AMENDED IN SENATE JUNE 22, 2015

AMENDED IN ASSEMBLY MAY 14, 2015

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**
**(Coauthor: Assembly Member Dababneh)**

February 26, 2015

An act to amend Sections 12200, 12238, 12243, 12253, 12310, 12404, 12420, 12431, 12460, 12461, 12530, 12653, 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 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 candidates. 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.~~ *performed.* The bill would authorize a worker cooperative to issue ~~an indivisible~~ *a* membership, *that is not divisible into partial memberships,* 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 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.~~ *qualification.* 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~~ *or* omissions.

The ~~issuance of~~ shares or memberships by a corporation subject to the Consumer Cooperative Corporation Law ~~is~~ *are* exempt ~~from,~~ *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.

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

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

SECTION 1. The Legislature finds and declares all of the following:

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

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

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

PART 2. COOPERATIVE CORPORATIONS

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

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

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

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

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

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

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

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

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

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

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

12238. (a) "Member" means any person who, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors, or possesses proprietary interests in the corporation.

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

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

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

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

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

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

(e) "Worker-member" means a member *of a worker cooperative* who is a natural person and also a patron of a worker cooperative.

(f) "Community investor" means a person who is not a worker-member and who holds a share or other proprietary interest in a worker cooperative.

(g) "Worker" means a natural person contributing labor or ~~services.~~ *services to a worker cooperative.* "Candidate" means a worker who is being considered for ~~membership,~~ *membership in a worker cooperative,* as defined in the corporation's articles or bylaws.

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

12243. (a) (1) If the corporation is organized to provide goods or services to its members, the corporation's "patrons" are those who purchase those types of goods from, or use those types of services of, the corporation. If the corporation is organized to market, ~~process~~ *process,* or otherwise handle its members' products or services, the corporation's "patrons" are those persons whose products or services are so marketed, processed, or handled by the corporation.

(2) "Patronage" of a patron is measured by the volume or value, or both, of a patron's purchases of products from, and use of services furnished by, the corporation, and by products and services provided by the patron to the corporation for marketing.

(b) (1) If the corporation is organized as a worker cooperative, the corporation's "patrons" are its worker-members.

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

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

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

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

(c) Community investor voting power in a worker cooperative shall be provided in the articles or bylaws, and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.

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

12253.5. "Worker cooperative" or "employment cooperative" means a corporation formed under this part that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of the corporation for any purposes. At least 51 percent of the workers shall be worker-members or candidates.

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

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

(a) The name of the corporation.

(b) The following statement:

"This corporation is a cooperative corporation organized under the Cooperative Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the law."

[The articles may include a further description of the corporation's purpose.]

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

(d) The initial street address of the corporation.

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

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

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

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

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

"This corporation is a worker cooperative corporation organized under the Cooperative Corporation Law."

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

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

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

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

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

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

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

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

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

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

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

(b) Community investors have voting power only as provided in subdivision (c) of Section 12253.

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

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

(b) All worker-members shall have the rights, privileges, preferences, restrictions, or conditions as provided in the articles or bylaws. This membership shall ~~be indivisible.~~ *not be divided into partial memberships.*

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

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

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

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

(c) A procedure is fair and reasonable ~~when:~~ *if all of the following occur:*

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

(2) It provides the giving of 15 days' prior notice of the expulsion, suspension, or termination and the reasons ~~therefor;~~ ~~and~~ *therefor.*

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

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

(e) Any action challenging an expulsion, suspension, or termination of membership, including any claim alleging defective notice, must be commenced within one year after the date of the expulsion, suspension, or termination. In the event such an action is successful the court may order any relief, including reinstatement, it finds equitable under the circumstances, but no vote of the members or of the board may be set aside solely because

a person was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension, or termination, unless the court finds further that the wrongful expulsion, ~~suspension~~ *suspension,* or termination was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

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

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

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

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

(b) Funds in the indivisible reserves account ~~shall,~~ *shall only derive from non-patronage-sourced income,* in a manner provided in the articles or bylaws, or by the board, *and shall* be used as capital for the cooperative.

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

12460. (a) Meetings of members may be held at a place within or without this state that is stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, meetings of members shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, members not physically present in person at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of members, be deemed present in person,

and vote at a meeting of members whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (f).

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

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

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

(e) Special meetings of members for any lawful purpose may be called by the board, the chairman of the board, the president, or other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members, however, in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of three worker-members or 5 percent of the worker-members. In a worker cooperative with fewer than four worker-members, special meetings may be called by ~~5 percent of the worker-members.~~ *one worker-member.*

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide members a reasonable

opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any member votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a member pursuant to clause (b) of Section 20 for consent to conduct a meeting of members by electronic transmission by and to the corporation, shall include a notice that absent consent of the member pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

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

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

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

12461. (a) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote thereat; provided, however, that if notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, that notice shall be given not less than 20 days before the meeting. A worker cooperative shall provide notice of the meeting not less than 48 hours before the meeting if the meeting is a meeting of only worker-members, provided that the notice is delivered ~~personally.~~ *personally to every worker-member.* Subject to subdivision (f), and subdivision (b) of Section 12462, that notice shall state the place, date, and time of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic video screen communication, if any, by which members may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the regular meeting, those matters which the board, at the time the notice is given, intends to present

for action by the members, but, except as provided in subdivision (b) of Section 12462, any proper matter may be presented at the meeting for such action. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

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

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

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

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

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

(c) Upon request in writing to the corporation addressed to the attention of the chairman of the board, president, vice president,

or secretary by any person (other than the board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to ~~vote~~ *vote*, and the form of notice.

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

(e) The transactions of any meeting of members however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present, and if, either before or after the meeting, each of the persons entitled to vote, not present in person, provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters

required by this part to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting, or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

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

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

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

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

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

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

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

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

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

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

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

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

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

12656.5. (a) After complying with the provisions of Section 12653, and except as otherwise provided in Section 12655, upon dissolution of a worker cooperative the majority of the unallocated capital account shall be distributed to members on the basis of ~~the following:~~ *any of the following, as specified in the articles of incorporation or bylaws of the cooperative:*

(1) Patronage.

(2) Capital contributions.

(3) A combination of patronage and capital contributions.

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

(c) Subdivision (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall, upon dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws.

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

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

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

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

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

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

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the

Public Utilities Commission, or the Real Estate Commissioner of this state.

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

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

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

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

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private

shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

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

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

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

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus, or similar benefit plan which meets

the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus, or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus, or similar benefit plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

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

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

(1) Listing standards:

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

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

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six

months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the exchange shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security that trades infrequently shall not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

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

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

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

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

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

(iii) Operating history of at least three years.

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

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

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

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

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

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

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

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

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

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

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by

interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

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

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

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

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

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the

commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

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

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

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

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2

(commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed one thousand dollars ($1,000). This exemption does not apply to the shares or memberships of that corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of that corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

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

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

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

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

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

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

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

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

O