

AMENDED IN SENATE JULY 6, 2015

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AMENDED IN ASSEMBLY MAY 14, 2015

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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)
(Coauthor: Senator Hancock)

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. The bill would authorize a worker cooperative to issue 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 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 or omissions.

The shares or memberships by a corporation subject to the Consumer Cooperative Corporation Law are 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.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: 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 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. COOPERATIVE CORPORATIONS

19
20 SEC. 3. Section 12200 of the Corporations Code is amended
21 to read:

22 12200. This part shall be known as the Cooperative Corporation
23 Law. This part is intended primarily to apply to the organization
24 and operation of cooperatives, including, but not limited to,
25 consumer cooperatives, worker cooperatives, and cooperatives
26 formed for the purpose of recycling or treating hazardous waste
27 that elect to incorporate under its provisions.

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

1 12201.5. (a) Notwithstanding Section 12201, the net earnings
2 and losses of a worker cooperative shall be apportioned and
3 distributed at the time and in the manner specified in the articles
4 of incorporation or bylaws.

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

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

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

16 12228.3. “Capital account cooperative” is a worker cooperative
17 in which the entire net book value is reflected in member capital
18 accounts, one for each member, and an unallocated capital account,
19 if any.

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

22 12230.5. “Collective board worker cooperative” means a
23 worker cooperative in which there is only one class of members
24 consisting of worker-members, all of whom are members of the
25 board.

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

28 12238. (a) “Member” means any person who, pursuant to a
29 specific provision of a corporation’s articles or bylaws, has the
30 right to vote for the election of a director or directors, or possesses
31 proprietary interests in the corporation.

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

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

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

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

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

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

4 (e) “Worker-member” means a member of a worker cooperative
5 who is a natural person and also a patron of a worker cooperative.

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

9 (g) “Worker” means a natural person contributing labor or
10 services to a worker cooperative. “Candidate” means a worker
11 who is being considered for membership in a worker cooperative,
12 as defined in the corporation’s articles or bylaws.

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

15 12243. (a) (1) If the corporation is organized to provide goods
16 or services to its members, the corporation’s “patrons” are those
17 who purchase those types of goods from, or use those types of
18 services of, the corporation. If the corporation is organized to
19 market, process, or otherwise handle its members’ products or
20 services, the corporation’s “patrons” are those persons whose
21 products or services are so marketed, processed, or handled by the
22 corporation.

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

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

29 (2) If the corporation is organized as a worker cooperative,
30 “patronage” may be measured by work performed, ~~including~~
31 *including, but not limited to*, wages earned, number of hours
32 worked, number of jobs created, or some combination of these
33 measures.

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

36 12253. (a) “Voting power” means the power to vote for the
37 election of directors at the time any determination of voting power
38 is made and does not include the right to vote upon the happening
39 of some condition or event that has not yet occurred.

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

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

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

15 12253.5. “Worker cooperative” or “employment cooperative”
 16 means a corporation formed under this part that includes a class
 17 of worker-members who are natural persons whose patronage
 18 consists of labor contributed to, ~~personal services performed for,~~
 19 *to* or other work performed for the corporation. Election to be
 20 organized as a worker cooperative or an employment cooperative
 21 does not create a presumption that workers are employees of the
 22 corporation for any purposes. At least 51 percent of the workers
 23 shall be worker-members or candidates.

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

26 12310. The articles of incorporation of a corporation formed
 27 under this part shall set forth:

28 (a) The name of the corporation.

29 (b) The following statement:

30
 31 “This corporation is a cooperative corporation organized under
 32 the Cooperative Corporation Law. The purpose of this corporation
 33 is to engage in any lawful act or activity for which a corporation
 34 may be organized under the law.”

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

37
 38 (c) The name and street address in this state of the corporation’s
 39 initial agent for service of process in accordance with subdivision
 40 (b) of Section 12570.

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

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

4 (f) Whether the voting power or the proprietary interests of the
5 members are equal or unequal. If the voting power or proprietary

6 interests of the members are unequal, the articles shall state either

7 (i) the general rule or rules by which the voting power and
8 proprietary interests of the members shall be determined or (ii)

9 that such rule or rules shall be prescribed in the corporation's
10 bylaws. Equal voting power means voting power apportioned on

11 the basis of one vote for each member. Equal proprietary rights
12 means property rights apportioned on the basis of one proprietary

13 unit for each member.

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

16 a worker cooperative.

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

19 12310.5. (a) A corporation organized under this part may elect
20 to be governed as a worker cooperative by making the following
21 statement in its articles of incorporation or its amended articles of
22 incorporation:

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

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

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

30 12317. (a) A worker cooperative may, in its articles or bylaws,
31 establish itself as a capital account cooperative.

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

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

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

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

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

19 12404. Except as permitted in Sections 12314 and 12404.5,
20 the voting power of members having voting rights shall be equal.

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

23 12404.5. (a) The worker-members of a worker cooperative
24 shall have voting power as provided in subdivision (a) of Section
25 12253.

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

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

30 12420. (a) Except as provided in subdivision (b), a corporation
31 may issue memberships having different rights, privileges,
32 preferences, restrictions, or conditions, as provided in its articles
33 or bylaws. If the articles or bylaws authorize at least one class of
34 voting memberships, a corporation may also authorize and issue
35 additional classes of memberships, preferred or otherwise, that are
36 divisible into a series or are nonvoting or both.

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

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

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

5 12431. (a) No member may be expelled or suspended, and no
6 membership or memberships may be terminated or suspended,
7 except according to procedures satisfying the requirements of this
8 section. An expulsion, termination, or suspension not in accord
9 with this section shall be void and without effect.

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

16 (c) A procedure is fair and reasonable if all of the following
17 occur:

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

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

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

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

33 (e) Any action challenging an expulsion, suspension, or
34 termination of membership, including any claim alleging defective
35 notice, must be commenced within one year after the date of the
36 expulsion, suspension, or termination. In the event such an action
37 is successful the court may order any relief, including
38 reinstatement, it finds equitable under the circumstances, but no
39 vote of the members or of the board may be set aside solely because
40 a person was at the time of the vote wrongfully excluded by virtue

1 of the challenged expulsion, suspension, or termination, unless the
2 court finds further that the wrongful expulsion, suspension, or
3 termination was in bad faith and for the purpose, and with the
4 effect, of wrongfully excluding the member from the vote or from
5 the meeting at which the vote took place, so as to affect the
6 outcome of the vote.

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

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

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

20 12454.5. (a) A worker cooperative may create an indivisible
21 reserves account that shall not be distributed to members.

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

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

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

1 held at a designated place or in whole or in part by means of
2 electronic transmission by and to the corporation or by electronic
3 video screen communication, in accordance with subdivision (f).

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

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

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

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

36 (f) A meeting of the members may be conducted, in whole or
37 in part, by electronic transmission by and to the corporation or by
38 electronic video screen communication (1) if the corporation
39 implements reasonable measures to provide members a reasonable
40 opportunity to participate in the meeting and to vote on matters

1 submitted to the members, including an opportunity to read or hear
2 the proceedings of the meeting concurrently with those
3 proceedings, and (2) if any member votes or takes other action at
4 the meeting by means of electronic transmission to the corporation
5 or electronic video screen communication, a record of that vote or
6 action is maintained by the corporation. Any request by a
7 corporation to a member pursuant to clause (b) of Section 20 for
8 consent to conduct a meeting of members by electronic
9 transmission by and to the corporation, shall include a notice that
10 absent consent of the member pursuant to clause (b) of Section
11 20, the meeting shall be held at a physical location in accordance
12 with subdivision (a).

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

15 12460.5. Notwithstanding Section 12460, a collective board
16 worker cooperative shall not be required to hold an annual meeting
17 of members.

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

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

1 matter may be presented at the meeting for such action. The notice
2 of any meeting at which directors are to be elected shall include
3 the names of all those who are nominees at the time the notice is
4 given to members.

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

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

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

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

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

38 (c) Upon request in writing to the corporation addressed to the
39 attention of the chairman of the board, president, vice president,
40 or secretary by any person (other than the board) entitled to call a

1 special meeting of members, the officer forthwith shall cause notice
2 to be given to the members entitled to vote that a meeting will be
3 held at a time fixed by the board not less than 35 nor more than
4 90 days after the receipt of the request. If the notice is not given
5 within 20 days after receipt of the request, the persons entitled to
6 call the meeting may give the notice or the superior court of the
7 proper county shall summarily order the giving of the notice, after
8 notice to the corporation giving it an opportunity to be heard. The
9 court may issue such orders as may be appropriate, including,
10 without limitation, orders designating the time and place of the
11 meeting, the record date for determination of members entitled to
12 vote, and the form of notice.

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

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

1 included, if such objection is expressly made at the meeting.
2 Neither the business to be transacted at nor the purpose of any
3 regular or special meeting of members need be specified in any
4 written waiver of notice, consent to the holding of the meeting, or
5 approval of the minutes thereof, unless otherwise provided in the
6 articles or bylaws, except as provided in subdivision (f).

7 (f) Any approval of the members required under Section 12362,
8 12364, 12373, 12502, or 12658 other than unanimous approval by
9 those entitled to vote, shall be valid only if the general nature of
10 the proposal so approved was stated in the notice of meeting or in
11 any written waiver of notice.

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

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

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

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

39 12530. Except as provided in Section 12530.5, any corporation
40 may merge with another domestic corporation, foreign corporation,

1 or other business entity. However, a merger with a nonprofit public
2 benefit corporation or a nonprofit religious corporation must have
3 the prior written consent of the Attorney General.

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

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

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

14 12653. (a) After determining that all the known debts and
15 liabilities of a corporation in the process of winding up have been
16 paid or adequately provided for, the board shall distribute all the
17 remaining corporate assets in the manner provided in Sections
18 12655, 12656, and 12656.5.

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

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

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

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

- 36 (1) Patronage.
- 37 (2) Capital contributions.
- 38 (3) A combination of patronage and capital contributions.

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

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

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

11 25100. The following securities are exempted from Sections
12 25110, 25120, and 25130:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) Listing standards:

27 (A) (i) Shareholders' equity of at least four million dollars
28 (\$4,000,000).

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

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

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

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

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

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

24 (B) (i) Shareholders' equity of at least four million dollars
25 (\$4,000,000).

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

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

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

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

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

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

1 (C) If the total number of shareholders is less than 400 or if the
2 number of shareholders of lots of 100 shares or more is less than
3 300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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