

AMENDED IN ASSEMBLY APRIL 30, 2015

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, 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 authorize a worker cooperative to issue an indivisible membership having the rights, privileges, preferences, restrictions or conditions 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~~ 2 or more worker cooperatives to consolidate, as specified, 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-no*. State-mandated local program: *yes-no*.

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.~~ *development in this state.*

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 subdivision
17 ~~(b) of Section 12243~~. *cooperative*.

18 ~~“Non-worker-member”~~ “Nonworker-member” means a
19 member of a worker cooperative who is not a worker member.

20 (g) “Worker” means a natural person contributing labor or
21 services. A worker who is being considered for membership, as
22 defined in the corporation’s articles or bylaws, shall be referred
23 to as a “candidate.”

24 SEC. 8. Section 12243 of the Corporations Code is amended
25 to read:

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

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

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

1 (2) If the corporation is organized as a worker cooperative,
2 “patronage” may be measured by work performed or personal
3 services contributed, including wages earned, number of hours
4 worked, number of jobs created, or some combination of these
5 measures.

6 SEC. 9. Section 12253 of the Corporations Code is amended
7 to read:

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

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

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

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

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

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

31 12310.5. (a) A corporation organized under this part may elect
32 to be governed as a worker cooperative by making the following
33 statement in its articles of incorporation or its amended articles of
34 incorporation:

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

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

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

3 12317. (a) A worker cooperative may, in its articles or bylaws,
4 establish itself as a capital account cooperative.

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

13 (c) The system of member and unallocated capital accounts may
14 be used to determine the redemption price of member shares,
15 capital stock, and written notices of allocation. The articles or
16 bylaws may provide for the capital account cooperative worker
17 cooperative to pay or credit interest on the balance in each
18 member's capital account.

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

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

29 SEC. 14. Section 12404 of the Corporations Code is amended
30 to read:

31 12404. Except as permitted in Sections 12314 and 12404.5,
32 the voting power of members having voting rights shall be equal.

33 SEC. 15. Section 12404.5 is added to the Corporations Code,
34 to read:

35 12404.5. (a) The worker-members of a worker cooperative
36 shall have voting power as provided in subdivision (a) of Section
37 12253.

38 (b) ~~Non-worker-member~~ *Nonworker-members* have voting
39 power only as provided in subdivision (c) of Section 12253.

1 SEC. 16. Section 12420 of the Corporations Code is amended
2 to read:

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

10 (b) All worker-members shall have the rights, privileges,
11 preferences, restrictions, or conditions as provided in the articles
12 or bylaws. This membership shall be indivisible.

13 (c) A worker cooperative shall only make patronage distributions
14 to the worker-member class.

15 SEC. 17. Section 12431 of the Corporations Code is amended
16 to read:

17 12431. (a) No member may be expelled or suspended, and no
18 membership or memberships may be terminated or suspended,
19 except according to procedures satisfying the requirements of this
20 section. An expulsion, termination, or suspension not in accord
21 with this section shall be void and without effect.

22 (b) Any expulsion, suspension, or termination must be done in
23 good faith and in a fair and reasonable manner. Any procedure
24 that conforms to the requirements of subdivision (c) or (d) is fair
25 and reasonable, but a court may also find other procedures to be
26 fair and reasonable when the full circumstances of the suspension,
27 termination, or expulsion are considered.

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

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

32 (2) It provides the giving of 15 days' prior notice of the
33 expulsion, suspension, or termination and the reasons therefor;
34 and

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

1 ~~(d) Notwithstanding subdivision (a), in the case of a worker~~
2 ~~cooperative, the articles of incorporation or bylaws may provide~~
3 ~~for suspension of a worker-member without prior notice if the~~
4 ~~worker-member is given notice and the opportunity to be heard or~~
5 ~~to provide a written response within five days after the effective~~
6 ~~date of the suspension.~~

7 (e)

8 (d) Any notice required under this section may be given by any
9 method reasonably calculated to provide actual notice. Any notice
10 given by mail must be given by first-class or registered mail sent
11 to the last address of the members shown on the corporation's
12 records.

13 (f)

14 (e) Any action challenging an expulsion, suspension or
15 termination of membership, including any claim alleging defective
16 notice, must be commenced within one year after the date of the
17 expulsion, suspension or termination. In the event such an action
18 is successful the court may order any relief, including
19 reinstatement, it finds equitable under the circumstances, but no
20 vote of the members or of the board may be set aside solely because
21 a person was at the time of the vote wrongfully excluded by virtue
22 of the challenged expulsion, suspension or termination, unless the
23 court finds further that the wrongful expulsion, suspension or
24 termination was in bad faith and for the purpose, and with the
25 effect, of wrongfully excluding the member from the vote or from
26 the meeting at which the vote took place, so as to affect the
27 outcome of the vote.

28 (g)

29 (f) This section governs only the procedures for expulsion,
30 suspension or termination and not the substantive grounds therefor.
31 An expulsion, suspension or termination based upon substantive
32 grounds which violate contractual or other rights of the member
33 or are otherwise unlawful is not made valid by compliance with
34 this section.

35 (h)

36 (g) A member who is expelled or suspended or whose
37 membership is terminated shall be liable for any charges incurred,
38 services or benefits actually rendered, dues, assessments or fees
39 incurred before expulsion, suspension or termination or arising
40 from contract or otherwise.

1 SEC. 18. Section 12454.5 is added to the Corporations Code,
2 to read:

3 12454.5. (a) A worker cooperative may create an indivisible
4 reserves account that shall not be distributed to members.

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

8 SEC. 19. Section 12460 of the Corporations Code is amended
9 to read:

10 12460. (a) Meetings of members may be held at a place within
11 or without this state that is stated in or fixed in accordance with
12 the bylaws. If no other place is so stated or fixed, meetings of
13 members shall be held at the principal executive office of the
14 corporation. Unless prohibited by the bylaws of the corporation,
15 if authorized by the board of directors in its sole discretion, and
16 subject to the requirement of consent in clause (b) of Section 20
17 and those guidelines and procedures as the board of directors may
18 adopt, members not physically present in person at a meeting of
19 members may, by electronic transmission by and to the corporation
20 (Sections 20 and 21) or by electronic video screen communication,
21 participate in a meeting of members, be deemed present in person,
22 and vote at a meeting of members whether that meeting is to be
23 held at a designated place or in whole or in part by means of
24 electronic transmission by and to the corporation or by electronic
25 video screen communication, in accordance with subdivision (f).

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

31 (c) If a corporation fails to hold the regular meeting for a period
32 of 60 days after the date designated therefor or, if no date has been
33 designated, for a period of 15 months after the formation of the
34 corporation or after its last regular meeting, or if the corporation
35 fails to hold a written ballot for a period of 60 days after the date
36 designated therefor, then the superior court of the proper county
37 may summarily order the meeting to be held or the ballot to be
38 conducted upon the application of a member, after notice to the
39 corporation giving it an opportunity to be heard.

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

9 (e) Special meetings of members for any lawful purpose may
10 be called by the board, the chairman of the board, the president,
11 or other persons, if any, as are specified in the bylaws. In addition,
12 special meetings of members for any lawful purpose may be called
13 by 5 percent or more of the members, however, ~~a special meeting~~
14 ~~of a worker cooperative may be called only by 20 percent or more~~
15 ~~of the worker-members.~~ *in a worker cooperative with more than*
16 *four worker-members, a special meeting may only be called by*
17 *the greater of three worker-members or 5 percent of the*
18 *worker-members. In a worker cooperative with fewer than four*
19 *worker-members, special meetings may be called by 5 percent of*
20 *the worker-members.*

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

38 SEC. 20. Section 12460.5 is added to the Corporations Code,
39 to read:

1 12460.5. Notwithstanding Section 12460, a collective board
2 worker cooperative shall not be required to hold an annual meeting
3 of members.

4 SEC. 21. Section 12461 of the Corporations Code is amended
5 to read:

6 12461. (a) Whenever members are required or permitted to
7 take any action at a meeting, a written notice of the meeting shall
8 be given not less than 10 nor more than 90 days before the date of
9 the meeting to each member who, on the record date for notice of
10 the meeting, is entitled to vote thereat; provided, however, that if
11 notice is given by mail, and the notice is not mailed by first-class,
12 registered, or certified mail, that notice shall be given not less than
13 20 days before the meeting. A worker cooperative shall provide
14 notice of the meeting not less than 48 hours before the meeting if
15 the meeting ~~involves is a meeting of only worker members.~~
16 *worker-members, provided that the notice is delivered personally.*
17 Subject to subdivision (f), and subdivision (b) of Section 12462,
18 that notice shall state the place, date and time of the meeting, the
19 means of electronic transmission by and to the corporation
20 (Sections 20 and 21) or electronic video screen communication,
21 if any, by which members may participate in that meeting, and (1)
22 in the case of a special meeting, the general nature of the business
23 to be transacted, and no other business may be transacted, or (2)
24 in the case of the regular meeting, those matters which the board,
25 at the time the notice is given, intends to present for action by the
26 members, but, except as provided in subdivision (b) of Section
27 12462, any proper matter may be presented at the meeting for such
28 action. The notice of any meeting at which directors are to be
29 elected shall include the names of all those who are nominees at
30 the time the notice is given to members.

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

1 of this part, executed by the secretary, assistant secretary or any
2 transfer agent, shall be prima facie evidence of the giving of the
3 notice or report.

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

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

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

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

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

39 (d) When a members' meeting is adjourned to another time or
40 place, unless the bylaws otherwise require and except as provided

1 in this subdivision, notice need not be given of the adjourned
2 meeting if the time and place thereof (or the means of electronic
3 transmission by and to the corporation or electronic video screen
4 communication, if any, by which members may participate) are
5 announced at the meeting at which the adjournment is taken. At
6 the adjourned meeting the corporation may transact any business
7 which might have been transacted at the original meeting. If the
8 adjournment is for more than 45 days or if after the adjournment
9 a new record date is fixed for the adjourned meeting, a notice of
10 the adjourned meeting shall be given to each member of record
11 entitled to vote at the meeting.

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

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

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

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

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

23 SEC. 22. Section 12530 of the Corporations Code is amended
24 to read:

25 12530. Except as provided in Section 12530.5, any corporation
26 may merge with another domestic corporation, foreign corporation,
27 or other business entity. However, a merger with a nonprofit public
28 benefit corporation or a nonprofit religious corporation must have
29 the prior written consent of the Attorney General.

30 SEC. 23. Section 12530.5 is added to the Corporations Code,
31 to read:

32 12530.5. Notwithstanding Section 12530, a worker cooperative
33 that has not revoked its election to be governed as a worker
34 cooperative under Section 12310.5 shall not consolidate or merge
35 with another corporation other than another worker cooperative.
36 Two or more worker cooperatives may merge or consolidate in a
37 manner consistent with this chapter.

38 SEC. 24. Section 12653 of the Corporations Code is amended
39 to read:

1 12653. (a) After determining that all the known debts and
2 liabilities of a corporation in the process of winding up have been
3 paid or adequately provided for, the board shall distribute all the
4 remaining corporate assets in the manner provided in Sections
5 12655, 12656, and 12656.5.

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

10 (c) Anything to the contrary notwithstanding, assets, if any, that
11 are not subject to attachment, execution or sale for the corporation's
12 debts and liabilities may be distributed pursuant to Sections 12655,
13 12656, and 12656.5 even though all debts and liabilities have not
14 been paid or adequately provided for.

15 SEC. 25. Section 12656.5 is added to the Corporations Code,
16 to read:

17 12656.5. (a) After complying with the provisions of Section
18 12653, and except as otherwise provided in Section 12655, upon
19 dissolution of a worker cooperative the majority of the unallocated
20 capital account shall be distributed to members on the basis of the
21 following:

- 22 (1) Patronage.
 - 23 (2) Capital contributions.
 - 24 (3) A combination of patronage and capital contributions.
- 25 (b) A worker cooperative is authorized to include patronage
26 provided by past and current members in its distribution of the
27 unallocated capital account.

28 (c) Subdivision (a) shall not apply to any amounts in the
29 indivisible reserve account. Any ~~amounts~~ *amount* in the indivisible
30 reserve account shall, upon dissolution, be allocated to ~~an~~
31 ~~International Cooperative Alliance approved national federation~~
32 ~~or a regional body in this state~~ *a cooperative development*
33 *organization* designated in the articles of incorporation or the
34 bylaws.

35 SEC. 26. ~~Section 25017 of the Corporations Code is amended~~
36 ~~to read:~~

37 25017. (a) ~~“Sale” or “sell” includes every contract of sale of,~~
38 ~~contract to sell, or disposition of, a security or interest in a security~~
39 ~~for value. “Sale” or “sell” includes any exchange of securities and~~

1 any change in the rights, preferences, privileges, or restrictions of
2 or on outstanding securities.

3 (b) ~~“Offer” or “offer to sell” includes every attempt or offer to~~
4 ~~dispose of, or solicitation of an offer to buy, a security or interest~~
5 ~~in a security for value.~~

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

10 (d) ~~A purported gift of assessable stock involves an offer and~~
11 ~~sale.~~

12 (e) ~~Every sale or offer of a warrant or right to purchase or~~
13 ~~subscribe to another security of the same or another issuer, as well~~
14 ~~as every sale or offer of a security which gives the holder a present~~
15 ~~or future right or privilege to convert the security into another~~
16 ~~security of the same or another issuer, includes an offer and sale~~
17 ~~of the other security only at the time of the offer or sale of the~~
18 ~~warrant or right or convertible security; but neither the exercise~~
19 ~~of the right to purchase or subscribe or to convert nor the issuance~~
20 ~~of securities pursuant thereto is an offer or sale.~~

21 (f) ~~The terms defined in this section do not include: (1) any bona~~
22 ~~fide secured transaction in or loan of outstanding securities; (2)~~
23 ~~any stock dividend payable with respect to common stock of a~~
24 ~~corporation solely (except for any cash or scrip paid for fractional~~
25 ~~shares) in shares of such common stock, if the corporation has no~~
26 ~~other class of voting stock outstanding; provided, that shares issued~~
27 ~~in any such dividend shall be subject to any conditions previously~~
28 ~~imposed by the commissioner applicable to the shares with respect~~
29 ~~to which they are issued; (3) any act incident to a transaction or~~
30 ~~reorganization approved by a state or federal court in which~~
31 ~~securities are issued and exchanged for one or more outstanding~~
32 ~~securities, claims, or property interests, or partly in that exchange~~
33 ~~and partly for cash, and nothing in this division shall be construed~~
34 ~~to prohibit a court from applying the protections described in~~
35 ~~Section 25014.7 or 25140 and the regulations adopted thereunder~~
36 ~~when approving any transaction involving a rollup participant; or~~
37 ~~(4) any written notice of allocation, as defined in Section 1388(b)~~
38 ~~of the Internal Revenue Code, issued by an organization described~~
39 ~~in Section 1381(a) of the Internal Revenue Code.~~

1 SEC. 27.— Section 25019 of the Corporations Code is amended
2 to read:
3 25019. “Security” means any note; stock; treasury stock;
4 membership in an incorporated or unincorporated association;
5 bond; debenture; evidence of indebtedness; certificate of interest
6 or participation in any profit-sharing agreement; collateral trust
7 certificate; preorganization certificate or subscription; transferable
8 share; investment contract; viatical settlement contract or a
9 fractionalized or pooled interest therein; life settlement contract
10 or a fractionalized or pooled interest therein; voting trust certificate;
11 certificate of deposit for a security; interest in a limited liability
12 company and any class or series of those interests (including any
13 fractional or other interest in that interest), except a membership
14 interest in a limited liability company in which the person claiming
15 this exception can prove that all of the members are actively
16 engaged in the management of the limited liability company;
17 provided that evidence that members vote or have the right to vote,
18 or the right to information concerning the business and affairs of
19 the limited liability company, or the right to participate in
20 management, shall not establish, without more, that all members
21 are actively engaged in the management of the limited liability
22 company; certificate of interest or participation in an oil, gas, or
23 mining title or lease or in payments out of production under that
24 title or lease; put, call, straddle, option, or privilege on any security,
25 certificate of deposit, or group or index of securities (including
26 any interest therein or based on the value thereof); or any put, call,
27 straddle, option, or privilege entered into on a national securities
28 exchange relating to foreign currency; any beneficial interest or
29 other security issued in connection with a funded employees’
30 pension, profit sharing, stock bonus, or similar benefit plan; or, in
31 general, any interest or instrument commonly known as a
32 “security”; or any certificate of interest or participation in,
33 temporary or interim certificate for, receipt for, guarantee of, or
34 warrant or right to subscribe to or purchase, any of the foregoing.
35 All of the foregoing are securities whether or not evidenced by a
36 written document. “Security” does not include: (1) any beneficial
37 interest in any voluntary inter vivos trust which is not created for
38 the purpose of carrying on any business or solely for the purpose
39 of voting, or (2) any beneficial interest in any testamentary trust,
40 (3) any insurance or endowment policy or annuity contract under

1 ~~which an insurance company admitted in this state promises to~~
2 ~~pay a sum of money (whether or not based upon the investment~~
3 ~~performance of a segregated fund) either in a lump sum or~~
4 ~~periodically for life or some other specified period, (4) any~~
5 ~~franchise subject to registration under the Franchise Investment~~
6 ~~Law (Division 5 (commencing with Section 31000)), or exempted~~
7 ~~from registration by Section 31100 or 31101, or (5) a membership~~
8 ~~or share interest in a collective board worker cooperative, as~~
9 ~~defined in Section 12230.5.~~

10 ~~SEC. 28.~~

11 ~~SEC. 26.~~ Section 25100 of the Corporations Code is amended
12 to read:

13 25100. The following securities are exempted from Sections
14 25110, 25120, and 25130:

15 (a) Any security (including a revenue obligation) issued or
16 guaranteed by the United States, any state, any city, county, city
17 and county, public district, public authority, public corporation,
18 public entity, or political subdivision of a state or any agency or
19 corporate or other instrumentality of any one or more of the
20 foregoing; or any certificate of deposit for any of the foregoing.

21 (b) Any security issued or guaranteed by Canada, any Canadian
22 province, any political subdivision or municipality of that province,
23 or by any other foreign government with which the United States
24 currently maintains diplomatic relations, if the security is
25 recognized as a valid obligation by the issuer or guarantor; or any
26 certificate of deposit for any of the foregoing.

27 (c) Any security issued or guaranteed by and representing an
28 interest in or a direct obligation of a national bank or a bank or
29 trust company incorporated under the laws of this state, and any
30 security issued by a bank to one or more other banks and
31 representing an interest in an asset of the issuing bank.

32 (d) Any security issued or guaranteed by a federal savings
33 association or federal savings bank or federal land bank or joint
34 land bank or national farm loan association or by any savings
35 association, as defined in subdivision (a) of Section 5102 of the
36 Financial Code, which is subject to the supervision and regulation
37 of the Commissioner of ~~Financial Institutions~~ *Business Oversight*
38 of this state.

39 (e) Any security (other than an interest in all or portions of a
40 parcel or parcels of real property which are subdivided land or a

1 subdivision or in a real estate development), the issuance of which
2 is subject to authorization by the Insurance Commissioner, the
3 Public Utilities Commission, or the Real Estate Commissioner of
4 this state.

5 (f) Any security consisting of any interest in all or portions of
6 a parcel or parcels of real property ~~which~~ *that* are subdivided lands
7 or a subdivision or in a real estate development; provided that the
8 exemption in this subdivision shall not be applicable to: (1) any
9 investment contract sold or offered for sale with, or as part of, that
10 interest, or (2) any person engaged in the business of selling,
11 distributing, or supplying water for irrigation purposes or domestic
12 use that is not a public utility except that the exemption is
13 applicable to any security of a mutual water company (other than
14 an investment contract as described in paragraph (1)) offered or
15 sold in connection with subdivided lands pursuant to Chapter 2
16 (commencing with Section 14310) of Part 7 of Division 3 of Title
17 1.

18 (g) Any mutual capital certificates or savings accounts, as
19 defined in the Savings Association Law, issued by a savings
20 association, as defined by subdivision (a) of Section 5102 of the
21 Financial Code, and holding a license or certificate of authority
22 then in force from the Commissioner of ~~Financial Institutions~~
23 *Business Oversight* of this state.

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

27 (i) Any security issued or guaranteed by any railroad, other
28 common carrier, public utility, or public utility holding company
29 which is (1) subject to the jurisdiction of the Interstate Commerce
30 Commission or its successor or (2) a holding company registered
31 with the Securities and Exchange Commission under the Public
32 Utility Holding Company Act of 1935 or a subsidiary of that
33 company within the meaning of that act or (3) regulated in respect
34 of the issuance or guarantee of the security by a governmental
35 authority of the United States, of any state, of Canada or of any
36 Canadian province; and the security is subject to registration with
37 or authorization of issuance by that authority.

38 (j) Any security (except evidences of indebtedness, whether
39 interest bearing or not) of an issuer (1) organized exclusively for
40 educational, benevolent, fraternal, religious, charitable, social, or

1 reformatory purposes and not for pecuniary profit, if no part of the
2 net earnings of the issuer inures to the benefit of any private
3 shareholder or individual, or (2) organized as a chamber of
4 commerce or trade or professional association. The fact that
5 amounts received from memberships or dues or both will or may
6 be used to construct or otherwise acquire facilities for use by
7 members of the nonprofit organization does not disqualify the
8 organization for this exemption. This exemption does not apply
9 to the securities of any nonprofit organization if any promoter
10 thereof expects or intends to make a profit directly or indirectly
11 from any business or activity associated with the organization or
12 operation of that nonprofit organization or from remuneration
13 received from that nonprofit organization.

14 (k) Any agreement, commonly known as a “life income
15 contract,” of an issuer (1) organized exclusively for educational,
16 benevolent, fraternal, religious, charitable, social, or reformatory
17 purposes and not for pecuniary profit and (2) which the
18 commissioner designates by rule or order, with a donor in
19 consideration of a donation of property to that issuer and providing
20 for the payment to the donor or persons designated by him or her
21 of income or specified periodic payments from the donated
22 property or other property for the life of the donor or those other
23 persons.

24 (l) Any note, draft, bill of exchange, or banker’s acceptance
25 which is freely transferable and of prime quality, arises out of a
26 current transaction or the proceeds of which have been or are to
27 be used for current transactions, and which evidences an obligation
28 to pay cash within nine months of the date of issuance, exclusive
29 of days of grace, or any renewal of that paper which is likewise
30 limited, or any guarantee of that paper or of that renewal, provided
31 that the paper is not offered to the public in amounts of less than
32 twenty-five thousand dollars (\$25,000) in the aggregate to any one
33 purchaser. In addition, the commissioner may, by rule or order,
34 exempt any issuer of any notes, drafts, bills of exchange or banker’s
35 acceptances from qualification of those securities when the
36 commissioner finds that the qualification is not necessary or
37 appropriate in the public interest or for the protection of investors.

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

1 (n) Any beneficial interest in an employees' pension,
2 profit-sharing, stock bonus, or similar benefit plan which meets
3 the requirements for qualification under Section 401 of the federal
4 Internal Revenue Code or any statute amendatory thereof or
5 supplementary thereto. A determination letter from the Internal
6 Revenue Service stating that an employees' pension, profit-sharing,
7 stock bonus, or similar benefit plan meets those requirements shall
8 be conclusive evidence that the plan is an employees' pension,
9 profit-sharing, stock bonus, or similar benefit plan within the
10 meaning of the first sentence of this subdivision until the date the
11 determination letter is revoked in writing by the Internal Revenue
12 Service, regardless of whether or not the revocation is retroactive.

13 (o) Any security listed or approved for listing upon notice of
14 issuance on a national securities exchange, if the exchange has
15 been certified by rule or order of the commissioner and any warrant
16 or right to purchase or subscribe to the security. The exemption
17 afforded by this subdivision does not apply to securities listed or
18 approved for listing upon notice of issuance on a national securities
19 exchange, in a rollup transaction unless the rollup transaction is
20 an eligible rollup transaction as defined in Section 25014.7.

21 That certification of any exchange shall be made by the
22 commissioner upon the written request of the exchange if the
23 commissioner finds that the exchange, in acting on applications
24 for listing of common stock, substantially applies the minimum
25 standards set forth in either subparagraph (A) or (B) of paragraph
26 (1), and, in considering suspension or removal from listing,
27 substantially applies each of the criteria set forth in paragraph (2).

28 (1) Listing standards:

29 (A) (i) Shareholders' equity of at least four million dollars
30 (\$4,000,000).

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

34 (iii) Minimum public distribution of 500,000 shares (exclusive
35 of the holdings of officers, directors, controlling shareholders, and
36 other concentrated or family holdings), together with a minimum
37 of 800 public holders or minimum public distribution of 1,000,000
38 shares together with a minimum of 400 public holders. The
39 exchange may also consider the listing of a company's securities
40 if the company has a minimum of 500,000 shares publicly held, a

1 minimum of 400 shareholders and daily trading volume in the
2 issue has been approximately 2,000 shares or more for the six
3 months preceding the date of application. In evaluating the
4 suitability of an issue for listing under this trading provision, the
5 exchange shall review the nature and frequency of that activity
6 and any other factors as it may determine to be relevant in
7 ascertaining whether the issue is suitable for trading. A security
8 that trades infrequently shall not be considered for listing under
9 this paragraph even though average daily volume amounts to 2,000
10 shares per day or more.

11 Companies whose securities are concentrated in a limited
12 geographical area, or whose securities are largely held in block by
13 institutional investors, normally may not be considered eligible
14 for listing unless the public distribution appreciably exceeds
15 500,000 shares.

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

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

26 (B) (i) Shareholders' equity of at least four million dollars
27 (\$4,000,000).

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

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

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

33 (2) Criteria for consideration of suspension or removal from
34 listing:

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

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

4 (iii) If the total number of shareholders is less than 400 or if the
5 number of shareholders of lots of 100 shares or more is less than
6 300.

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

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

14 A national securities exchange, certified by rule or order of the
15 commissioner under this subdivision, shall file annual reports when
16 requested to do so by the commissioner. The annual reports shall
17 contain, by issuer: the variances granted to an exchange's listing
18 standards, including variances from corporate governance and
19 voting rights' standards, for any security of that issuer; the reasons
20 for the variances; a discussion of the review procedure instituted
21 by the exchange to determine the effect of the variances on
22 investors and whether the variances should be continued; and any
23 other information that the commissioner deems relevant. The
24 purpose of these reports is to assist the commissioner in
25 determining whether the quantitative and qualitative requirements
26 of this subdivision are substantially being met by the exchange in
27 general or with regard to any particular security.

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

35 A rule or order of certification shall conclusively establish that
36 any security listed or approved for listing upon notice of issuance
37 on any exchange named in a rule or order of certification, and any
38 warrant or right to purchase or subscribe to that security, is exempt
39 under this subdivision until the adoption by the commissioner of
40 any rule or order decertifying the exchange.

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

5 (q) Any unincorporated interindemnity or reciprocal or
6 interinsurance contract, that qualifies under the provisions of
7 Section 1280.7 of the Insurance Code, between members of a
8 cooperative corporation, organized and operating under Part 2
9 (commencing with Section 12200) of Division 3 of Title 1, and
10 whose members consist only of physicians and surgeons licensed
11 in California, which contracts indemnify solely in respect to
12 medical malpractice claims against the members, and which do
13 not collect in advance of loss any moneys other than contributions
14 by each member to a collective reserve trust fund or for necessary
15 expenses of administration.

16 (1) Whenever it appears to the commissioner that any person
17 has engaged or is about to engage in any act or practice constituting
18 a violation of any provision of Section 1280.7 of the Insurance
19 Code, the commissioner may, in the commissioner's discretion,
20 bring an action in the name of the people of the State of California
21 in the superior court to enjoin the acts or practices or to enforce
22 compliance with Section 1280.7 of the Insurance Code. Upon a
23 proper showing a permanent or preliminary injunction, a restraining
24 order, or a writ of mandate shall be granted and a receiver or
25 conservator may be appointed for the defendant or the defendant's
26 assets.

27 (2) The commissioner may, in the commissioner's discretion,
28 (A) make public or private investigations within or outside of this
29 state as the commissioner deems necessary to determine whether
30 any person has violated or is about to violate any provision of
31 Section 1280.7 of the Insurance Code or to aid in the enforcement
32 of Section 1280.7, and (B) publish information concerning the
33 violation of Section 1280.7.

34 (3) For the purpose of any investigation or proceeding under
35 this section, the commissioner or any officer designated by the
36 commissioner may administer oaths and affirmations, subpoena
37 witnesses, compel their attendance, take evidence, and require the
38 production of any books, papers, correspondence, memoranda,
39 agreements, or other documents or records which the commissioner
40 deems relevant or material to the inquiry.

1 (4) In case of contumacy by, or refusal to obey a subpoena
2 issued to, any person, the superior court, upon application by the
3 commissioner, may issue to the person an order requiring the
4 person to appear before the commissioner, or the officer designated
5 by the commissioner, to produce documentary evidence, if so
6 ordered, or to give evidence touching the matter under investigation
7 or in question. Failure to obey the order of the court may be
8 punished by the court as a contempt.

9 (5) No person is excused from attending or testifying or from
10 producing any document or record before the commissioner or in
11 obedience to the subpoena of the commissioner or any officer
12 designated by the commissioner, or in any proceeding instituted
13 by the commissioner, on the ground that the testimony or evidence
14 (documentary or otherwise), required of the person may tend to
15 incriminate the person or subject the person to a penalty or
16 forfeiture, but no individual may be prosecuted or subjected to any
17 penalty or forfeiture for or on account of any transaction, matter,
18 or thing concerning which the person is compelled, after validly
19 claiming the privilege against self-incrimination, to testify or
20 produce evidence (documentary or otherwise), except that the
21 individual testifying is not exempt from prosecution and
22 punishment for perjury or contempt committed in testifying.

23 (6) The cost of any review, examination, audit, or investigation
24 made by the commissioner under Section 1280.7 of the Insurance
25 Code shall be paid to the commissioner by the person subject to
26 the review, examination, audit, or investigation, and the
27 commissioner may maintain an action for the recovery of these
28 costs in any court of competent jurisdiction. In determining the
29 cost, the commissioner may use the actual amount of the salary or
30 other compensation paid to the persons making the review,
31 examination, audit, or investigation plus the actual amount of
32 expenses including overhead reasonably incurred in the
33 performance of the work.

34 The recoverable cost of each review, examination, audit, or
35 investigation made by the commissioner under Section 1280.7 of
36 the Insurance Code shall not exceed twenty-five thousand dollars
37 (\$25,000), except that costs exceeding twenty-five thousand dollars
38 (\$25,000) shall be recoverable if the costs are necessary to prevent
39 a violation of any provision of Section 1280.7 of the Insurance
40 Code.

1 (r) Any shares or memberships issued by any corporation
2 organized and existing pursuant to the provisions of Part 2
3 (commencing with Section 12200) of Division 3 of Title 1,
4 provided the aggregate investment of any shareholder or member
5 in shares or memberships sold pursuant to this subdivision does
6 not exceed one thousand dollars (\$1,000). ~~In the case of a worker
7 cooperative, the aggregate investment of any worker member in
8 shares or memberships sold pursuant to this subdivision shall not
9 exceed five thousand dollars (\$5,000). This section does not create
10 the presumption, if the aggregate investment of a worker member
11 exceeds five thousand dollars (\$5,000), that the investment must
12 be qualified or filed as a sale of securities under this title. This
13 exemption does not apply to the shares or memberships of that
14 corporation if any promoter thereof expects or intends to make a
15 profit directly or indirectly from any business or activity associated
16 with the corporation or the operation of the corporation or from
17 remuneration, other than reasonable salary, received from the
18 corporation. This exemption does not apply to nonvoting shares
19 or memberships of that corporation issued to any person who does
20 not possess, and who will not acquire in connection with the
21 issuance of nonvoting shares or memberships, voting power
22 (Section 12253) in the corporation. This exemption also does not
23 apply to shares or memberships issued by a nonprofit cooperative
24 corporation organized to facilitate the creation of an unincorporated
25 interindemnity arrangement that provides indemnification for
26 medical malpractice to its physician and surgeon members as set
27 forth in subdivision (q).~~

28 (s) Any security consisting of or representing an interest in a
29 pool of mortgage loans that meets each of the following
30 requirements:

31 (1) The pool consists of whole mortgage loans or participation
32 interests in those loans, which loans were originated or acquired
33 in the ordinary course of business by a national bank or federal
34 savings association or federal savings bank having its principal
35 office in this state, by a bank incorporated under the laws of this
36 state or by a savings association as defined in subdivision (a) of
37 Section 5102 of the Financial Code and which is subject to the
38 supervision and regulation of the Commissioner of Financial
39 Institutions, and each of which at the time of transfer to the pool

1 is an authorized investment for the originating or acquiring
2 institution.

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

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

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

11 (5) The security is offered pursuant to a registration under the
12 Securities Act of 1933, or pursuant to an exemption under
13 Regulation A under that act, or in the opinion of counsel for the
14 issuer, is offered pursuant to an exemption under Section 4(2) of
15 that act.

16 (t) (1) Any security issued or guaranteed by and representing
17 an interest in or a direct obligation of an industrial loan company
18 incorporated under the laws of the state and authorized by the
19 Commissioner of Financial Institutions to engage in industrial loan
20 business.

21 (2) Any investment certificate in or issued by any industrial
22 loan company that is organized under the laws of a state of the
23 United States other than this state, that is insured by the Federal
24 Deposit Insurance Corporation, and that maintains a branch office
25 in this state.

26 ~~SEC. 29. No reimbursement is required by this act pursuant to~~
27 ~~Section 6 of Article XIII B of the California Constitution because~~
28 ~~the only costs that may be incurred by a local agency or school~~
29 ~~district will be incurred because this act creates a new crime or~~
30 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
31 ~~for a crime or infraction, within the meaning of Section 17556 of~~
32 ~~the Government Code, or changes the definition of a crime within~~
33 ~~the meaning of Section 6 of Article XIII B of the California~~
34 ~~Constitution.~~