

An Act

ENROLLED HOUSE
BILL NO. 1335

By: Sims and McEntire of the
House

and

Stanislawski of the Senate

An Act relating to insurance; creating the Protected Cell Companies Act; declaring purpose; providing definitions; providing for establishment of protective cell; requiring plan of operation; requiring approval of the Insurance Commissioner; providing for attributions of assets and liabilities; providing for legal status of protected cell; permitting right to contract; directing protected 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 certain contracts directly to policyholders or 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 exceptions for certain persons; authorizing the Insurance Commissioner to promulgate rules; providing for codification; and providing an effective date.

SUBJECT: Insurance

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

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

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

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

The Protected Cell Companies Act is adopted to provide a basis for the creation of protected cells by a domestic insurer as a means of accessing alternative sources of capital and achieving the benefits of insurance securitization or effectuating insurance 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 of protected cells is intended to be a means to achieve more efficiencies in conducting insurance securitizations or insurance business transfers.

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

As used in the Protected Cell Companies Act:

1. "Commissioner" means the Oklahoma Insurance Commissioner;
2. "Domestic insurer" means an insurance or reinsurance company domiciled in the State of Oklahoma or a captive insurance or reinsurance company domiciled in the State of Oklahoma;
3. "Fair value" of an asset or liability means the monetary amount at which that asset or liability could be bought, incurred, sold or settled in a current transaction between willing parties other than in a forced or liquidation sale. Quoted market prices in active markets are the best evidence of fair value and shall be used as the basis for the measurement, if available. If a quoted market price is available, the fair value is the product of the number of trading units times market price. If quoted market prices are not available, the estimate of fair value shall be based on the best

information available. The estimate of fair value shall consider prices for similar assets and liabilities and the results of valuation techniques to the extent available in the circumstances. Examples of valuation techniques include the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved, option pricing models, matrix pricing, option-adjusted spread models and fundamental analysis. Valuation techniques for measuring financial assets and liabilities and servicing assets and liabilities shall be consistent with the objective of measuring fair value. Those techniques shall incorporate assumptions that market participants would use in their estimates of values, future revenues and future expenses, including assumptions about interest rates, default, prepayment and volatility. When measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, the objective is to use discount rates at which those liabilities could be settled in an arm's-length transaction. Estimates of expected future cash flows, if used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections. All available evidence shall be considered in developing estimates of expected future cash flows. The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively. If a range is estimated for the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of future cash flows;

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

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

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

7. "Nonindemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual

protected cell company incurring a specified level of losses under its insurance or reinsurance contracts;

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

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

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

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

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

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

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

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

A. A protected cell company may establish one or more protected cells, with the prior written approval of the Insurance Commissioner of a plan of operation or amendments to a plan of operation submitted by the protected cell company with respect to each protected cell. Upon the written approval of the Commissioner of the plan of operation or amendments to a plan of operation, which shall include, but not be limited to, the specific business objectives and investment guidelines of the protected cell, the protected cell company may, in accordance with the approved plan of operations, attribute to the protected cell amounts both reflective of insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the obligations. Each protected cell of a protected cell company shall have its own distinct name or designation, which shall include the words "protected cell". The protected cell company shall transfer all assets attributable to each protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

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

C. The creation of a protected cell does not create, in respect of that protected cell, a legal person separate from the protected cell company. Amounts attributed to a protected cell under this act, including assets transferred to a protected cell account, are owned by the protected cell company and the protected cell company may not be, nor hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding the foregoing, the protected cell company may allow for a security interest to attach to protected cell assets or a

protected cell account when in favor of a creditor of the protected cell and otherwise allowed under applicable law.

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

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

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

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

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

F. Unless otherwise approved by the Commissioner, the protected cell company shall, when establishing a protected cell, attribute

the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

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

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

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

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

D. As permitted by the Commissioner, a protected cell company may, in respect of any of its protected cells, engage in fully funded indemnity triggered and/or fully funded nonindemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization under the terms of this section only after the Commissioner, in accordance with the authority granted under Section 9 of this act, adopts regulations addressing the methods of funding of the portion of the risk that is not indemnity-based, accounting, disclosure, risk-based capital treatment, and assessing risks associated with those

securitizations. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell, and nothing in this section shall be construed or interpreted as preventing a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing that interest or other consideration.

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

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

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

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

A. 1. Protected cell assets shall only be available to the creditors of the protected cell company that are creditors in respect to that protected cell and shall be entitled, in conformity

with the provisions of the Protected Cell Companies Act, to have recourse to the protected cell assets attributable to that protected cell, and shall be absolutely protected from the creditors of the protected cell company that are not creditors in respect of that protected cell and, who accordingly, shall not be entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors, with respect to a protected cell, shall not be entitled to have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account.

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

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

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

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

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

D. Other than with regard to the application of this section, the activities, assets and obligations relating to a protected cell are not subject to the provisions of Articles 20A and 20B of Title 36 of the Oklahoma Statutes. Neither a protected cell nor a protected cell company shall be assessed by or be required to contribute to any guaranty fund or guaranty association in this

state with respect to the activities, assets or obligations of a protected cell. Nothing in this section shall affect the activities or obligations of an insurer's general account.

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

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

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

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

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

A protected cell company insurance securitization shall not be deemed to be an insurance or reinsurance contract. An investor in a protected cell company insurance securitization shall not, by sole means of this investment, be deemed to be transacting an insurance business in this state. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives and advisors involved in a protected cell

company insurance securitization shall not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory or consulting business by virtue of their activities in connection with those businesses.

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

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

SECTION 10. This act shall become effective November 1, 2019.

Passed the House of Representatives the 7th day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____