

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 816

Introduced by Assembly Member Bonta

February 26, 2015

An act to amend Sections 12200, 12238, 12243, 12253, 12310, 12404, 12420, 12431, 12460, 12461, 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, 12404.5, 12454.5, 12460.5, 12530.5, and 12656.5 to, the Corporations ~~Code~~ *Code*, relating to cooperative corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as amended, 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 require that 51% of the workers shall be worker-members or eligible for membership within 2 years of having become a worker. The bill would authorize a worker cooperative to suspend a worker-member without prior notice if specified requirements are met.* 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 require a worker cooperative to only make patronage distributions to the worker-member class.* 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~~ *an* 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~~ *prescribe* 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. GENERAL COOPERATIVE CORPORATIONS
19

1 SEC. 3. Section 12200 of the Corporations Code is amended
2 to read:

3 12200. This part shall be known as the General Cooperative
4 Corporation Law. This part is intended primarily to apply to the
5 organization and operation of cooperatives, including, but not
6 limited to, consumer cooperatives, worker cooperatives, and
7 cooperatives formed for the purpose of recycling or treating
8 hazardous waste that elect to incorporate under its provisions.

9 SEC. 4. Section 12201.5 is added to the Corporations Code,
10 to read:

11 12201.5. (a) Notwithstanding Section 12201, the net earnings
12 and losses of a worker cooperative shall be apportioned and
13 distributed at the time and in the manner specified in the articles
14 of incorporation or bylaws.

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

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

24 SEC. 5. Section 12228.3 is added to the Corporations Code,
25 to read:

26 12228.3. "Capital account cooperative" is a worker cooperative
27 in which the entire net book value is reflected in member capital
28 accounts, one for each member, and an unallocated capital account,
29 if any.

30 SEC. 6. Section 12230.5 is added to the Corporations Code,
31 to read:

32 12230.5. "Collective board worker cooperative" means a
33 worker cooperative in which there is only one class of members
34 consisting of worker-members, all of whom are members of the
35 board.

36 SEC. 7. *Section 12238 of the Corporations Code is amended*
37 *to read:*

38 12238. (a) "Member" means any person who, pursuant to a
39 specific provision of a corporation's articles or bylaws, has the

1 right to vote for the election of a director or directors, or possesses
2 proprietary interests in the corporation.

3 (b) The articles or bylaws may confer some or all of the rights
4 of a member, set forth in this part, upon any person or persons who
5 do not have any of the voting rights referred to in subdivision (a).

6 (c) Where a member of a corporation is not a natural person,
7 such member may authorize in writing one or more natural persons
8 to vote on its behalf on any or all matters which may require a vote
9 of the members.

10 (d) A person is not a member by virtue of any of the following:

11 (1) Any rights such person has as a delegate.

12 (2) Any rights such person has to designate or select a director
13 or directors.

14 (3) Any rights such person has as a director.

15 (e) *“Worker-member” means a member who is a natural person
16 and also a patron of a worker cooperative, as defined in
17 subdivision (b) of Section 12243.*

18 (f) *“Non-worker-member” means a member of a worker
19 cooperative who is not a worker member.*

20 ~~SEC. 7:~~

21 *SEC. 8.* Section 12243 of the Corporations Code is amended
22 to read:

23 12243. (a) (1) If the corporation is organized to provide goods
24 or services to its members, the corporation’s “patrons” are those
25 who purchase those types of goods from, or use those types of
26 ~~service services~~ of, the corporation. If the corporation is organized
27 to market, process or otherwise handle its members’ products or
28 services, the corporation’s “patrons” are those persons whose
29 products or services are so marketed, processed, or handled by the
30 corporation.

31 (2) “Patronage” of a patron is measured by the volume or value,
32 or both, of a patron’s purchases of products from, and use of
33 services furnished by, the corporation, and by products and services
34 provided by the patron to the corporation for marketing.

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

37 (2) If the corporation is organized as a worker cooperative,
38 “patronage” may be measured by work performed or personal
39 services contributed, including wages earned, number of hours
40 worked, ~~seniority in the cooperative, number of jobs created in the~~

1 ~~previous taxable year~~, *created*, or some combination of these
 2 measures.

3 ~~SEC. 8.~~

4 *SEC. 9.* Section 12253 of the Corporations Code is amended
 5 to read:

6 12253. (a) “Voting power” means the power to vote for the
 7 election of directors at the time any determination of voting power
 8 is made and does not include the right to vote upon the happening
 9 of some condition or event that has not yet occurred.

10 (b) If different classes of memberships are entitled to vote as
 11 separate classes for different members of the board, the
 12 determination of percentage of voting power shall be made on the
 13 basis of the percentage of the total number of authorized directors
 14 that the memberships in question (whether of one or more classes)
 15 have the power to elect in an election at which all memberships
 16 then entitled to vote for the election of any directors are voted.

17 (c) *Non-worker-member voting power in a worker cooperative*
 18 *shall be provided in the articles or bylaws, and is limited to*
 19 *approval rights only over a merger, sale of major assets,*
 20 *reorganization, or dissolution. Approval rights shall not include*
 21 *the right to propose any action.*

22 ~~SEC. 9.~~

23 *SEC. 10.* Section 12253.5 is added to the Corporations Code,
 24 to read:

25 12253.5. “Worker cooperative” or “employment cooperative”
 26 means a corporation formed under this part that includes a class
 27 of worker-members who are natural persons whose patronage
 28 consists of labor contributed to, personal services performed for,
 29 or other work performed for the corporation. *Election to be*
 30 *organized as a worker cooperative or an employment cooperative*
 31 *does not create a presumption that workers are employees of the*
 32 *corporation for any purposes. At least 51 percent of the workers*
 33 *shall be worker-members, or eligible for membership within two*
 34 *years of becoming a worker.*

35 ~~SEC. 10.~~

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

38 12310. The articles of incorporation of a corporation formed
 39 under this part shall set forth:

40 (a) The name of the corporation.

1 (b) The following statement:
2

3 “This corporation is a cooperative corporation organized under
4 the General Cooperative Corporation Law. The purpose of this
5 corporation is to engage in any lawful act or activity for which a
6 corporation may be organized under the law.”

7 [The articles may include a further description of the
8 corporation’s purpose.]
9

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

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

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

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

26 (g) Pursuant to Section 12310.5, the articles of incorporation
27 may state whether the cooperative has elected to be governed as
28 a worker cooperative.

29 ~~SEC. 11.~~

30 *SEC. 12.* Section 12310.5 is added to the Corporations Code,
31 to read:

32 12310.5. (a) A corporation organized under this part may elect
33 to be governed as a worker cooperative by making the following
34 statement in its articles of incorporation or its amended articles of
35 incorporation:

36 “This corporation is a worker cooperative corporation organized
37 under the General Cooperative Corporation ~~Law~~. *Law.*”

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

1 ~~SEC. 12.~~

2 *SEC. 13.* Section 12317 is added to the Corporations Code, to
3 read:

4 12317. (a) A worker cooperative may, in its articles or bylaws,
5 establish itself as a capital account cooperative.

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

8 ~~(c)~~

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

17 ~~(d)~~

18 (c) The system of member and unallocated capital accounts may
19 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)~~

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

32 ~~(f)~~

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

36 ~~SEC. 13.~~

37 *SEC. 14.* Section 12404 of the Corporations Code is amended
38 to read:

1 12404. Except as permitted in ~~Section 12314~~, *Sections 12314*
2 *and 12404.5*, the voting power of members having voting rights;
3 ~~other than members of a worker cooperative~~, shall be equal.

4 *SEC. 15. Section 12404.5 is added to the Corporations Code,*
5 *to read:*

6 *12404.5. (a) The worker-members of a worker cooperative*
7 *shall have voting power as provided in subdivision (a) of Section*
8 *12253.*

9 *(b) Non-worker-member have voting power only as provided*
10 *in subdivision (c) of Section 12253.*

11 ~~SEC. 14.~~

12 *SEC. 16. Section 12420 of the Corporations Code is amended*
13 *to read:*

14 12420. (a) Except as provided in subdivision (b), a corporation
15 may issue memberships having different rights, privileges,
16 preferences, restrictions, or conditions, as provided in its articles
17 or bylaws. If the articles or bylaws authorize at least one class of
18 voting memberships, a corporation may also authorize and issue
19 additional classes of memberships, preferred or otherwise, that are
20 divisible into a series or are nonvoting or both.

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

25 *(c) A worker cooperative shall only make patronage*
26 *distributions to the worker-member class.*

27 *SEC. 17. Section 12431 of the Corporations Code is amended*
28 *to read:*

29 12431. (a) No member may be expelled or suspended, and no
30 membership or memberships may be terminated or suspended,
31 except according to procedures satisfying the requirements of this
32 section. An expulsion, termination, or suspension not in accord
33 with this section shall be void and without effect.

34 (b) Any expulsion, suspension, or termination must be done in
35 good faith and in a fair and reasonable manner. Any procedure
36 ~~which~~ *that* conforms to the requirements of subdivision (c) *or (d)*
37 is fair and reasonable, but a court may also find other procedures
38 to be fair and reasonable when the full circumstances of the
39 suspension, termination, or expulsion are considered.

40 (c) A procedure is fair and reasonable when:

1 (1) The provisions of the procedure have been set forth in the
2 articles or bylaws, or copies of such provisions are sent annually
3 to all the members as required by the articles or bylaws;

4 (2) It provides the giving of 15 days' prior notice of the
5 expulsion, suspension, or termination and the reasons therefor;
6 and

7 (3) It provides an opportunity for the member to be heard, orally
8 or in writing, not less than five days before the effective date of
9 the expulsion, suspension, or termination by a person or body
10 authorized to decide that the proposed expulsion, termination, or
11 suspension not take place.

12 *(d) Notwithstanding subdivision (a), in the case of a worker*
13 *cooperative, the articles of incorporation or bylaws may provide*
14 *for suspension of a worker-member without prior notice if the*
15 *worker-member is given notice and the opportunity to be heard*
16 *or to provide a written response within five days after the effective*
17 *date of the suspension.*

18 ~~(d)~~

19 (e) Any notice required under this section may be given by any
20 method reasonably calculated to provide actual notice. Any notice
21 given by mail must be given by first-class or registered mail sent
22 to the last address of the members shown on the corporation's
23 records.

24 ~~(e)~~

25 (f) Any action challenging an expulsion, suspension or
26 termination of membership, including any claim alleging defective
27 notice, must be commenced within one year after the date of the
28 expulsion, suspension or termination. In the event such an action
29 is successful the court may order any relief, including
30 reinstatement, it finds equitable under the circumstances, but no
31 vote of the members or of the board may be set aside solely because
32 a person was at the time of the vote wrongfully excluded by virtue
33 of the challenged expulsion, suspension or termination, unless the
34 court finds further that the wrongful expulsion, suspension or
35 termination was in bad faith and for the purpose, and with the
36 effect, of wrongfully excluding the member from the vote or from
37 the meeting at which the vote took place, so as to affect the
38 outcome of the vote.

39 ~~(f)~~

1 (g) This section governs only the procedures for expulsion,
2 suspension or termination and not the substantive grounds therefor.
3 An expulsion, suspension or termination based upon substantive
4 grounds which violate contractual or other rights of the member
5 or are otherwise unlawful is not made valid by compliance with
6 this section.

7 ~~(g)~~

8 (h) A member who is expelled or suspended or whose
9 membership is terminated shall be liable for any charges incurred,
10 services or benefits actually rendered, dues, assessments or fees
11 incurred before expulsion, suspension or termination or arising
12 from contract or otherwise.

13 ~~SEC. 15.~~

14 *SEC. 18.* Section 12454.5 is added to the Corporations Code,
15 to read:

16 12454.5. (a) A worker cooperative ~~is authorized to~~ *may* create
17 an indivisible reserves account that shall not be distributed to
18 members.

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

22 ~~SEC. 16.~~

23 *SEC. 19.* Section 12460 of the Corporations Code is amended
24 to read:

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

1 (b) Except as provided in Section 12460.5, a regular meeting
2 of members shall be held annually. In any year in which directors
3 are elected, the election shall be held at the regular meeting unless
4 the directors are chosen in some other manner authorized by law.
5 Any other proper business may be transacted at the meeting.

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

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

23 (e) Special meetings of members for any lawful purpose may
24 be called by the board, the chairman of the board, the president,
25 or ~~such~~ other persons, if any, as are specified in the bylaws. In
26 addition, special meetings of members for any lawful purpose may
27 be called by 5 percent or more of the ~~members~~. *members, however,*
28 *a special meeting of a worker cooperative may be called only by*
29 *20 percent or more of the worker-members.*

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

1 corporation to a member pursuant to clause (b) of Section 20 for
2 consent to conduct a meeting of members by electronic
3 transmission by and to the corporation, shall include a notice that
4 absent consent of the member pursuant to clause (b) of Section
5 20, the meeting shall be held at a physical location in accordance
6 with subdivision (a).

7 ~~SEC. 17.~~

8 *SEC. 20.* Section 12460.5 is added to the Corporations Code,
9 to read:

10 12460.5. Notwithstanding Section 12460, a collective board
11 worker cooperative shall not be required to hold an annual meeting
12 of members.

13 *SEC. 21. Section 12461 of the Corporations Code is amended*
14 *to read:*

15 12461. (a) Whenever members are required or permitted to
16 take any action at a meeting, a written notice of the meeting shall
17 be given not less than 10 nor more than 90 days before the date of
18 the meeting to each member who, on the record date for notice of
19 the meeting, is entitled to vote thereat; provided, however, that if
20 notice is given by mail, and the notice is not mailed by first-class,
21 registered, or certified mail, that notice shall be given not less than
22 20 days before the meeting. *A worker cooperative shall provide*
23 *notice of the meeting not less than 48 hours before the meeting if*
24 *the meeting involves only worker members.* Subject to subdivision
25 (f), and subdivision (b) of Section 12462, that notice shall state
26 the place, date and time of the meeting, the means of electronic
27 transmission by and to the corporation (Sections 20 and 21) or
28 electronic video screen communication, if any, by which members
29 may participate in that meeting, and (1) in the case of a special
30 meeting, the general nature of the business to be transacted, and
31 no other business may be transacted, or (2) in the case of the regular
32 meeting, those matters which the board, at the time the notice is
33 given, intends to present for action by the members, but, except
34 as provided in subdivision (b) of Section 12462, any proper matter
35 may be presented at the meeting for such action. The notice of any
36 meeting at which directors are to be elected shall include the names
37 of all those who are nominees at the time the notice is given to
38 members.

39 (b) Notice of a members' meeting or any report shall be given
40 personally, by electronic transmission by the corporation, or by

1 mail or other means of written communication, addressed to a
2 member at the address of such member appearing on the books of
3 the corporation or given by the member to the corporation for
4 purpose of notice; or if no such address appears or is given, at the
5 place where the principal office of the corporation is located or by
6 publication at least once in a newspaper of general circulation in
7 the county in which the principal office is located. An affidavit of
8 giving of any notice or report in accordance with the provisions
9 of this part, executed by the secretary, assistant secretary or any
10 transfer agent, shall be prima facie evidence of the giving of the
11 notice or report.

12 If any notice or report addressed to the member at the address
13 of such member appearing on the books of the corporation is
14 returned to the corporation by the United States Postal Service
15 marked to indicate the United States Postal Service is unable to
16 deliver the notice or report to the member at such address, all future
17 notices or reports shall be deemed to have been duly given without
18 further mailing if the same shall be available for the member upon
19 written demand of the member at the principal office of the
20 corporation for a period of one year from the date of the giving of
21 the notice or report to all other members.

22 Notice given by electronic transmission by the corporation under
23 this subdivision shall be valid only if it complies with Section 20.
24 Notwithstanding the foregoing, notice shall not be given by
25 electronic transmission by the corporation under this subdivision
26 after either of the following:

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

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

32 (c) Upon request in writing to the corporation addressed to the
33 attention of the chairman of the board, president, vice president
34 or secretary by any person (other than the board) entitled to call a
35 special meeting of members, the officer forthwith shall cause notice
36 to be given to the members entitled to vote that a meeting will be
37 held at a time fixed by the board not less than 35 nor more than
38 90 days after the receipt of the request. If the notice is not given
39 within 20 days after receipt of the request, the persons entitled to
40 call the meeting may give the notice or the superior court of the

1 proper county shall summarily order the giving of the notice, after
2 notice to the corporation giving it an opportunity to be heard. The
3 court may issue such orders as may be appropriate, including,
4 without limitation, orders designating the time and place of the
5 meeting, the record date for determination of members entitled to
6 vote and the form of notice.

7 (d) When a members' meeting is adjourned to another time or
8 place, unless the bylaws otherwise require and except as provided
9 in this subdivision, notice need not be given of the adjourned
10 meeting if the time and place thereof (or the means of electronic
11 transmission by and to the corporation or electronic video screen
12 communication, if any, by which members may participate) are
13 announced at the meeting at which the adjournment is taken. At
14 the adjourned meeting the corporation may transact any business
15 which might have been transacted at the original meeting. If the
16 adjournment is for more than 45 days or if after the adjournment
17 a new record date is fixed for the adjourned meeting, a notice of
18 the adjourned meeting shall be given to each member of record
19 entitled to vote at the meeting.

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

1 (f) Any approval of the members required under Section 12362,
2 12364, 12373, 12502 or 12658 other than unanimous approval by
3 those entitled to vote, shall be valid only if the general nature of
4 the proposal so approved was stated in the notice of meeting or in
5 any written waiver of notice.

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

9 (h) Subject to the provisions of subdivision (i), and unless
10 prohibited by the articles or bylaws, prior to any regular or special
11 meeting of members, the board may authorize distribution of a
12 written ballot to every member entitled to vote at the meeting.
13 Such ballot shall set forth the action proposed to be taken at the
14 meeting, shall provide an opportunity to specify approval or
15 disapproval of the proposed action, and shall state that unless
16 revoked by the member voting in person at the meeting, the ballot
17 will be counted if received by the corporation on or before the time
18 of the meeting with respect to which it was sent. If ballots are so
19 distributed with respect to a meeting, the number of members
20 voting at the meeting by unrevoked written ballots shall be deemed
21 present at the meeting for purposes of determining the existence
22 of a quorum pursuant to subdivision (a) of Section 12462 but only
23 with respect to the proposed action referred to in the ballots. These
24 ballots shall be distributed in a manner consistent with the
25 requirements of subdivision (b) and Section 12464.

26 (i) Unless prohibited by the articles or bylaws, written ballots
27 may be distributed in a manner contemplated by subdivision (h)
28 with respect to the election of directors, except that no ballots may
29 be so distributed with respect to the election of directors if
30 cumulative voting is permitted pursuant to Section 12484.

31 ~~SEC. 18.~~

32 *SEC. 22.* Section 12530 of the Corporations Code is amended
33 to read:

34 12530. Except as provided in Section 12530.5, any corporation
35 may merge with another domestic corporation, foreign corporation,
36 or other business entity. However, a merger with a nonprofit public
37 benefit corporation or a nonprofit religious corporation must have
38 the prior written consent of the Attorney General.

1 ~~SEC. 19.~~

2 *SEC. 23.* Section 12530.5 is added to the Corporations Code,
3 to read:

4 12530.5. Notwithstanding Section 12530, a worker cooperative
5 that has not revoked its election to be governed as a worker
6 cooperative under Section 12310.5 shall not consolidate or merge
7 with another corporation other than another worker cooperative.
8 Two or more worker cooperatives may merge or consolidate in a
9 manner consistent with this chapter.

10 ~~SEC. 20.~~

11 *SEC. 24.* Section 12653 of the Corporations Code is amended
12 to read:

13 12653. (a) After determining that all the known debts and
14 liabilities of a corporation in the process of winding up have been
15 paid or adequately provided for, the board shall distribute all the
16 remaining corporate assets in the manner provided in Sections
17 12655, 12656, and 12656.5.

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

22 (c) Anything to the contrary notwithstanding, assets, if any, that
23 are not subject to attachment, execution or sale for the corporation's
24 debts and liabilities may be distributed pursuant to Sections 12655,
25 12656, and 12656.5 even though all debts and liabilities have not
26 been paid or adequately provided for.

27 ~~SEC. 21.~~

28 *SEC. 25.* Section 12656.5 is added to the Corporations Code,
29 to read:

30 12656.5. (a) After complying with the provisions of Section
31 12653, and except as otherwise provided in Section 12655, upon
32 dissolution of a worker cooperative the majority of the unallocated
33 capital account shall be distributed to members on the basis of the
34 following:

35 (1) ~~Patronage~~, *Patronage*.

36 (2) ~~Capital contributions~~, or *contributions*.

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

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

1 (c) Subdivision (a) shall not apply to any amounts in the
2 indivisible reserve account. Any amounts in the indivisible reserve
3 account shall, upon dissolution, be allocated to an International
4 Cooperative Alliance approved national federation or a regional
5 body in this state designated in the articles of incorporation or the
6 bylaws.

7 ~~SEC. 22.~~

8 *SEC. 26.* Section 25017 of the Corporations Code is amended
9 to read:

10 25017. (a) “Sale” or “sell” includes every contract of sale of,
11 contract to sell, or disposition of, a security or interest in a security
12 for value. “Sale” or “sell” includes any exchange of securities and
13 any change in the rights, preferences, privileges, or restrictions of
14 or on outstanding securities.

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

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

22 (d) A purported gift of assessable stock involves an offer and
23 sale.

24 (e) Every sale or offer of a warrant or right to purchase or
25 subscribe to another security of the same or another issuer, as well
26 as every sale or offer of a security which gives the holder a present
27 or future right or privilege to convert the security into another
28 security of the same or another issuer, includes an offer and sale
29 of the other security only at the time of the offer or sale of the
30 warrant or right or convertible security; but neither the exercise
31 of the right to purchase or subscribe or to convert nor the issuance
32 of securities pursuant thereto is an offer or sale.

33 (f) The terms defined in this section do not include: (1) any bona
34 fide secured transaction in or loan of outstanding securities; (2)
35 any stock dividend payable with respect to common stock of a
36 corporation solely (except for any cash or scrip paid for fractional
37 shares) in shares of such common stock, if the corporation has no
38 other class of voting stock outstanding; provided, that shares issued
39 in any such dividend shall be subject to any conditions previously
40 imposed by the commissioner applicable to the shares with respect

1 to which they are issued; (3) any act incident to a transaction or
2 reorganization approved by a state or federal court in which
3 securities are issued and exchanged for one or more outstanding
4 securities, claims, or property interests, or partly in that exchange
5 and partly for cash, and nothing in this division shall be construed
6 to prohibit a court from applying the protections described in
7 Section 25014.7 or 25140 and the regulations adopted thereunder
8 when approving any transaction involving a rollup participant; or
9 (4) any written notice of allocation, as defined in Section 1388(b)
10 of the Internal Revenue Code, issued by an organization described
11 in Section 1381(a) of the Internal Revenue Code.

12 ~~SEC. 23.~~

13 *SEC. 27.* Section 25019 of the Corporations Code is amended
14 to read:

15 25019. "Security" means any note; stock; treasury stock;
16 membership in an incorporated or unincorporated association;
17 bond; debenture; evidence of indebtedness; certificate of interest
18 or participation in any profit-sharing agreement; collateral trust
19 certificate; preorganization certificate or subscription; transferable
20 share; investment contract; viatical settlement contract or a
21 fractionalized or pooled interest therein; life settlement contract
22 or a fractionalized or pooled interest therein; voting trust certificate;
23 certificate of deposit for a security; interest in a limited liability
24 company and any class or series of those interests (including any
25 fractional or other interest in that interest), except a membership
26 interest in a limited liability company in which the person claiming
27 this exception can prove that all of the members are actively
28 engaged in the management of the limited liability company;
29 provided that evidence that members vote or have the right to vote,
30 or the right to information concerning the business and affairs of
31 the limited liability company, or the right to participate in
32 management, shall not establish, without more, that all members
33 are actively engaged in the management of the limited liability
34 company; certificate of interest or participation in an oil, ~~gas~~ gas,
35 or mining title or lease or in payments out of production under that
36 title or lease; put, call, straddle, option, or privilege on any security,
37 certificate of deposit, or group or index of securities (including
38 any interest therein or based on the value thereof); or any put, call,
39 straddle, option, or privilege entered into on a national securities
40 exchange relating to foreign currency; any beneficial interest or

1 other security issued in connection with a funded employees’
2 pension, profit sharing, stock bonus, or similar benefit plan; or, in
3 general, any interest or instrument commonly known as a
4 “security”; or any certificate of interest or participation in,
5 temporary or interim certificate for, receipt for, guarantee of, or
6 warrant or right to subscribe to or purchase, any of the foregoing.
7 All of the foregoing are securities whether or not evidenced by a
8 written document. “Security” does not include: (1) any beneficial
9 interest in any voluntary inter vivos trust which is not created for
10 the purpose of carrying on any business or solely for the purpose
11 of voting, or (2) any beneficial interest in any testamentary trust,
12 (3) any insurance or endowment policy or annuity contract under
13 which an insurance company admitted in this state promises to
14 pay a sum of money (whether or not based upon the investment
15 performance of a segregated fund) either in a lump sum or
16 periodically for life or some other specified period, (4) any
17 franchise subject to registration under the Franchise Investment
18 Law (Division 5 (commencing with Section 31000)), or exempted
19 from registration by Section 31100 or 31101, or (5) a membership
20 or share interest in a collective board worker cooperative, as
21 defined in Section 12230.5.

22 ~~SEC. 24.~~

23 *SEC. 28.* Section 25100 of the Corporations Code is amended
24 to read:

25 25100. The following securities are exempted from Sections
26 25110, 25120, and 25130:

27 (a) Any security (including a revenue obligation) issued or
28 guaranteed by the United States, any state, any city, county, city
29 and county, public district, public authority, public corporation,
30 public entity, or political subdivision of a state or any agency or
31 corporate or other instrumentality of any one or more of the
32 foregoing; or any certificate of deposit for any of the foregoing.

33 (b) Any security issued or guaranteed by Canada, any Canadian
34 province, any political subdivision or municipality of that province,
35 or by any other foreign government with which the United States
36 currently maintains diplomatic relations, if the security is
37 recognized as a valid obligation by the issuer or guarantor; or any
38 certificate of deposit for any of the foregoing.

39 (c) Any security issued or guaranteed by and representing an
40 interest in or a direct obligation of a national bank or a bank or

1 trust company incorporated under the laws of this state, and any
2 security issued by a bank to one or more other banks and
3 representing an interest in an asset of the issuing bank.

4 (d) Any security issued or guaranteed by a federal savings
5 association or federal savings bank or federal land bank or joint
6 land bank or national farm loan association or by any savings
7 association, as defined in subdivision (a) of Section 5102 of the
8 Financial Code, which is subject to the supervision and regulation
9 of the Commissioner of Financial Institutions of this state.

10 (e) Any security (other than an interest in all or portions of a
11 parcel or parcels of real property which are subdivided land or a
12 subdivision or in a real estate development), the issuance of which
13 is subject to authorization by the Insurance Commissioner, the
14 Public Utilities Commission, or the Real Estate Commissioner of
15 this state.

16 (f) Any security consisting of any interest in all or portions of
17 a parcel or parcels of real property which are subdivided lands or
18 a subdivision or in a real estate development; provided that the
19 exemption in this subdivision shall not be applicable to: (1) any
20 investment contract sold or offered for sale with, or as part of, that
21 interest, or (2) any person engaged in the business of selling,
22 distributing, or supplying water for irrigation purposes or domestic
23 use that is not a public utility except that the exemption is
24 applicable to any security of a mutual water company (other than
25 an investment contract as described in paragraph (1)) offered or
26 sold in connection with subdivided lands pursuant to Chapter 2
27 (commencing with Section 14310) of Part 7 of Division 3 of Title
28 1.

29 (g) Any mutual capital certificates or savings accounts, as
30 defined in the Savings Association Law, issued by a savings
31 association, as defined by subdivision (a) of Section 5102 of the
32 Financial Code, and holding a license or certificate of authority
33 then in force from the Commissioner of Financial Institutions of
34 this state.

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

38 (i) Any security issued or guaranteed by any railroad, other
39 common carrier, public utility, or public utility holding company
40 which is (1) subject to the jurisdiction of the Interstate Commerce

1 Commission or its successor or (2) a holding company registered
2 with the Securities and Exchange Commission under the Public
3 Utility Holding Company Act of 1935 or a subsidiary of that
4 company within the meaning of that act or (3) regulated in respect
5 of the issuance or guarantee of the security by a governmental
6 authority of the United States, of any state, of Canada or of any
7 Canadian province; and the security is subject to registration with
8 or authorization of issuance by that authority.

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

25 (k) Any agreement, commonly known as a “life income
26 contract,” of an issuer (1) organized exclusively for educational,
27 benevolent, fraternal, religious, charitable, social, or reformatory
28 purposes and not for pecuniary profit and (2) which the
29 commissioner designates by rule or order, with a donor in
30 consideration of a donation of property to that issuer and providing
31 for the payment to the donor or persons designated by him or her
32 of income or specified periodic payments from the donated
33 property or other property for the life of the donor or those other
34 persons.

35 (l) Any note, draft, bill of exchange, or banker’s acceptance
36 which is freely transferable and of prime quality, arises out of a
37 current transaction or the proceeds of which have been or are to
38 be used for current transactions, and which evidences an obligation
39 to pay cash within nine months of the date of issuance, exclusive
40 of days of grace, or any renewal of that paper which is likewise

1 limited, or any guarantee of that paper or of that renewal, provided
2 that the paper is not offered to the public in amounts of less than
3 twenty-five thousand dollars (\$25,000) in the aggregate to any one
4 purchaser. In addition, the commissioner may, by rule or order,
5 exempt any issuer of any notes, drafts, bills of exchange or banker's
6 acceptances from qualification of those securities when the
7 commissioner finds that the qualification is not necessary or
8 appropriate in the public interest or for the protection of investors.

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

12 (n) Any beneficial interest in an employees' pension,
13 profit-sharing, ~~stock bonus~~ *stock bonus*, or similar benefit plan
14 which meets the requirements for qualification under Section 401
15 of the federal Internal Revenue Code or any statute amendatory
16 thereof or supplementary thereto. A determination letter from the
17 Internal Revenue Service stating that an employees' pension,
18 profit-sharing, ~~stock bonus~~ *stock bonus*, or similar benefit plan
19 meets those requirements shall be conclusive evidence that the
20 plan is an employees' pension, profit-sharing, ~~stock bonus~~ *stock*
21 *bonus*, or similar benefit plan within the meaning of the first
22 sentence of this subdivision until the date the determination letter
23 is revoked in writing by the Internal Revenue Service, regardless
24 of whether or not the revocation is retroactive.

25 (o) Any security listed or approved for listing upon notice of
26 issuance on a national securities exchange, if the exchange has
27 been certified by rule or order of the commissioner and any warrant
28 or right to purchase or subscribe to the security. The exemption
29 afforded by this subdivision does not apply to securities listed or
30 approved for listing upon notice of issuance on a national securities
31 exchange, in a rollup transaction unless the rollup transaction is
32 an eligible rollup transaction as defined in Section 25014.7.

33 That certification of any exchange shall be made by the
34 commissioner upon the written request of the exchange if the
35 commissioner finds that the exchange, in acting on applications
36 for listing of common stock, substantially applies the minimum
37 standards set forth in either subparagraph (A) or (B) of paragraph
38 (1), and, in considering suspension or removal from listing,
39 substantially applies each of the criteria set forth in paragraph (2).

40 (1) Listing standards:

1 (A) (i) Shareholders' equity of at least four million dollars
2 (\$4,000,000).

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

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

23 Companies whose securities are concentrated in a limited
24 geographical area, or whose securities are largely held in block by
25 institutional investors, normally may not be considered eligible
26 for listing unless the public distribution appreciably exceeds
27 500,000 shares.

28 (iv) Minimum price of three dollars (\$3) per share for a
29 reasonable period of time prior to the filing of a listing application;
30 provided, however, in certain instances an exchange may favorably
31 consider listing an issue selling for less than three dollars (\$3) per
32 share after considering all pertinent factors, including market
33 conditions in general, whether historically the issue has sold above
34 three dollars (\$3) per share, the applicant's capitalization, and the
35 number of outstanding and publicly held shares of the issue.

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

38 (B) (i) Shareholders' equity of at least four million dollars
39 (\$4,000,000).

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

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

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

6 (2) Criteria for consideration of suspension or removal from
7 listing:

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

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

16 (iii) If the total number of shareholders is less than 400 or if the
17 number of shareholders of lots of 100 shares or more is less than
18 300.

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

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

26 A national securities exchange, certified by rule or order of the
27 commissioner under this subdivision, shall file annual reports when
28 requested to do so by the commissioner. The annual reports shall
29 contain, by issuer: the variances granted to an exchange's listing
30 standards, including variances from corporate governance and
31 voting rights' standards, for any security of that issuer; the reasons
32 for the variances; a discussion of the review procedure instituted
33 by the exchange to determine the effect of the variances on
34 investors and whether the variances should be continued; and any
35 other information that the commissioner deems relevant. The
36 purpose of these reports is to assist the commissioner in
37 determining whether the quantitative and qualitative requirements
38 of this subdivision are substantially being met by the exchange in
39 general or with regard to any particular security.

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

8 A rule or order of certification shall conclusively establish that
9 any security listed or approved for listing upon notice of issuance
10 on any exchange named in a rule or order of certification, and any
11 warrant or right to purchase or subscribe to that security, is exempt
12 under this subdivision until the adoption by the commissioner of
13 any rule or order decertifying the exchange.

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

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

29 (1) Whenever it appears to the commissioner that any person
30 has engaged or is about to engage in any act or practice constituting
31 a violation of any provision of Section 1280.7 of the Insurance
32 Code, the commissioner may, in the commissioner's discretion,
33 bring an action in the name of the people of the State of California
34 in the superior court to enjoin the acts or practices or to enforce
35 compliance with Section 1280.7 of the Insurance Code. Upon a
36 proper showing a permanent or preliminary injunction, a restraining
37 order, or a writ of mandate shall be granted and a receiver or
38 conservator may be appointed for the defendant or the defendant's
39 assets.

1 (2) The commissioner may, in the commissioner's discretion,
2 (A) make public or private investigations within or outside of this
3 state as the commissioner deems necessary to determine whether
4 any person has violated or is about to violate any provision of
5 Section 1280.7 of the Insurance Code or to aid in the enforcement
6 of Section 1280.7, and (B) publish information concerning the
7 violation of Section 1280.7.

8 (3) For the purpose of any investigation or proceeding under
9 this section, the commissioner or any officer designated by the
10 commissioner may administer oaths and affirmations, subpoena
11 witnesses, compel their attendance, take evidence, and require the
12 production of any books, papers, correspondence, memoranda,
13 agreements, or other documents or records which the commissioner
14 deems relevant or material to the inquiry.

15 (4) In case of contumacy by, or refusal to obey a subpoena
16 issued to, any person, the superior court, upon application by the
17 commissioner, may issue to the person an order requiring the
18 person to appear before the commissioner, or the officer designated
19 by the commissioner, to produce documentary evidence, if so
20 ordered, or to give evidence touching the matter under investigation
21 or in question. Failure to obey the order of the court may be
22 punished by the court as a contempt.

23 (5) No person is excused from attending or testifying or from
24 producing any document or record before the commissioner or in
25 obedience to the subpoena of the commissioner or any officer
26 designated by the commissioner, or in any proceeding instituted
27 by the commissioner, on the ground that the testimony or evidence
28 (documentary or otherwise), required of the person may tend to
29 incriminate the person or subject the person to a penalty or
30 forfeiture, but no individual may be prosecuted or subjected to any
31 penalty or forfeiture for or on account of any transaction, matter,
32 or thing concerning which the person is compelled, after validly
33 claiming the privilege against self-incrimination, to testify or
34 produce evidence (documentary or otherwise), except that the
35 individual testifying is not exempt from prosecution and
36 punishment for perjury or contempt committed in testifying.

37 (6) The cost of any review, examination, audit, or investigation
38 made by the commissioner under Section 1280.7 of the Insurance
39 Code shall be paid to the commissioner by the person subject to
40 the review, examination, audit, or investigation, and the

1 commissioner may maintain an action for the recovery of these
2 costs in any court of competent jurisdiction. In determining the
3 cost, the commissioner may use the actual amount of the salary or
4 other compensation paid to the persons making the review,
5 examination, audit, or investigation plus the actual amount of
6 expenses including overhead reasonably incurred in the
7 performance of the work.

8 The recoverable cost of each review, examination, audit, or
9 investigation made by the commissioner under Section 1280.7 of
10 the Insurance Code shall not exceed twenty-five thousand dollars
11 (\$25,000), except that costs exceeding twenty-five thousand dollars
12 (\$25,000) shall be recoverable if the costs are necessary to prevent
13 a violation of any provision of Section 1280.7 of the Insurance
14 Code.

15 (r) Any shares or memberships issued by any corporation
16 organized and existing pursuant to the provisions of Part 2
17 (commencing with Section 12200) of Division 3 of Title 1,
18 provided the aggregate investment of any shareholder or member
19 in shares or memberships sold pursuant to this subdivision does
20 not exceed one thousand *dollars* (\$1,000). In the case of a worker
21 cooperative, the aggregate investment of any worker member in
22 shares or memberships sold pursuant to this subdivision shall not
23 exceed five thousand dollars (\$5,000). *This section does not create*
24 *the presumption, if the aggregate investment of a worker-member*
25 *exceeds five thousand dollars (\$5,000), that the investment must*
26 *be qualified or filed as a sale of securities under this title.* This
27 exemption does not apply to the shares or memberships of that
28 corporation if any promoter thereof expects or intends to make a
29 profit directly or indirectly from any business or activity associated
30 with the corporation or the operation of the corporation or from
31 remuneration, other than reasonable salary, received from the
32 corporation. This exemption does not apply to nonvoting shares
33 or memberships of that corporation issued to any person who does
34 not possess, and who will not acquire in connection with the
35 issuance of nonvoting shares or memberships, voting power
36 (Section 12253) in the corporation. This exemption also does not
37 apply to shares or memberships issued by a nonprofit cooperative
38 corporation organized to facilitate the creation of an unincorporated
39 interindemnity arrangement that provides indemnification for

1 medical malpractice to its physician and surgeon members as set
2 forth in subdivision (q).

3 (s) Any security consisting of or representing an interest in a
4 pool of mortgage loans that meets each of the following
5 requirements:

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

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

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

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

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

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

35 (2) Any investment certificate in or issued by any industrial
36 loan company that is organized under the laws of a state of the
37 United States other than this state, that is insured by the Federal
38 Deposit Insurance Corporation, and that maintains a branch office
39 in this state.

1 ~~SEC. 25.~~
2 *SEC. 29.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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