AN ACT concerning insurance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Insurance Code is amended by changing Sections 107.06a, 107.07, 107.15, 179A-5, 179A-10, 179A-15, 179A-20, 179A-25, 179A-30, and 179A-35 as follows:

(215 ILCS 5/107.06a) (from Ch. 73, par. 719.06a)

Sec. 107.06a. Organization under Illinois Insurance Code.

(a) After December 31, 1997, a syndicate or limited syndicate, except for a limited syndicate formed as a partnership <u>or a special purpose limited syndicate</u>, may only be organized pursuant to Sections 7, 8, 10, 11, 12, 14, 14.1 (other than subsection (d) thereof), 15 (other than subsection (d) thereof), 18, 19, 20, 21, 22, 23, 25, 27.1, 28, 28.1, 28.2, 29, 30, 31, 32, 32.1, 33, and 35.1 and Article X of this Code, to carry on the business of a syndicate, or limited syndicate under Article V-1/2 of this Code; provided that such syndicate or limited syndicate is admitted to the Exchange.

(b) After December 31, 1997, syndicates and limited syndicates are subject to the following:

(1) Articles I, IIA, VIII, VIII 1/2, X, XI, XI 1/2, XII, XII 1/2, XIII, XIII 1/2, XXIV, XXV (Sections 408 and 412 only), and XXVIII (except for Sections 445, 445.1, 445.2, 445.3, 445.4, and 445.5) of this Code;

(2) Subsections (2) and (3) of Section 155.04 and Sections 13, 132.1 through 140, 141a, 144, 155.01, 155.03, 378, 379.1, 393.1, 395, and 396 of this Code;

(3) the Reinsurance Intermediary Act; and

(4) the Producer Controlled Insurer Act.

Originated in the Senate

Secretary of the Senate

PUBLIC ACT 92-74

(c) No other provision of this Insurance Code shall be applicable to any such syndicate or limited syndicate except as provided in this Article V-1/2.

(Source: P.A. 90-499, eff. 8-19-97; 90-794, eff. 8-14-98; 91-278, eff. 7-23-99.)

(215 ILCS 5/107.07) (from Ch. 73, par. 719.07)

Sec. 107.07. Admission. Capitalization:

Syndicate - at least $2,000,000.

Subscriber - at least $30,000.

Special Purpose Limited Syndicate - at least $5,000.

Fees: (a) Exchange brokers. An annual fee shall be paid to the Exchange by any person who presents risks to the Exchange. The annual fee established by the Exchange shall not exceed $5,000.

(b) The Exchange may establish annual fees for the admission of syndicates, limited syndicates, and subscribers.

Standards: The Exchange may establish additional standards for the admission of subscribers and Exchange brokers.

Assessments: The Exchange may make assessments of subscribers or syndicates for the expenses of operating the Exchange.

(Source: P.A. 90-499, eff. 1-1-98.)

(215 ILCS 5/107.15) (from Ch. 73, par. 719.15)

Sec. 107.15. Definitions. Persons: A person is an individual, partnership, association, corporation or limited partnership.

Syndicate: A syndicate is a subscriber, group of subscribers, limited syndicate or group of limited syndicates which meets the minimum capital requirement of Section 107.07.

Limited Syndicate: A limited syndicate is a corporation

or partnership formed by subscribers for the purpose of joining with syndicates, other subscribers, or limited syndicates to form syndicates or to participate with syndicates in the insurance or reinsurance of risks.

Subscriber: A subscriber is a person who has made a deposit of money pursuant to Section 107.07 permitting that person to participate as a subscriber in a syndicate or limited syndicate.

Special Purpose Limited Syndicate: A special purpose limited syndicate is any entity formed for the purposes of participation in the securitization of reinsurance risks in accordance with rules adopted pursuant to Section 107.15b.

Exchange Broker: A person licensed as an insurance broker in the State of Illinois or as a reinsurance intermediary who is admitted to the Exchange to present applications for insurance.

Present Applications for Insurance: Means to make an application to a syndicate for an insurance policy.

Reinsurance: Means reinsuring insurance.

Minimum Subscription: The subscription capital required for admission as a subscriber to the Exchange. Subscribers shall at all times maintain the minimum capitalization required by this Article.

(Source: P.A. 89-206, eff. 7-21-95.)

(215 ILCS 5/179A-5)

Sec. 179A-5. Purpose. This Article is adopted to provide a basis for the creation of protected cells by a domestic insurer as one means of accessing alternative sources of capital and achieving the benefits of insurance securitization. Investors in fully funded insurance securitization transactions provide funds that are available to pay the insurer's insurance obligations or to repay the investors or both. The creation of protected cells is

intended to be a means to achieve more efficiencies in conducting insurance securitizations. ~~Insurance securitization has been developed as a means of accessing alternative sources of capital and diversifying credit risk in order to enhance an insurance company's ability to both assume risk and stabilize underwriting results.~~

Under the terms of the typical debt instrument underlying an insurance securitization transaction, prepaid principal is repaid to the investor on a specified maturity date with interest, unless a trigger event occurs. The insurance securitization proceeds secure both the protected cell company's insurance obligations ~~proceeds of the debt instrument both collateralize the insurance company's obligations under specified contracts of insurance~~ if a trigger event occurs, as well as the protected cell ~~insurance~~ company's obligation to repay the insurance securitization investors ~~debt instrument~~ if a trigger event does not occur. ~~Traditionally,~~ Insurance securitization transactions have been performed through alien companies in order to utilize efficiencies available to alien companies that are not currently available to domestic companies. This Article is adopted in order to create more efficiency in conducting insurance securitization, to allow domestic companies easier access to alternative sources of capital, and to promote the benefits of insurance securitization generally.

(Source: P.A. 91-278, eff. 7-23-99.)

(215 ILCS 5/179A-10)

Sec. 179A-10. Definitions.

"Domestic company" means an insurance company domiciled in the State of Illinois.

"Fully funded" means that, with respect to any exposure attributed to a protected cell, the market 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.

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

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

~~"Insurance-securitization"-means--the--entering--into--of debt--instruments--supported--in--full--by--cash--or--readily marketable--securities--with--investors-by-a-domestic-company where--repayment--of--principal--or--interest,--or--both,--to investors-pursuant-to-the--transaction--terms--is--contingent upon-the-occurrence-or-nonoccurrence-of-an-event-with-respect to--which--the--domestic--company--is--exposed--to-loss-under policies-or-contracts-of--insurance--or--reinsurance--it--has issued.~~

"Market value" has the meaning given that term in Article VIII of this Code (Investments of Domestic Companies).

"Non-indemnity 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.

"Protected cell" means an identified pool of assets and liabilities of a domestic company segregated and insulated by means of this Article from the remainder of the company's assets and liabilities.

"Protected cell account" means a specifically identified bank or custodial account established by a protected cell company for the purpose of ~~legally~~ 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.

"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~~,--including--assets--physically---segregated---in---a protected-cell-account~~.

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

"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 or interest, or both, 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.

"Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company. ~~Protected-cell-liabilities-include--liabilities--representing the--insurance--obligations--of-the-protected-cell-as-well-as obligations--of--the--protected--cell--arising--out--of---any insurance-securitization-transactions-of-the-protected-cell.~~

~~"Protected--cell--company"-means-a-domestic-company-which has-one-or-more-protected-cells.~~

(Source: P.A. 91-278, eff. 7-23-99.)

(215 ILCS 5/179A-15)

Sec. 179A-15. Establishment of protected cells.

(a) A domestic company may, with the prior written approval by the Director of a plan of operation submitted by

the domestic company with respect to each protected cell, establish one or more protected cells in connection with an insurance securitization. Upon the written approval by the Director of the plan of operation, which shall include, but not be limited to, the specific business and investment guidelines ~~objectives~~ of the protected cell, the protected cell company may, in accordance with the approved plan of operation, 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 those obligations. A protected cell 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 a 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 ~~sales, exchanges, transfers, or other~~ 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 Director. ~~or shall be otherwise approved by the Director. Unless otherwise approved by the Director, no sale, exchange, transfer, or~~ No other attribution of assets or liabilities may be made by a protected cell company between the protected cell company's general account and ~~one or more of~~ its protected cells. ~~unless, in the case of an attribution to a protected cell, the attribution is made solely to establish the protected cell or, in the case of an attribution from a protected cell to the company's general account, the attribution is made solely to support the company's insurance obligations that~~

~~are the subject of the business of the protected cell. Any sale, exchange, transfer, or other~~ 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 shall be in cash or in readily marketable securities with established market values ~~unless otherwise approved in advance in writing by the Director~~.

(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 Article, 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 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) This Article shall not 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.

(e) A ~~domestic company that is a~~ protected cell company shall establish ~~such~~ administrative and accounting procedures ~~as 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 ~~thereto~~. It shall be the duty of the directors of a protected cell company to:

(1)~~(i)~~ 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)~~(ii)~~ keep protected cell assets and protected cell liabilities attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

If this Section is violated ~~Notwithstanding---the foregoing~~, 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) The protected cell ~~Unless otherwise approved by--the Director,--the~~ company shall, when establishing a protected cell, attribute to the protected cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

(Source: P.A. 91-278, eff. 7-23-99.)

(215 ILCS 5/179A-20)

Sec. 179A-20. Use and operation of protected cells.

(a) The protected cell assets of any protected cell may 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 ~~the obligations---of--a--protected--cell--to--the general--account~~ shall clearly indicate that only ~~the assets of~~ the protected cell assets are available for the

1 satisfaction of those ~~obligations--of--the~~ protected cell
2 liabilities. 468
3 (b) The income, gains, and losses, realized or 470
4 unrealized, from protected cell assets and protected cell 472
5 liabilities must be credited to or charged against the 473
6 protected cell without regard to other income, gains, or 476
7 losses of the protected cell company, including income,
8 gains, or losses of other protected cells. Amounts 479
9 attributed to a protected cell and accumulations thereon may
10 be invested and reinvested without regard to any requirements 481
11 or limitations of Article VIII of this Code (Investments of 483
12 Domestic Companies), and the investments in a protected cell 485
13 or cells may not be taken into account in applying the 486
14 investment limitations otherwise applicable to the 488
15 investments of the protected cell company.
16 (c) ~~Unless--otherwise--approved--by-the-Director,~~ Assets 490
17 attributed to a protected cell must be valued at their 494
18 market value on the date of valuation, or if there is no
19 readily available market, then as provided in the contract or 496
20 the rules or other written documentation applicable to the 498
21 protected cell.
22 (d) A protected cell company shall, in respect of any of 500
23 its protected cells, engage in fully funded 502
24 indemnity-triggered insurance securitization to support in 503
25 full the protected cell exposures ~~liabilities~~ attributable to 504
26 that protected cell. A protected cell company ~~An~~ insurance 506
27 securitization that is not indemnity-triggered may qualify as 507
28 an insurance securitization under the terms of this Article 508
29 only after the Director adopts rules addressing the methods 509
30 of:(i) funding of the portion of the risk that is not 510
31 indemnity based, (ii) accounting, and disclosure, (iii) 511
32 risk-based capital treatment, and (iv) assessing risk
33 associated with such securitizations ~~and-does-not-support-in~~ 514
34 ~~full-the-protected-cell-obligations-of-a-protected-cell-shall~~ 515

~~be prohibited absent specific permission by the Director in accordance with the authority granted under Section 179A-40 and the guidance of the National Association of Insurance Commissioners, as such guidance is developed.~~ A protected cell company ~~An~~ insurance securitization ~~transaction~~ that is not fully funded, whether indemnity triggered or non-indemnity triggered ~~indemnity triggered or not indemnity triggered~~, is prohibited. Protected cell assets may be used to ~~A protected cell may~~ pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell, and nothing in this subsection shall be construed or interpreted to prevent 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 such interest or other consideration.

(e) In all ~~cases in which a~~ protected cell company ~~engages in an~~ insurance securitizations ~~securitization~~, the contracts or other documentation ~~financial instrument~~ effecting such transaction shall contain provisions identifying the protected cell to which the transaction will be attributed. In addition, the contracts or other documentation ~~financial instrument~~ 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 Article and any other applicable law or rule, the failure to include such language in the contracts or other documentation ~~financial instrument~~ shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this Article.

(f) A protected cell company may attribute to a protected cell account only the insurance obligations relating to the protected cell company's general account. A

protected cell may not 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.

(g)~~(f)~~ At the cessation of business of a protected cell, the protected cell company shall voluntarily close out ~~wind up~~ the protected cell account in accordance with a plan approved by the Director.

(Source: P.A. 91-278, eff. 7-23-99.)

(215 ILCS 5/179A-25)

Sec. 179A-25. Reach of creditors and other claimants.

(a) Protected cell assets are ~~shall only be~~ available only to the creditors of the protected cell company who are creditors in respect of that protected cell and ~~shall thereby~~ be entitled, in conformity with the provisions of this Article, to have recourse to the protected cell assets attributable to that protected cell.~~,~~ Protected cell assets ~~and~~ shall be absolutely protected from the creditors of the protected cell company who are not creditors in respect of that protected cell and who, accordingly, are ~~shall~~ not be entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors with respect to ~~of~~ 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.

Protected cell assets are available only to creditors of a protected cell company after all protected cell liabilities have been extinguished or otherwise 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 otherwise imposed, in

respect of 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, in respect of that obligation, be entitled to have recourse only to the protected cell assets attributable to that protected cell; and

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

(d) ~~A protected cell shall only be authorized to assume an insurance obligation directly from the company's general account, and under no circumstances shall a protected cell be authorized to issue insurance or reinsurance policies or contracts directly to policyholders or reinsureds or have any obligation to the policyholders of the company's general account.~~ The activities, assets, and obligations relating to ~~of~~ a protected cell are not subject to the provisions of Article XXXIII1/2 (Illinois Life and Health Guaranty Association Law) or Article XXXIV (Illinois Insurance Guaranty Fund), and neither a protected cell nor a protected cell company ~~protected cells~~ shall ~~not~~ be assessed by or otherwise 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 subsection shall affect the activities or obligations of a company'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.

(Source: P.A. 91-278, eff. 7-23-99.)

(215 ILCS 5/179A-30)

Sec. 179A-30. Rehabilitation and liquidation of protected cell companies.

(a) Notwithstanding any contrary provision in this Code, the rules promulgated under this Code, or any other applicable law or rule, upon any order of rehabilitation, conservation, or liquidation of ~~a domestic company that is~~ 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 this Article.

(b) With respect to amounts recoverable under a protected cell company ~~any~~ insurance securitization ~~entered into or outstanding in any protected cell of a protected cell company~~, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of rehabilitation, conservation, or liquidation with respect to the protected cell company notwithstanding any provisions to the contrary in the contracts or other documentation ~~financial instrument~~ governing the protected cell company ~~such~~ insurance securitization.

(Source: P.A. 91-278, eff. 7-23-99.)

(215 ILCS 5/179A-35)

Sec. 179A-35. ~~No~~ transaction of an insurance business. A protected cell insurance securitization shall not ~~No insurance securitization effected under the provisions of this Article shall~~ be deemed to be an insurance or reinsurance contract. An ~~policy or contract of insurance and no~~ investor in a protected cell company insurance securitization ~~transaction~~ shall not, by sole means of such 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 therewith ~~required to be licensed as an insurance company in the State of Illinois~~.

(Source: P.A. 91-278, eff. 7-23-99.)

Section 99. Effective date. This Act takes effect upon becoming law.

President of the Senate

Michael J. Madigan
Speaker, House of Representatives

APPROVED

this 12th day of July, 20 01 A.D.

GOVERNOR