

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1335

By: Sims and McEntire of the
House

4 and

5 Stanislawski of the Senate

6
7
8 An Act relating to insurance; creating the Protected
9 Cell Companies Act; declaring purpose; providing
10 definitions; providing for establishment of
11 protective cell; *** authorizing the Insurance
Commissioner to promulgate rules; providing for
12 codification; and providing an effective date.

13
14 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
15 entire bill and insert

16 "An Act relating to insurance; creating the Protected
17 Cell Companies Act; declaring purpose; providing
18 definitions; providing for establishment of
19 protective cell; requiring plan of operation;
20 requiring approval of the Insurance Commissioner;
21 providing for attributions of assets and liabilities;
22 providing for legal status of protected cell;
23 permitting right to contract; directing protected
24 cell company to establish administrative and
accounting procedures; prohibiting certain
liabilities for protected cell assets; providing for
valuation of assets; authorizing a protected cell
company to engage in insurance securitization;
requiring certain provisions be included in contracts
or other documentation effecting the transaction;
providing for close-out of protected cell account at
the cessation of business; prohibiting issuance of

1 certain contracts directly to policyholders or
2 reinsureds; precluding availability of assets to
3 certain creditors; precluding availability of assets
4 to certain persons; providing for obligations
5 relating solely to the general account; providing
6 exception; providing for applicability and procedures
7 during administrative supervision; providing
8 exceptions for certain persons; authorizing the
9 Insurance Commissioner to promulgate rules; providing
10 for codification; and providing an effective date.

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1691 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 This act shall be known and may be cited as the "Protected Cell
16 Companies Act".

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1692 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 The Protected Cell Companies Act is adopted to provide a basis
21 for the creation of protected cells by a domestic insurer as a means
22 of accessing alternative sources of capital and achieving the
23 benefits of insurance securitization or effectuating insurance
24 business transfers in accordance with the Insurance Business
Transfer Act. Investors in fully funded insurance securitization
transactions provide funds that are available to pay the insurer's
insurance obligations or to repay investors or both. The creation

1 of protected cells is intended to be a means to achieve more
2 efficiencies in conducting insurance securitizations or insurance
3 business transfers.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1693 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 As used in the Protected Cell Companies Act:

8 1. "Commissioner" means the Oklahoma Insurance Commissioner;

9 2. "Domestic insurer" means an insurance or reinsurance company
10 domiciled in the State of Oklahoma or a captive insurance or
11 reinsurance company domiciled in the State of Oklahoma;

12 3. "Fair value" of an asset or liability means the monetary
13 amount at which that asset or liability could be bought, incurred,
14 sold or settled in a current transaction between willing parties
15 other than in a forced or liquidation sale. Quoted market prices in
16 active markets are the best evidence of fair value and shall be used
17 as the basis for the measurement, if available. If a quoted market
18 price is available, the fair value is the product of the number of
19 trading units times market price. If quoted market prices are not
20 available, the estimate of fair value shall be based on the best
21 information available. The estimate of fair value shall consider
22 prices for similar assets and liabilities and the results of
23 valuation techniques to the extent available in the circumstances.
24 Examples of valuation techniques include the present value of

1 estimated expected future cash flows using a discount rate
2 commensurate with the risks involved, option pricing models, matrix
3 pricing, option-adjusted spread models and fundamental analysis.
4 Valuation techniques for measuring financial assets and liabilities
5 and servicing assets and liabilities shall be consistent with the
6 objective of measuring fair value. Those techniques shall
7 incorporate assumptions that market participants would use in their
8 estimates of values, future revenues and future expenses, including
9 assumptions about interest rates, default, prepayment and
10 volatility. When measuring financial liabilities and servicing
11 liabilities at fair value by discounting estimated future cash
12 flows, the objective is to use discount rates at which those
13 liabilities could be settled in an arm's-length transaction.
14 Estimates of expected future cash flows, if used to estimate fair
15 value, shall be the best estimate based on reasonable and
16 supportable assumptions and projections. All available evidence
17 shall be considered in developing estimates of expected future cash
18 flows. The weight given to the evidence shall be commensurate with
19 the extent to which the evidence can be verified objectively. If a
20 range is estimated for the amount or timing of possible cash flows,
21 the likelihood of possible outcomes shall be considered in
22 determining the best estimate of future cash flows;

23 4. "Fully funded" means that, with respect to any exposure
24 attributed to a protected cell, the fair value of the protected cell

1 assets, on the date on which the insurance securitization is
2 effected, equals or exceeds the maximum possible exposure
3 attributable to the protected cell with respect to those exposures;

4 5. "General account" means the assets and liabilities of a
5 protected cell company other than protected cell assets and
6 protected cell liabilities;

7 6. "Indemnity trigger" means a transaction term by which relief
8 of the issuer's obligation to repay investors is triggered by the
9 issuer incurring a specified level of losses under its insurance or
10 reinsurance contracts;

11 7. "Nonindemnity trigger" means a transaction term by which
12 relief of the issuer's obligation to repay investors is triggered
13 solely by some event or condition other than the individual
14 protected cell company incurring a specified level of losses under
15 its insurance or reinsurance contracts;

16 8. "Protected cell" means an identified pool of assets and
17 liabilities of a protected cell company segregated and insulated by
18 means of this act from the remainder of the protected cell company's
19 assets and liabilities;

20 9. "Protected cell account" means a specifically identified
21 bank or custodial account established by a protected cell company
22 for the purpose of segregating the protected cell assets of one
23 protected cell from the protected cell assets of other protected
24

1 cells and from the assets of the protected cell company's general
2 account;

3 10. "Protected cell assets" means all assets, contract rights
4 and general intangibles identified with and attributable to a
5 specific protected cell of a protected cell company;

6 11. "Protected cell company" means a domestic insurer that has
7 one or more protected cells;

8 12. "Protected cell company insurance securitization" means the
9 issuance of debt instruments, the proceeds from which support the
10 exposures attributed to the protected cell, by a protected cell
11 company, where repayment of principal and/or interest to investors
12 pursuant to the transaction terms is contingent upon the occurrence
13 or nonoccurrence of an event with respect to which the protected
14 cell company is exposed to loss under insurance or reinsurance
15 contracts it has issued;

16 13. "Protected cell liabilities" means all liabilities and
17 other obligations identified with and attributable to a specific
18 protected cell of a protected cell company; and

19 14. "Receiver" means the Commissioner, where the Commissioner
20 is acting as a rehabilitator, liquidator or administrative
21 supervisor of a company, or any person appointed to carry out an
22 order of rehabilitation or liquidation of a company.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1694 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A protected cell company may establish one or more protected
5 cells, with the prior written approval of the Insurance Commissioner
6 of a plan of operation or amendments to a plan of operation
7 submitted by the protected cell company with respect to each
8 protected cell. Upon the written approval of the Commissioner of
9 the plan of operation or amendments to a plan of operation, which
10 shall include, but not be limited to, the specific business
11 objectives and investment guidelines of the protected cell, the
12 protected cell company may, in accordance with the approved plan of
13 operations, attribute to the protected cell amounts both reflective
14 of insurance obligations with respect to its insurance business and
15 obligations relating to the insurance securitization and assets to
16 fund the obligations. Each protected cell of a protected cell
17 company shall have its own distinct name or designation, which shall
18 include the words "protected cell". The protected cell company
19 shall transfer all assets attributable to each protected cell to one
20 or more separately established and identified protected cell
21 accounts bearing the name or designation of that protected cell.
22 Protected cell assets shall be held in the protected cell accounts
23 for the purpose of satisfying the obligations of that protected
24 cell.

1 B. All attributions of assets and liabilities between a
2 protected cell and the general account shall be in accordance with
3 the plan of operation approved by the Commissioner or shall be
4 otherwise approved by the Commissioner. Unless otherwise approved
5 by the Commissioner, no other attribution of assets or liabilities
6 shall be made by a protected cell company between the protected cell
7 company's general account and one or more of its protected cells.
8 Any attribution of assets and liabilities between the general
9 account and a protected cell, or from investors in the form of
10 principal on a debt instrument issued by a protected cell company in
11 connection with a protected cell company securitization, shall be in
12 cash or readily marketable securities with established market values
13 unless otherwise approved in advance in writing by the Commissioner.

14 C. The creation of a protected cell does not create, in respect
15 of that protected cell, a legal person separate from the protected
16 cell company. Amounts attributed to a protected cell under this
17 act, including assets transferred to a protected cell account, are
18 owned by the protected cell company and the protected cell company
19 may not be, nor hold itself out to be, a trustee with respect to
20 those protected cell assets of that protected cell account.
21 Notwithstanding the foregoing, the protected cell company may allow
22 for a security interest to attach to protected cell assets or a
23 protected cell account when in favor of a creditor of the protected
24 cell and otherwise allowed under applicable law.

1 D. Nothing in the Protected Cell Companies Act shall be
2 construed to prohibit the protected cell company from contracting
3 with or arranging for an investment advisor, commodity trading
4 advisor or other third party to manage the protected cell assets of
5 a protected cell, provided that all remuneration, expenses and other
6 compensation of the third-party advisor or manager are payable from
7 the protected cell assets of that protected cell and not from the
8 protected cell assets of other protected cells or the assets of the
9 protected cell company's general account. The contract shall
10 clearly reference the protected cell or cells for which the contract
11 has been arranged and shall contain a nonrecourse provision in favor
12 of the company that prohibits the contracting party from seeking
13 recourse against, or attaching the assets of the general account, or
14 the assets of another protected cell, to satisfy the obligations of
15 any one or more protected cells which are the subject of the
16 contract.

17 E. A protected cell company shall establish any administrative
18 and accounting procedures that are necessary to properly identify
19 the one or more protected cells of the protected cell company and
20 the protected cell assets and protected cell liabilities
21 attributable to the protected cells. It shall be the duty of the
22 directors of a protected cell company to:

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1 1. Keep protected cell assets and protected cell liabilities
2 separate and separately identifiable from the assets and liabilities
3 of the protected cell company's general account; and

4 2. Keep protected cell assets and protected cell liabilities
5 attributable to one protected cell separated and separately
6 identifiable from protected cell assets and protected cell
7 liabilities attributable to other protected cells.

8 Notwithstanding other provisions of this section, if this
9 section is violated, the remedy of tracing shall be applicable to
10 protected cell assets when commingled with protected cell assets of
11 other protected cells or the assets of the protected cell company's
12 general account. The remedy of tracing shall not be construed as an
13 exclusive remedy.

14 F. Unless otherwise approved by the Commissioner, the protected
15 cell company shall, when establishing a protected cell, attribute
16 the protected cell assets a value at least equal to the reserves and
17 other insurance liabilities attributed to that protected cell.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1695 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The protected cell assets of any protected cell shall not be
22 charged with liabilities arising out of any other business the
23 protected cell company may conduct. All contracts or other
24 documentation reflecting protected cell liabilities shall clearly

1 indicate that only the protected cell assets are available for the
2 satisfaction of those protected cell liabilities.

3 B. Unless otherwise approved by the Insurance Commissioner,
4 assets attributed to a protected cell shall be valued at their fair
5 value on the date of valuation.

6 C. The income, gains and losses, realized or unrealized, from
7 protected cell assets and protected cell liabilities shall be
8 credited to or charged against the protected cell without regard to
9 other income, gains or losses of the protected cell company,
10 including income, gains or losses of other protected cells. Amounts
11 attributed to any protected cell and accumulations on the attributed
12 amounts may be invested and reinvested without regard to any
13 requirements or limitations imposed on investments of insurance
14 companies domiciled in this state and the investments in any
15 protected cell or cells may not be taken into account in applying
16 the investment limitations otherwise applicable to the investments
17 of the protected cell company, subject to any restrictions that may
18 be imposed by the Commissioner in accordance with Section 9 of this
19 act.

20 D. As permitted by the Commissioner, a protected cell company
21 may, in respect of any of its protected cells, engage in fully
22 funded indemnity triggered and/or fully funded nonindemnity
23 triggered insurance securitization to support in full the protected
24 cell exposures attributable to that protected cell. A protected

1 cell company insurance securitization that is nonindemnity triggered
2 shall qualify as an insurance securitization under the terms of this
3 section only after the Commissioner, in accordance with the
4 authority granted under Section 9 of this act, adopts regulations
5 addressing the methods of funding of the portion of the risk that is
6 not indemnity-based, accounting, disclosure, risk-based capital
7 treatment, and assessing risks associated with those
8 securitizations. A protected cell company insurance securitization
9 that is not fully funded, whether indemnity triggered or
10 nonindemnity triggered, is prohibited. Protected cell assets may be
11 used to pay interest or other consideration on any outstanding debt
12 or other obligation attributable to that protected cell, and nothing
13 in this section shall be construed or interpreted as preventing a
14 protected cell company from entering into a swap agreement or other
15 transaction for the account of the protected cell that has the
16 effect of guaranteeing that interest or other consideration.

17 E. In all protected cell company insurance securitizations, the
18 contracts or other documentation effecting the transaction shall
19 contain provisions identifying the protected cell to which the
20 transaction will be attributed. In addition, the contracts or other
21 documentation shall clearly disclose that the assets of that
22 protected cell, and only those assets, are available to pay the
23 obligations of that protected cell. Notwithstanding the foregoing,
24 and subject to the provisions of this title and any other applicable

1 law or rules, the failure to include that language in the contracts
2 or other documentation shall not be used as the sole basis by
3 creditors, reinsurers or other claimants to circumvent the
4 provisions of this section.

5 F. At the cessation of business of a protected cell, and in
6 absence of any placement under administrative supervision or order
7 of conservation, rehabilitation or liquidation attributable to that
8 protected cell or the protected cell company, the protected cell
9 company shall voluntarily close out the protected cell account in
10 accordance with a plan approved by the Commissioner.

11 G. A protected cell company shall only be authorized to
12 attribute to a protected cell account the insurance obligations
13 relating to the protected cell company's general account. Under no
14 circumstances shall a protected cell be authorized to issue
15 insurance or reinsurance contracts directly to policyholders or
16 reinsureds or have any obligation to the policyholders or reinsureds
17 of the protected cell company's general account.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1696 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 A. 1. Protected cell assets shall only be available to the
22 creditors of the protected cell company that are creditors in
23 respect to that protected cell and shall be entitled, in conformity
24 with the provisions of the Protected Cell Companies Act, to have

1 recourse to the protected cell assets attributable to that protected
2 cell, and shall be absolutely protected from the creditors of the
3 protected cell company that are not creditors in respect of that
4 protected cell and, who accordingly, shall not be entitled to have
5 recourse to the protected cell assets attributable to that protected
6 cell. Creditors, with respect to a protected cell, shall not be
7 entitled to have recourse against the protected cell assets of other
8 protected cells or the assets of the protected cell company's
9 general account.

10 2. Protected cell assets shall only be available to creditors
11 of a protected cell company after all protected cell liabilities
12 have been extinguished or provided for in accordance with the plan
13 of operation relating to that protected cell.

14 B. When an obligation of a protected cell company to a person
15 arises from a transaction, or is imposed, with respect to a
16 protected cell:

17 1. That obligation of the protected cell company shall extend
18 only to the protected cell assets attributable to that protected
19 cell, and the person shall, with respect to that obligation, be
20 entitled to have recourse only to the protected cell assets
21 attributable to that protected cell; and

22 2. That obligation of the company shall not extend to the
23 protected cell assets of any other protected cell or the assets of
24 the protected cell company's general account, and that person shall

1 not, with respect to that obligation, be entitled to have recourse
2 to the protected cell assets of any other protected cell or the
3 assets of the protected cell company's general account.

4 C. When an obligation of a protected cell company relates
5 solely to the general account, the obligation of the protected cell
6 company shall extend only to, and that creditor shall, with respect
7 to that obligation, be entitled to have recourse only to, the assets
8 of the protected cell company's general account.

9 D. Other than with regard to the application of this section,
10 the activities, assets and obligations relating to a protected cell
11 are not subject to the provisions of Articles 20A and 20B of Title
12 36 of the Oklahoma Statutes. Neither a protected cell nor a
13 protected cell company shall be assessed by or be required to
14 contribute to any guaranty fund or guaranty association in this
15 state with respect to the activities, assets or obligations of a
16 protected cell. Nothing in this section shall affect the activities
17 or obligations of an insurer's general account.

18 E. In no event shall the establishment of one or more protected
19 cells alone constitute or be deemed to be a fraudulent conveyance,
20 an intent by the protected cell company to defraud creditors, or the
21 carrying out of business by the protected cell company for any other
22 fraudulent purpose.

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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1697 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Notwithstanding any contrary provision in the Oklahoma
5 Insurance Code, the rules promulgated under the Oklahoma Insurance
6 Code or any other applicable law or rule, upon placement under
7 administrative supervision or upon any order of conservation,
8 rehabilitation or liquidation of a protected cell company, the
9 receiver shall be bound to deal with the protected cell company's
10 assets and liabilities, including protected cell assets and
11 protected cell liabilities, in accordance with the requirements set
12 forth in the Protected Cell Companies Act.

13 B. With respect to amounts recoverable under a protected cell
14 company insurance securitization, the amount recoverable by the
15 receiver shall not be reduced or diminished as a result of the
16 placement under administrative supervision or entry of an order of
17 conservation, rehabilitation or liquidation with respect to the
18 protected cell company or any of its protected cells,
19 notwithstanding any provisions to the contrary in the contracts or
20 other documentation governing the protected cell company insurance
21 securitization.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1698 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A protected cell company insurance securitization shall not be
2 deemed to be an insurance or reinsurance contract. An investor in a
3 protected cell company insurance securitization shall not, by sole
4 means of this investment, be deemed to be transacting an insurance
5 business in this state. The underwriters or selling agents and
6 their partners, directors, officers, members, managers, employees,
7 agents, representatives and advisors involved in a protected cell
8 company insurance securitization shall not be deemed to be
9 conducting an insurance or reinsurance agency, brokerage,
10 intermediary, advisory or consulting business by virtue of their
11 activities in connection with those businesses.

12 SECTION 9. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1699 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 The Insurance Commissioner may promulgate reasonable rules as
16 may be necessary to effectuate the purposes of the Protected Cell
17 Companies Act.

18 SECTION 10. This act shall become effective November 1, 2019."
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1 Passed the Senate the 23rd day of April, 2019.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

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8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 1335

By: Sims and McEntire of the
House

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6 An Act relating to insurance; creating the Protected
7 Cell Companies Act; declaring purpose; providing
8 definitions; providing for establishment of
9 protective cell; requiring plan of operation;
10 requiring approval of the Insurance Commissioner;
11 providing for attributions of assets and liabilities;
12 providing for legal status of protected cell;
13 permitting right to contract; directing protected
14 cell company to establish administrative and
15 accounting procedures; prohibiting certain
16 liabilities for protected cell assets; providing for
17 valuation of assets; authorizing a protected cell
18 company to engage in insurance securitization;
19 requiring certain provisions be included in contracts
20 or other documentation effecting the transaction;
21 providing for close-out of protected cell account at
22 the cessation of business; prohibiting issuance of
23 certain contracts directly to policyholders or
24 reinsureds; precluding availability of assets to
certain creditors; precluding availability of assets
to certain persons; providing for obligations
relating solely to the general account; providing
exception; providing for applicability and procedures
during administrative supervision; providing for
orders of rehabilitation or conservation; providing
for challenge of an order of rehabilitation,
conservation or liquidation; requiring permission of
the Insurance Commissioner for voluntary winding up
of a protected cell company; providing for payment
from assets during rehabilitation, conservation or
liquidation; providing for fines and penalties;
providing exceptions for certain persons; authorizing
the Insurance Commissioner to promulgate rules;
providing for codification; and providing an
effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 11. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1691 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Protected Cell
6 Companies Act".

7 SECTION 12. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1692 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 The Protected Cell Companies Act is adopted to provide a basis
11 for the creation of protected cells by a domestic insurer as a means
12 of accessing alternative sources of capital and achieving the
13 benefits of insurance securitization or effectuating insurance
14 business transfers in accordance with the Insurance Business
15 Transfer Act. Investors in fully funded insurance securitization
16 transactions provide funds that are available to pay the insurer's
17 insurance obligations or to repay investors or both. The creation
18 of protected cells is intended to be a means to achieve more
19 efficiencies in conducting insurance securitizations or insurance
20 business transfers.

21 SECTION 13. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1693 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

24 As used in the Protected Cell Companies Act:

- 1 1. "Commissioner" means the Oklahoma Insurance Commissioner;
- 2 2. "Domestic insurer" means an insurance or reinsurance company
3 domiciled in the State of Oklahoma or a captive insurance or
4 reinsurance company domiciled in the State of Oklahoma;
- 5 3. "Fair value" of an asset or liability means the amount at
6 which that asset or liability could be bought, incurred, sold or
7 settled in a current transaction between willing parties other than
8 in a forced or liquidation sale. Quoted market prices in active
9 markets are the best evidence of fair value and shall be used as the
10 basis for the measurement, if available. If a quoted market price
11 is available, the fair value is the product of the number of trading
12 units times market price. If quoted market prices are not
13 available, the estimate of fair value shall be based on the best
14 information available. The estimate of fair value shall consider
15 prices for similar assets and liabilities and the results of
16 valuation techniques to the extent available in the circumstances.
17 Examples of valuation techniques include the present value of
18 estimated expected future cash flows using a discount rate
19 commensurate with the risks involved, option pricing models, matrix
20 pricing, option-adjusted spread models and fundamental analysis.
21 Valuation techniques for measuring financial assets and liabilities
22 and servicing assets and liabilities shall be consistent with the
23 objective of measuring fair value. Those techniques shall
24 incorporate assumptions that market participants would use in their

1 estimates of values, future revenues and future expenses, including
2 assumptions about interest rates, default, prepayment and
3 volatility. When measuring financial liabilities and servicing
4 liabilities at fair value by discounting estimated future cash
5 flows, the objective is to use discount rates at which those
6 liabilities could be settled in an arm's-length transaction.
7 Estimates of expected future cash flows, if used to estimate fair
8 value, shall be the best estimate based on reasonable and
9 supportable assumptions and projections. All available evidence
10 shall be considered in developing estimates of expected future cash
11 flows. The weight given to the evidence shall be commensurate with
12 the extent to which the evidence can be verified objectively. If a
13 range is estimated for the amount or timing of possible cash flows,
14 the likelihood of possible outcomes shall be considered in
15 determining the best estimate of future cash flows;

16 4. "Fully funded" means that, with respect to any exposure
17 attributed to a protected cell, the fair value of the protected cell
18 assets, on the date on which the insurance securitization is
19 effected, equals or exceeds the maximum possible exposure
20 attributable to the protected cell with respect to those exposures;

21 5. "General account" means the assets and liabilities of a
22 protected cell company other than protected cell assets and
23 protected cell liabilities;

24

1 6. "Indemnity trigger" means a transaction term by which relief
2 of the issuer's obligation to repay investors is triggered by its
3 incurring a specified level of losses under its insurance or
4 reinsurance contracts;

5 7. "Nonindemnity trigger" means a transaction term by which
6 relief of the issuer's obligation to repay investors is triggered
7 solely by some event or condition other than the individual
8 protected cell company incurring a specified level of losses under
9 its insurance or reinsurance contracts;

10 8. "Protected cell" means an identified pool of assets and
11 liabilities of a protected cell company segregated and insulated by
12 means of this act from the remainder of the protected cell company's
13 assets and liabilities;

14 9. "Protected cell account" means a specifically identified
15 bank or custodial account established by a protected cell company
16 for the purpose of segregating the protected cell assets of one
17 protected cell from the protected cell assets of other protected
18 cells and from the assets of the protected cell company's general
19 account;

20 10. "Protected cell assets" means all assets, contract rights
21 and general intangibles identified with and attributable to a
22 specific protected cell of a protected cell company;

23 11. "Protected cell company" means a domestic insurer that has
24 one or more protected cells;

1 12. "Protected cell company insurance securitization" means the
2 issuance of debt instruments, the proceeds from which support the
3 exposures attributed to the protected cell, by a protected cell
4 company, where repayment of principal and/or interest to investors
5 pursuant to the transaction terms is contingent upon the occurrence
6 or nonoccurrence of an event with respect to which the protected
7 cell company is exposed to loss under insurance or reinsurance
8 contracts it has issued;

9 13. "Protected cell liabilities" means all liabilities and
10 other obligations identified with and attributable to a specific
11 protected cell of a protected cell company; and

12 14. "Receiver" means the Commissioner, where the Commissioner
13 is acting as a rehabilitator, liquidator or administrative
14 supervisor of a company, or any person appointed to carry out an
15 order of rehabilitation or liquidation of a company.

16 SECTION 14. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1694 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. A protected cell company may establish one or more protected
20 cells, with the prior written approval of the Insurance Commissioner
21 of a plan of operation or amendments to a plan of operation
22 submitted by the protected cell company with respect to each
23 protected cell. Upon the written approval of the Commissioner of
24 the plan of operation or amendments to a plan of operation, which

1 shall include, but not be limited to, the specific business
2 objectives and investment guidelines of the protected cell, the
3 protected cell company may, in accordance with the approved plan of
4 operations, attribute to the protected cell amounts both reflective
5 of insurance obligations with respect to its insurance business and
6 obligations relating to the insurance securitization and assets to
7 fund the obligations. Each protected cell of a protected cell
8 company shall have its own distinct name or designation, which shall
9 include the words "protected cell". The protected cell company
10 shall transfer all assets attributable to each protected cell to one
11 or more separately established and identified protected cell
12 accounts bearing the name or designation of that protected cell.
13 Protected cell assets shall be held in the protected cell accounts
14 for the purpose of satisfying the obligations of that protected
15 cell.

16 B. All attributions of assets and liabilities between a
17 protected cell and the general account shall be in accordance with
18 the plan of operation approved by the Commissioner or shall be
19 otherwise approved by the Commissioner. Unless otherwise approved
20 by the Commissioner, no other attribution of assets or liabilities
21 shall be made by a protected cell company between the protected cell
22 company's general account and one or more of its protected cells.
23 Any attribution of assets and liabilities between the general
24 account and a protected cell, or from investors in the form of

1 principal on a debt instrument issued by a protected cell company in
2 connection with a protected cell company securitization, shall be in
3 cash or readily marketable securities with established market values
4 unless otherwise approved in advance in writing by the Commissioner.

5 C. The creation of a protected cell does not create, in respect
6 of that protected cell, a legal person separate from the protected
7 cell company. Amounts attributed to a protected cell under this
8 act, including assets transferred to a protected cell account, are
9 owned by the protected cell company and the protected cell company
10 may not be, nor hold itself out to be, a trustee with respect to
11 those protected cell assets of that protected cell account.

12 Notwithstanding the foregoing, the protected cell company may allow
13 for a security interest to attach to protected cell assets or a
14 protected cell account when in favor of a creditor of the protected
15 cell and otherwise allowed under applicable law.

16 D. Nothing in the Protected Cell Companies Act shall be
17 construed to prohibit the protected cell company from contracting
18 with or arranging for an investment advisor, commodity trading
19 advisor or other third party to manage the protected cell assets of
20 a protected cell, provided that all remuneration, expenses and other
21 compensation of the third-party advisor or manager are payable from
22 the protected cell assets of that protected cell and not from the
23 protected cell assets of other protected cells or the assets of the
24 protected cell company's general account. The contract shall

1 clearly reference the protected cell or cells for which the contract
2 has been arranged and shall contain a nonrecourse provision in favor
3 of the company that prohibits the contracting party from seeking
4 recourse against, or attaching, the assets of the general account,
5 or the assets of another protected cell, to satisfy the obligations
6 of any one or more protected cells which are the subject of the
7 contract.

8 E. A protected cell company shall establish any administrative
9 and accounting procedures that are necessary to properly identify
10 the one or more protected cells of the protected cell company and
11 the protected cell assets and protected cell liabilities
12 attributable to the protected cells. It shall be the duty of the
13 directors of a protected cell company to:

14 1. Keep protected cell assets and protected cell liabilities
15 separate and separately identifiable from the assets and liabilities
16 of the protected cell company's general account; and

17 2. Keep protected cell assets and protected cell liabilities
18 attributable to one protected cell separated and separately
19 identifiable from protected cell assets and protected cell
20 liabilities attributable to other protected cells.

21 Notwithstanding other provisions of this section, and subject to
22 the provisions of Section 10 of this act, if this section is
23 violated, the remedy of tracing shall be applicable to protected
24 cell assets when commingled with protected cell assets of other

1 protected cells or the assets of the protected cell company's
2 general account. The remedy of tracing shall not be construed as an
3 exclusive remedy.

4 F. Unless otherwise approved by the Commissioner, the protected
5 cell company shall, when establishing a protected cell, attribute
6 the protected cell assets a value at least equal to the reserves and
7 other insurance liabilities attributed to that protected cell.

8 SECTION 15. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1695 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 A. The protected cell assets of any protected cell shall not be
12 charged with liabilities arising out of any other business the
13 protected cell company may conduct. All contracts or other
14 documentation reflecting protected cell liabilities shall clearly
15 indicate that only the protected cell assets are available for the
16 satisfaction of those protected cell liabilities.

17 B. Unless otherwise approved by the Insurance Commissioner,
18 assets attributed to a protected cell shall be valued at their fair
19 value on the date of valuation.

20 C. The income, gains and losses, realized or unrealized, from
21 protected cell assets and protected cell liabilities shall be
22 credited to or charged against the protected cell without regard to
23 other income, gains or losses of the protected cell company,
24 including income, gains or losses of other protected cells. Amounts

1 attributed to any protected cell and accumulations on the attributed
2 amounts may be invested and reinvested without regard to any
3 requirements or limitations imposed on investments of insurance
4 companies domiciled in this state and the investments in any
5 protected cell or cells may not be taken into account in applying
6 the investment limitations otherwise applicable to the investments
7 of the protected cell company, subject to any restrictions that may
8 be imposed by the Commissioner in accordance with Section 12 of this
9 act.

10 D. As permitted by the Commissioner, a protected cell company
11 may, in respect of any of its protected cells, engage in fully
12 funded indemnity triggered and/or fully funded nonindemnity
13 triggered insurance securitization to support in full the protected
14 cell exposures attributable to that protected cell. A protected
15 cell company insurance securitization that is nonindemnity triggered
16 shall qualify as an insurance securitization under the terms of this
17 section only after the Commissioner, in accordance with the
18 authority granted under Section 12 of this act, adopts regulations
19 addressing the methods of funding of the portion of the risk that is
20 not indemnity-based, accounting, disclosure, risk-based capital
21 treatment, and assessing risks associated with those
22 securitizations. A protected cell company insurance securitization
23 that is not fully funded, whether indemnity triggered or
24 nonindemnity triggered, is prohibited. Protected cell assets may be

1 used to pay interest or other consideration on any outstanding debt
2 or other obligation attributable to that protected cell, and nothing
3 in this section shall be construed or interpreted as preventing a
4 protected cell company from entering into a swap agreement or other
5 transaction for the account of the protected cell that has the
6 effect of guaranteeing that interest or other consideration.

7 E. In all protected cell company insurance securitizations, the
8 contracts or other documentation effecting the transaction shall
9 contain provisions identifying the protected cell to which the
10 transaction will be attributed. In addition, the contracts or other
11 documentation shall clearly disclose that the assets of that
12 protected cell, and only those assets, are available to pay the
13 obligations of that protected cell. Notwithstanding the foregoing,
14 and subject to the provisions of this title and any other applicable
15 law or rules, the failure to include that language in the contracts
16 or other documentation shall not be used as the sole basis by
17 creditors, reinsurers or other claimants to circumvent the
18 provisions of this section.

19 F. At the cessation of business of a protected cell, and in
20 absence of any placement under administrative supervision or order
21 of conservation, rehabilitation or liquidation attributable to that
22 protected cell or the protected cell company, the protected cell
23 company shall voluntarily close out the protected cell account in
24 accordance with a plan approved by the Commissioner.

1 G. A protected cell company shall only be authorized to
2 attribute to a protected cell account the insurance obligations
3 relating to the protected cell company's general account. Under no
4 circumstances shall a protected cell be authorized to issue
5 insurance or reinsurance contracts directly to policyholders or
6 reinsureds or have any obligation to the policyholders or reinsureds
7 of the protected cell company's general account.

8 SECTION 16. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1696 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 A. 1. Protected cell assets shall only be available to the
12 creditors of the protected cell company that are creditors in
13 respect to that protected cell and shall be entitled, in conformity
14 with the provisions of the Protected Cell Companies Act, to have
15 recourse to the protected cell assets attributable to that protected
16 cell, and shall be absolutely protected from the creditors of the
17 protected cell company that are not creditors in respect of that
18 protected cell and, who accordingly, shall not be entitled to have
19 recourse to the protected cell assets attributable to that protected
20 cell. Creditors with respect to a protected cell shall not be
21 entitled to have recourse against the protected cell assets of other
22 protected cells or the assets of the protected cell company's
23 general account.

24

1 2. Protected cell assets shall only be available to creditors
2 of a protected cell company after all protected cell liabilities
3 have been extinguished or provided for in accordance with the plan
4 of operation relating to that protected cell.

5 B. When an obligation of a protected cell company to a person
6 arises from a transaction, or is imposed, in respect of a protected
7 cell:

8 1. That obligation of the protected cell company shall extend
9 only to the protected cell assets attributable to that protected
10 cell, and the person shall, with respect to that obligation, be
11 entitled to have recourse only to the protected cell assets
12 attributable to that protected cell; and

13 2. That obligation of the company shall not extend to the
14 protected cell assets of any other protected cell or the assets of
15 the protected cell company's general account, and that person shall
16 not, with respect to that obligation, be entitled to have recourse
17 to the protected cell assets of any other protected cell or the
18 assets of the protected cell company's general account.

19 C. When an obligation of a protected cell company relates
20 solely to the general account, the obligation of the protected cell
21 company shall extend only to, and that creditor shall, with respect
22 to that obligation, be entitled to have recourse only to, the assets
23 of the protected cell company's general account.

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1 D. Other than with regard to the application of this section,
2 the activities, assets and obligations relating to a protected cell
3 are not subject to the provisions of Articles 20A and 20B of Title
4 36 of the Oklahoma Statutes and neither a protected cell nor a
5 protected cell company shall be assessed by or be required to
6 contribute to any guaranty fund or guaranty association in this
7 state with respect to the activities, assets or obligations of a
8 protected cell. Nothing in this section shall affect the activities
9 or obligations of an insurer's general account.

10 E. In no event shall the establishment of one or more protected
11 cells alone constitute or be deemed to be a fraudulent conveyance,
12 an intent by the protected cell company to defraud creditors, or the
13 carrying out of business by the protected cell company for any other
14 fraudulent purpose.

15 SECTION 17. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1697 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Notwithstanding any contrary provision in the Oklahoma
19 Insurance Code, the rules promulgated under the Oklahoma Insurance
20 Code or any other applicable law or rule, upon placement under
21 administrative supervision or upon any order of conservation,
22 rehabilitation or liquidation of a protected cell company, the
23 receiver shall be bound to deal with the protected cell company's
24 assets and liabilities, including protected cell assets and

1 protected cell liabilities, in accordance with the requirements set
2 forth in the Protected Cell Companies Act.

3 B. With respect to amounts recoverable under a protected cell
4 company insurance securitization, the amount recoverable by the
5 receiver shall not be reduced or diminished as a result of the
6 placement under administrative supervision or entry of an order of
7 conservation, rehabilitation or liquidation with respect to the
8 protected cell company or any of its protected cells,
9 notwithstanding any provisions to the contrary in the contracts or
10 other documentation governing the protected cell company insurance
11 securitization.

12 SECTION 18. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1698 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. If in relation to one or more protected cells of a protected
16 cell company, the Insurance Commissioner is satisfied that the
17 protected cell assets attributable to that protected cell are
18 insufficient to discharge the claims of creditors or other claimants
19 with respect to that protected cell, the Commissioner may place
20 under administrative supervision or apply for an order of
21 conservation, rehabilitation or liquidation with respect to that
22 protected cell. In carrying out the administrative supervision,
23 conservation, rehabilitation or liquidation of a protected cell, the
24 receiver shall follow generally the provisions of Articles 1, 6, 18

1 and 19 of Title 36 of the Oklahoma Statutes, as applicable, and any
2 rules and regulations promulgated under those articles, except that
3 at all times the receiver shall be bound to deal with the protected
4 cell assets and protected cell liabilities in accordance with the
5 requirements of the Protected Cell Companies Act.

6 B. An order of rehabilitation or conservation shall not be
7 requested or made with respect to any protected cell of a protected
8 cell company if a receiver has been appointed to act in respect of a
9 protected cell company and the Commissioner may still apply for an
10 order of liquidation with respect to that protected cell. Any prior
11 order of rehabilitation or conservation with respect to a protected
12 cell shall cease to be of effect upon an order of rehabilitation
13 with respect to the protected cell company, without prejudice to the
14 prior acts of the receiver or its agents.

15 C. An order of rehabilitation, conservation or liquidation
16 shall not be requested or made with respect to any protected cell of
17 a protected cell company if a liquidator has been appointed to act
18 in respect of the protected cell company. Any prior order of
19 rehabilitation, conservation or liquidation with respect to a
20 protected cell shall cease to be of effect upon an order of
21 liquidation with respect to the protected cell company, without
22 prejudice to the prior acts of the receiver or its agent.

23 D. During any period of conservation or rehabilitation, or upon
24 an order of liquidation, with respect to a protected cell, the

1 directors of the protected cell company shall cease in respect of
2 the business of, and the protected cell assets and protected cell
3 liabilities attributable to, the protected cell which is the subject
4 of the rehabilitation, conservation or liquidation.

5 E. In the event that a petition for an order of rehabilitation,
6 conservation or liquidation of a protected cell is challenged, prior
7 to the entry or denial of the order, the directors of the protected
8 cell company shall cease in respect of the business of, and the
9 protected cell assets and protected cell liabilities attributable
10 to, the protected cell which is the subject of the petition and the
11 Commissioner shall carry out the business of the protected cell
12 until the order has been entered or denied. In the event the order
13 is denied, the Commissioner shall immediately return possession and
14 control of the protected cell to the directors of the protected cell
15 company.

16 F. No resolution for the voluntary winding up of a protected
17 cell company with any protected cell which has been placed under
18 administrative supervision or is the subject of an order of
19 rehabilitation, conservation or liquidation shall be effective
20 without permission of the Commissioner and, in the case of
21 rehabilitation, conservation or liquidation, the court supervising
22 the rehabilitation, conservation or liquidation.

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1 SECTION 19. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1699 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. With respect to orders of rehabilitation, conservation or
5 liquidation directed at a protected cell company, the remuneration,
6 expenses and other compensation of the receiver shall be payable
7 from the assets of the company's general account, in accordance with
8 the priority of distribution set forth in Section 1927.1 of Title 36
9 of the Oklahoma Statutes.

10 B. With respect to orders of rehabilitation, conservation or
11 liquidation directed at a protected cell company, the remuneration,
12 expenses and other compensation of the receiver shall be payable
13 from the protected cell assets attributable to that protected cell.
14 In the case where more than one protected cell is the subject of the
15 order, the receiver shall account for remuneration, expenses and
16 other compensation separately for each protected cell in accordance
17 with actual time and expenses attributable to the rehabilitation,
18 conservation or liquidation of each respective protected cell.

19 C. With respect to orders of rehabilitation, conservation or
20 liquidation directed at a protected cell company during a pending
21 rehabilitation, conservation or liquidation of one or more protected
22 cells, the remuneration, expenses and other compensation of the
23 receiver of the protected cells shall be satisfied from the
24 protected cell assets of the protected cell or cells in accordance

1 with the provisions of subsection B of this section, and the
2 remuneration, expenses and other compensation of the receiver of the
3 protected cell company shall be satisfied from the assets of the
4 company's general account.

5 SECTION 20. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1699.1 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 Any person violating the provisions of the Protected Cell
9 Companies Act shall be subject to any and all enforcement procedures
10 either currently employed or subsequently promulgated by the
11 Insurance Commissioner including, but not limited to, the imposition
12 of fines, sanctions or civil penalties, or an order to cease and
13 desist from the establishment of additional protected cells. In no
14 event shall the Commissioner have the authority to cease the
15 business of an existing protected cell, except by placement under
16 administrative supervision or by order of rehabilitation,
17 conservation or liquidation in accordance with the provisions of
18 this act.

19 SECTION 21. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1699.2 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 A protected cell company insurance securitization shall not be
23 deemed to be an insurance or reinsurance contract. An investor in a
24 protected cell company insurance securitization shall not, by sole

1 means of this investment, be deemed to be transacting an insurance
2 business in this state. The underwriters or selling agents and
3 their partners, directors, officers, members, managers, employees,
4 agents, representatives and advisors involved in a protected cell
5 company insurance securitization shall not be deemed to be
6 conducting an insurance or reinsurance agency, brokerage,
7 intermediary, advisory or consulting business by virtue of their
8 activities in connection with those businesses.

9 SECTION 22. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1699.3 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 The Insurance Commissioner may promulgate reasonable rules as
13 may be necessary to effectuate the purposes of the Protected Cell
14 Companies Act.

15 SECTION 23. This act shall become effective November 1, 2019.

16 Passed the House of Representatives the 12th day of March, 2019.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ____ day of _____, 2019.

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Presiding Officer of the Senate

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