issuance or guarantee of the security by a governmental
18 authority of the United States, of any state, of Canada or of any
19 Canadian province; and the security is subject to registration with
20 or authorization of issuance by that authority.

21 (j) Any security (except evidences of indebtedness, whether
22 interest bearing or not) of an issuer (1) organized exclusively for
23 educational, benevolent, fraternal, religious, charitable, social, or
24 reformatory purposes and not for pecuniary profit, if no part of the
25 net earnings of the issuer inures to the benefit of any private
26 shareholder or individual, or (2) organized as a chamber of
27 commerce or trade or professional association. The fact that
28 amounts received from memberships or dues or both will or may
29 be used to construct or otherwise acquire facilities for use by
30 members of the nonprofit organization does not disqualify the
31 organization for this exemption. This exemption does not apply
32 to the securities of any nonprofit organization if any promoter
33 thereof expects or intends to make a profit directly or indirectly
34 from any business or activity associated with the organization or
35 operation of that nonprofit organization or from remuneration
36 received from that nonprofit organization.

37 (k) Any agreement, commonly known as a “life income
38 contract,” of an issuer (1) organized exclusively for educational,
39 benevolent, fraternal, religious, charitable, social, or reformatory
40 purposes and not for pecuniary profit and (2) which the

1 commissioner designates by rule or order, with a donor in
2 consideration of a donation of property to that issuer and providing
3 for the payment to the donor or persons designated by him or her
4 of income or specified periodic payments from the donated
5 property or other property for the life of the donor or those other
6 persons.

7 (l) Any note, draft, bill of exchange, or banker's acceptance
8 which is freely transferable and of prime quality, arises out of a
9 current transaction or the proceeds of which have been or are to
10 be used for current transactions, and which evidences an obligation
11 to pay cash within nine months of the date of issuance, exclusive
12 of days of grace, or any renewal of that paper which is likewise
13 limited, or any guarantee of that paper or of that renewal, provided
14 that the paper is not offered to the public in amounts of less than
15 twenty-five thousand dollars (\$25,000) in the aggregate to any one
16 purchaser. In addition, the commissioner may, by rule or order,
17 exempt any issuer of any notes, drafts, bills of exchange or banker's
18 acceptances from qualification of those securities when the
19 commissioner finds that the qualification is not necessary or
20 appropriate in the public interest or for the protection of investors.

21 (m) Any security issued by any corporation organized and
22 existing under the provisions of Chapter 1 (commencing with
23 Section 54001) of Division 20 of the Food and Agricultural Code.

24 (n) Any beneficial interest in an employees' pension,
25 profit-sharing, stock bonus or similar benefit plan which meets the
26 requirements for qualification under Section 401 of the federal
27 Internal Revenue Code or any statute amendatory thereof or
28 supplementary thereto. A determination letter from the Internal
29 Revenue Service stating that an employees' pension, profit-sharing,
30 stock bonus or similar benefit plan meets those requirements shall
31 be conclusive evidence that the plan is an employees' pension,
32 profit-sharing, stock bonus or similar benefit plan within the
33 meaning of the first sentence of this subdivision until the date the
34 determination letter is revoked in writing by the Internal Revenue
35 Service, regardless of whether or not the revocation is retroactive.

36 (o) Any security listed or approved for listing upon notice of
37 issuance on a national securities exchange, if the exchange has
38 been certified by rule or order of the commissioner and any warrant
39 or right to purchase or subscribe to the security. The exemption
40 afforded by this subdivision does not apply to securities listed or

1 approved for listing upon notice of issuance on a national securities
2 exchange, in a rollup transaction unless the rollup transaction is
3 an eligible rollup transaction as defined in Section 25014.7.

4 That certification of any exchange shall be made by the
5 commissioner upon the written request of the exchange if the
6 commissioner finds that the exchange, in acting on applications
7 for listing of common stock, substantially applies the minimum
8 standards set forth in either subparagraph (A) or (B) of paragraph
9 (1), and, in considering suspension or removal from listing,
10 substantially applies each of the criteria set forth in paragraph (2).

11 (1) Listing standards:

12 (A) (i) Shareholders' equity of at least four million dollars
13 (\$4,000,000).

14 (ii) Pretax income of at least seven hundred fifty thousand
15 dollars (\$750,000) in the issuer's last fiscal year or in two of its
16 last three fiscal years.

17 (iii) Minimum public distribution of 500,000 shares (exclusive
18 of the holdings of officers, directors, controlling shareholders, and
19 other concentrated or family holdings), together with a minimum
20 of 800 public holders or minimum public distribution of 1,000,000
21 shares together with a minimum of 400 public holders. The
22 exchange may also consider the listing of a company's securities
23 if the company has a minimum of 500,000 shares publicly held, a
24 minimum of 400 shareholders and daily trading volume in the
25 issue has been approximately 2,000 shares or more for the six
26 months preceding the date of application. In evaluating the
27 suitability of an issue for listing under this trading provision, the
28 exchange shall review the nature and frequency of that activity
29 and any other factors as it may determine to be relevant in
30 ascertaining whether the issue is suitable for trading. A security
31 that trades infrequently shall not be considered for listing under
32 this paragraph even though average daily volume amounts to 2,000
33 shares per day or more.

34 Companies whose securities are concentrated in a limited
35 geographical area, or whose securities are largely held in block by
36 institutional investors, normally may not be considered eligible
37 for listing unless the public distribution appreciably exceeds
38 500,000 shares.

39 (iv) Minimum price of three dollars (\$3) per share for a
40 reasonable period of time prior to the filing of a listing application;

1 provided, however, in certain instances an exchange may favorably
2 consider listing an issue selling for less than three dollars (\$3) per
3 share after considering all pertinent factors, including market
4 conditions in general, whether historically the issue has sold above
5 three dollars (\$3) per share, the applicant's capitalization, and the
6 number of outstanding and publicly held shares of the issue.

7 (v) An aggregate market value for publicly held shares of at
8 least three million dollars (\$3,000,000).

9 (B) (i) Shareholders' equity of at least four million dollars
10 (\$4,000,000).

11 (ii) Minimum public distribution set forth in clause (iii) of
12 subparagraph (A) of paragraph (1).

13 (iii) Operating history of at least three years.

14 (iv) An aggregate market value for publicly held shares of at
15 least fifteen million dollars (\$15,000,000).

16 (2) Criteria for consideration of suspension or removal from
17 listing:

18 (i) If a company that (A) has shareholders' equity of less than
19 one million dollars (\$1,000,000) has sustained net losses in each
20 of its two most recent fiscal years, or (B) has net tangible assets
21 of less than three million dollars (\$3,000,000) and has sustained
22 net losses in three of its four most recent fiscal years.

23 (ii) If the number of shares publicly held (excluding the holdings
24 of officers, directors, controlling shareholders and other
25 concentrated or family holdings) is less than 150,000.

26 (iii) If the total number of shareholders is less than 400 or if the
27 number of shareholders of lots of 100 shares or more is less than
28 300.

29 (iv) If the aggregate market value of shares publicly held is less
30 than seven hundred fifty thousand dollars (\$750,000).

31 (v) If shares of common stock sell at a price of less than three
32 dollars (\$3) per share for a substantial period of time and the issuer
33 shall fail to effectuate a reverse stock split of the shares within a
34 reasonable period of time after being requested by the exchange
35 to take that action.

36 A national securities exchange, certified by rule or order of the
37 commissioner under this subdivision, shall file annual reports when
38 requested to do so by the commissioner. The annual reports shall
39 contain, by issuer: the variances granted to an exchange's listing
40 standards, including variances from corporate governance and

1 voting rights' standards, for any security of that issuer; the reasons
2 for the variances; a discussion of the review procedure instituted
3 by the exchange to determine the effect of the variances on
4 investors and whether the variances should be continued; and any
5 other information that the commissioner deems relevant. The
6 purpose of these reports is to assist the commissioner in
7 determining whether the quantitative and qualitative requirements
8 of this subdivision are substantially being met by the exchange in
9 general or with regard to any particular security.

10 The commissioner after appropriate notice and opportunity for
11 hearing in accordance with the provisions of the Administrative
12 Procedure Act, Chapter 5 (commencing with Section 11500) of
13 Part 1 of Division 3 of Title 2 of the Government Code, may, in
14 his or her discretion, by rule or order, decertify any exchange
15 previously certified that ceases substantially to apply the minimum
16 standards or criteria as set forth in paragraphs (1) and (2).

17 A rule or order of certification shall conclusively establish that
18 any security listed or approved for listing upon notice of issuance
19 on any exchange named in a rule or order of certification, and any
20 warrant or right to purchase or subscribe to that security, is exempt
21 under this subdivision until the adoption by the commissioner of
22 any rule or order decertifying the exchange.

23 (p) A promissory note secured by a lien on real property, which
24 is neither one of a series of notes of equal priority secured by
25 interests in the same real property nor a note in which beneficial
26 interests are sold to more than one person or entity.

27 (q) Any unincorporated interindemnity or reciprocal or
28 interinsurance contract, that qualifies under the provisions of
29 Section 1280.7 of the Insurance Code, between members of a
30 cooperative corporation, organized and operating under Part 2
31 (commencing with Section 12200) of Division 3 of Title 1, and
32 whose members consist only of physicians and surgeons licensed
33 in California, which contracts indemnify solely in respect to
34 medical malpractice claims against the members, and which do
35 not collect in advance of loss any moneys other than contributions
36 by each member to a collective reserve trust fund or for necessary
37 expenses of administration.

38 (1) Whenever it appears to the commissioner that any person
39 has engaged or is about to engage in any act or practice constituting
40 a violation of any provision of Section 1280.7 of the Insurance

1 Code, the commissioner may, in the commissioner's discretion,
2 bring an action in the name of the people of the State of California
3 in the superior court to enjoin the acts or practices or to enforce
4 compliance with Section 1280.7 of the Insurance Code. Upon a
5 proper showing a permanent or preliminary injunction, a restraining
6 order, or a writ of mandate shall be granted and a receiver or
7 conservator may be appointed for the defendant or the defendant's
8 assets.

9 (2) The commissioner may, in the commissioner's discretion,
10 (A) make public or private investigations within or outside of this
11 state as the commissioner deems necessary to determine whether
12 any person has violated or is about to violate any provision of
13 Section 1280.7 of the Insurance Code or to aid in the enforcement
14 of Section 1280.7, and (B) publish information concerning the
15 violation of Section 1280.7.

16 (3) For the purpose of any investigation or proceeding under
17 this section, the commissioner or any officer designated by the
18 commissioner may administer oaths and affirmations, subpoena
19 witnesses, compel their attendance, take evidence, and require the
20 production of any books, papers, correspondence, memoranda,
21 agreements, or other documents or records which the commissioner
22 deems relevant or material to the inquiry.

23 (4) In case of contumacy by, or refusal to obey a subpoena
24 issued to, any person, the superior court, upon application by the
25 commissioner, may issue to the person an order requiring the
26 person to appear before the commissioner, or the officer designated
27 by the commissioner, to produce documentary evidence, if so
28 ordered, or to give evidence touching the matter under investigation
29 or in question. Failure to obey the order of the court may be
30 punished by the court as a contempt.

31 (5) No person is excused from attending or testifying or from
32 producing any document or record before the commissioner or in
33 obedience to the subpoena of the commissioner or any officer
34 designated by the commissioner, or in any proceeding instituted
35 by the commissioner, on the ground that the testimony or evidence
36 (documentary or otherwise), required of the person may tend to
37 incriminate the person or subject the person to a penalty or
38 forfeiture, but no individual may be prosecuted or subjected to any
39 penalty or forfeiture for or on account of any transaction, matter,
40 or thing concerning which the person is compelled, after validly

1 claiming the privilege against self-incrimination, to testify or
2 produce evidence (documentary or otherwise), except that the
3 individual testifying is not exempt from prosecution and
4 punishment for perjury or contempt committed in testifying.

5 (6) The cost of any review, examination, audit, or investigation
6 made by the commissioner under Section 1280.7 of the Insurance
7 Code shall be paid to the commissioner by the person subject to
8 the review, examination, audit, or investigation, and the
9 commissioner may maintain an action for the recovery of these
10 costs in any court of competent jurisdiction. In determining the
11 cost, the commissioner may use the actual amount of the salary or
12 other compensation paid to the persons making the review,
13 examination, audit, or investigation plus the actual amount of
14 expenses including overhead reasonably incurred in the
15 performance of the work.

16 The recoverable cost of each review, examination, audit, or
17 investigation made by the commissioner under Section 1280.7 of
18 the Insurance Code shall not exceed twenty-five thousand dollars
19 (\$25,000), except that costs exceeding twenty-five thousand dollars
20 (\$25,000) shall be recoverable if the costs are necessary to prevent
21 a violation of any provision of Section 1280.7 of the Insurance
22 Code.

23 (r) Any shares or memberships issued by any corporation
24 organized and existing pursuant to the provisions of Part 2
25 (commencing with Section 12200) of Division 3 of Title 1,
26 provided the aggregate investment of any shareholder or member
27 in shares or memberships sold pursuant to this subdivision does
28 not exceed ~~three hundred dollars (\$300)~~ *one thousand (\$1,000)*.

29 *In the case of a worker cooperative, the aggregate investment of*
30 *any worker member in shares or memberships sold pursuant to*
31 *this subdivision shall not exceed five thousand dollars (\$5,000).*

32 This exemption does not apply to the shares or memberships of
33 that corporation if any promoter thereof expects or intends to make
34 a profit directly or indirectly from any business or activity
35 associated with the corporation or the operation of the corporation
36 or from remuneration, other than reasonable salary, received from
37 the corporation. This exemption does not apply to nonvoting shares
38 or memberships of that corporation issued to any person who does
39 not possess, and who will not acquire in connection with the
40 issuance of nonvoting shares or memberships, voting power

1 (Section 12253) in the corporation. This exemption also does not
2 apply to shares or memberships issued by a nonprofit cooperative
3 corporation organized to facilitate the creation of an unincorporated
4 interindemnity arrangement that provides indemnification for
5 medical malpractice to its physician and surgeon members as set
6 forth in subdivision (q).

7 (s) Any security consisting of or representing an interest in a
8 pool of mortgage loans that meets each of the following
9 requirements:

10 (1) The pool consists of whole mortgage loans or participation
11 interests in those loans, which loans were originated or acquired
12 in the ordinary course of business by a national bank or federal
13 savings association or federal savings bank having its principal
14 office in this state, by a bank incorporated under the laws of this
15 state or by a savings association as defined in subdivision (a) of
16 Section 5102 of the Financial Code and which is subject to the
17 supervision and regulation of the Commissioner of Financial
18 Institutions, and each of which at the time of transfer to the pool
19 is an authorized investment for the originating or acquiring
20 institution.

21 (2) The pool of mortgage loans is held in trust by a trustee which
22 is a financial institution specified in paragraph (1) as trustee or
23 otherwise.

24 (3) The loans are serviced by a financial institution specified in
25 paragraph (1).

26 (4) The security is not offered in amounts of less than
27 twenty-five thousand dollars (\$25,000) in the aggregate to any one
28 purchaser.

29 (5) The security is offered pursuant to a registration under the
30 Securities Act of 1933, or pursuant to an exemption under
31 Regulation A under that act, or in the opinion of counsel for the
32 issuer, is offered pursuant to an exemption under Section 4(2) of
33 that act.

34 (t) (1) Any security issued or guaranteed by and representing
35 an interest in or a direct obligation of an industrial loan company
36 incorporated under the laws of the state and authorized by the
37 Commissioner of Financial Institutions to engage in industrial loan
38 business.

39 (2) Any investment certificate in or issued by any industrial
40 loan company that is organized under the laws of a state of the

1 United States other than this state, that is insured by the Federal
2 Deposit Insurance Corporation, and that maintains a branch office
3 in this state.

4 SEC. 25. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

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