CHAPTER 521G

PROTECTED CELL COMPANIES

Referred to in §87.4, §296.7, §331.301, §364.4, §505.28, §505.29, §669.14, §670.7

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521G.1 Short title.

This chapter shall be known and may be cited as the *"Protected Cell Company Act"*.

2000 Acts, ch 1046, §1

521G.2 Purpose.

The purpose of this chapter is to authorize the establishment of protected cells by a domestic insurer authorized to transact the business of insurance under chapter 508 or 515, as a 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. Protected cells are intended to achieve more efficiencies with respect to such insurance securitization.

2000 Acts, ch 1046, §2

521G.3 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Domestic insurer"* means an insurer domiciled in this state and organized under chapter 508 or 515.

2. *"Fair value"* of an asset or liability means the amount at which that asset or liability could be bought or incurred, or sold or settled, in a current transaction between willing parties, other than in a forced or liquidation sale, and as determined under section 521G.4.

3. *"Fully funded"* means, with respect to any exposure attributed to a protected cell, that 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 such exposures.

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

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

6. *"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.

7. *"Protected cell"* means an identified pool of assets and liabilities of a protected cell company segregated and insulated as provided under this chapter from the remainder of the protected cell company's assets and liabilities.

8. *"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.

9. *"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.

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

11. *"Protected cell company insurance securitization"* means the issuance of a debt instrument, the proceeds from which support the exposures attributed to a 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 which the protected cell company has issued.

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

2000 Acts, ch 1046, §3

521G.4 Determination of fair value — valuation technique.

A quoted market price in an active market is deemed to be the best evidence of fair value of an asset and shall be used as the basis for the measurement of fair value, if available. If a quoted market price is available, the fair value is the product of the number of trading units times the quoted market price. If a quoted market price is not available, the estimate of fair value shall be based on the best information available. The estimate of fair value shall consider the price for similar assets and liabilities and the results of a valuation technique to the extent available in the circumstances. For purposes of this section, *"valuation technique"* includes, but is not limited to, 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. A valuation technique for measuring financial assets and liabilities and servicing assets and liabilities shall be consistent with the objective of measuring fair value. A valuation technique shall incorporate assumptions that a market participant would use in estimating value, future revenue, and future expenses, including assumptions about interest rates, default, prepayment, and volatility. In measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, discount rates shall be used at which those liabilities could be settled in an open and competitive transaction. An estimate of expected future cash flow, 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 an estimate of expected future cash flow. 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 either the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of such future cash flows.

2000 Acts, ch 1046, §4

Referred to in **§521G.3**

521G.5 Establishment of protected cells.

1. A protected cell company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments to such plan submitted by the protected cell company with respect to each protected cell related to an insurance securitization. The plan shall include, but not be limited to, the specific business objectives and investment guidelines of the protected cell company. Upon the written approval of the commissioner of the plan of operation, the protected cell company, consistent with the approved plan of operation, may attribute to the protected cell insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the 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.

2. Attribution of assets and liabilities between a protected cell and the general account shall be pursuant to the plan of operation. Other attribution of assets or liabilities shall not be

made by a protected cell company between the protected cell company's general account and its protected cells. The 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 insurance securitization transaction, shall be in cash or in readily marketable securities with established market values.

3. The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell company. An amount attributed to a protected cell under this chapter, including assets transferred to a protected cell account, is owned by the protected cell company and the protected cell company shall not be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, a protected cell company may permit a security interest to attach to protected cell assets or a protected cell account which is in favor of a creditor of the protected cell company and otherwise allowed under applicable law.

4. This chapter 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.

5. *a.* A protected cell company shall establish administrative and accounting procedures necessary to properly identify the protected cells of the protected cell company and the protected cell assets and protected cell liabilities attributable to the protected cells. The board of directors of a protected cell company shall do both of the following:

(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.

(2) 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.

b. 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.

6. A protected cell company, when establishing a protected cell, shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

2000 Acts, ch 1046, §5

521G.6 Use and operation of protected cells.

1. The protected cell assets of a protected cell shall not be charged with liabilities arising out of any other business the protected cell company may conduct. A contract or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets of a protected cell are available for the satisfaction of the protected cell liabilities attributed to that same protected cell.

2. 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 another protected cell. An amount attributed to a protected cell and accumulations on the attributed amount may be invested and reinvested without regard to the requirements and limitations of section 511.8 or 515.35, and the investments in a protected cell shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

3. Assets and liabilities attributed to a protected cell shall be valued at their fair value on the date of valuation.

4. *a.* A protected cell company, with respect to its protected cells, shall engage in fully funded indemnity 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 qualifies as an insurance securitization under this chapter only after the commissioner adopts rules providing for all of the following:

(1) The methods of funding of the portion of the risk that is not indemnity based.

(2) Accounting requirements.

(3) Disclosure requirements.

(4) Risk-based capital treatment.

(5) Assessment of risks associated with such securitizations.

b. 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 an outstanding debt or other obligation attributable to that protected cell. This subsection shall not 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 interest or other consideration.

5. In a protected cell company insurance securitization, a contract or other documentation affecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contract or other documentation shall clearly disclose that the assets of the protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection, the failure to include such language in a contract or other documentation shall not be used as the sole basis by a creditor, reinsurer, or other claimant to circumvent this chapter.

6. A protected cell company shall only attribute to a protected cell account the insurance obligations relating to the protected cell company's general account. A protected cell shall not issue an insurance or reinsurance contract directly to a policyholder or reinsured, and shall not have an obligation to a policyholder or reinsured of the protected cell company's general account.

7. At the cessation of business of a protected cell pursuant to the plan approved by the commissioner, the protected cell company shall close the protected cell account.

2000 Acts, ch 1046, §6; 2007 Acts, ch 137, §22

521G.7 Creditors and other claimants of protected cell companies.

1. *a.* Protected cell assets shall only be available to a creditor of the protected cell company that is a creditor with respect to that protected cell. Such a creditor shall have recourse to the protected cell assets attributable to that protected cell, to the exclusion of other creditors of the protected cell company that are not creditors with respect to that protected cell. Such other creditors shall have no recourse to the protected cell assets attributable to that protected cell. A creditor with respect to a protected cell does not have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account.

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

2. An obligation of a protected cell company to a person which arises from a transaction, or is otherwise imposed, with respect to a protected cell, is subject to both of the following:

a. The obligation to a person shall extend only to the protected cell assets attributable to that protected cell, and with respect to that obligation, such person is entitled to recourse only against the protected cell assets attributable to that protected cell.

b. The obligation to a person shall not extend to the protected cell assets of another protected cell or the assets of the protected cell company's general account, and with respect to that obligation, such person is not entitled to recourse against the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

3. An obligation of a protected cell company that relates solely to the general account shall extend only to the assets of the protected cell company's general account, and the creditor, with respect to that obligation, is entitled to recourse against only the assets of the protected cell company's general account.

4. A protected cell is not subject to any requirements relating to a guaranty fund or

guaranty association, and 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. This section does not affect the activities or obligations of a protected cell company's general account.

5. The establishment of one or more protected cells, by itself, does not constitute any of the following:

a. A fraudulent conveyance.

b. An intent by the protected cell company to defraud creditors.

c. The transaction of business by the protected cell company for a fraudulent purpose.

2000 Acts, ch 1046, §7

521G.8 Supervision, rehabilitation, or liquidation of a protected cell company.

Upon an order of supervision, rehabilitation, or liquidation of a protected cell company, a receiver shall manage a protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, as provided in this chapter.

An amount recoverable by a receiver under a protected cell company insurance securitization shall not be reduced or diminished as a result of the entry of an order of supervision, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding contrary provisions in a contract or other document governing the protected cell company insurance securitization.

2000 Acts, ch 1046, §8

521G.9 Securitization transactions not insurance.

A protected cell company insurance securitization is not an insurance or reinsurance contract. An investor in a protected cell company insurance securitization, by sole means of this investment, is not deemed to be transacting an insurance business in this state. An underwriter or selling agent, or a partner, director, officer, member, manager, employee, or agent of such underwriter or selling agent, participating in a protected cell company insurance securitization, is not deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business as a result of such participation.

2000 Acts, ch 1046, §9

521G.10 Rules.

The commissioner shall adopt rules pursuant to chapter 17A as are necessary to administer this chapter.

2000 Acts, ch 1046, §10