

Lamberti
Gronstal
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SSB-3126

Commerce
Succ By
SF (HF) 2200

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the establishment of protected cells by
2 domestic insurers.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 521G.1 SHORT TITLE.

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

4 Sec. 2. NEW SECTION. 521G.2 PURPOSE.

5 The purpose of this chapter is to authorize the
6 establishment of protected cells by a domestic insurer
7 authorized to transact the business of insurance under chapter
8 515 as a means of accessing alternative sources of capital and
9 achieving the benefits of insurance securitization. Investors
10 in fully funded insurance securitization transactions provide
11 funds that are available to pay the insurer's insurance
12 obligations or to repay the investors, or both. Protected
13 cells are intended to achieve more efficiencies with respect
14 to such insurance securitization.

15 Sec. 3. NEW SECTION. 521G.3 DEFINITIONS.

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

18 1. "Domestic insurer" means an insurer domiciled in this
19 state and organized under chapter 515.

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

25 3. "Fully funded" means, with respect to any exposure
26 attributed to a protected cell, that the fair value of the
27 protected cell assets, on the date on which the insurance
28 securitization is effected, equals or exceeds the maximum
29 possible exposure attributable to the protected cell with
30 respect to such exposures.

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

34 5. "Indemnity trigger" means a transaction term by which
35 relief of the issuer's obligation to repay investors is

1 triggered by its incurring a specified level of losses under
2 its insurance or reinsurance contracts.

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

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

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

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

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

24 11. "Protected cell company insurance securitization"
25 means the issuance of a debt instrument, the proceeds from
26 which support the exposures attributed to a protected cell, by
27 a protected cell company where repayment of principal or
28 interest, or both, to investors pursuant to the transaction
29 terms is contingent upon the occurrence or nonoccurrence of an
30 event with respect to which the protected cell company is
31 exposed to loss under insurance or reinsurance contracts which
32 the protected cell company has issued.

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

1 Sec. 4. NEW SECTION. 521G.4 DETERMINATION OF FAIR VALUE.

2 A quoted market price in an active market is deemed to be
3 the best evidence of fair value of an asset and shall be used
4 as the basis for the measurement of fair value, if available.
5 If a quoted market price is available, the fair value is the
6 product of the number of trading units times the quoted market
7 price. If a quoted market price is not available, the
8 estimate of fair value shall be based on the best information
9 available. The estimate of fair value shall consider the
10 price for similar assets and liabilities and the results of a
11 valuation technique to the extent available in the
12 circumstances. For purposes of this section, "valuation
13 technique" includes, but is not limited to, the present value
14 of estimated expected future cash flows using a discount rate
15 commensurate with the risks involved, option-pricing models,
16 matrix pricing, option-adjusted spread models, and fundamental
17 analysis. A valuation technique for measuring financial
18 assets and liabilities and servicing assets and liabilities
19 shall be consistent with the objective of measuring fair
20 value. A valuation technique shall incorporate assumptions
21 that a market participant would use in estimating value,
22 future revenue, and future expenses, including assumptions
23 about interest rates, default, prepayment, and volatility. In
24 measuring financial liabilities and servicing liabilities at
25 fair value by discounting estimated future cash flows,
26 discount rates shall be used at which those liabilities could
27 be settled in an open and competitive transaction. An
28 estimate of expected future cash flow, if used to estimate
29 fair value, shall be the best estimate based on reasonable and
30 supportable assumptions and projections. All available
31 evidence shall be considered in developing an estimate of
32 expected future cash flow. The weight given to the evidence
33 shall be commensurate with the extent to which the evidence
34 can be verified objectively. If a range is estimated for
35 either the amount or timing of possible cash flows, the

1 likelihood of possible outcomes shall be considered in
2 determining the best estimate of such future cash flows.

3 Sec. 5. NEW SECTION. 521G.5 ESTABLISHMENT OF PROTECTED
4 CELLS.

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

18 A protected cell shall have its own distinct name or
19 designation, which shall include the words "protected cell".
20 The protected cell company shall transfer all assets
21 attributable to a protected cell to one or more separately
22 established and identified protected cell accounts bearing the
23 name or designation of that protected cell. Protected cell
24 assets shall be held in the protected cell accounts for the
25 purpose of satisfying the obligations of that protected cell.

26 2. Attribution of assets and liabilities between a
27 protected cell and the general account shall be pursuant to
28 the plan of operation. Other attribution of assets or
29 liabilities shall not be made by a protected cell company
30 between the protected cell company's general account and its
31 protected cells. The attribution of assets and liabilities
32 between the general account and a protected cell, or from
33 investors in the form of principal on a debt instrument issued
34 by a protected cell company in connection with a protected
35 cell company insurance securitization transaction, shall be in

1 cash or in readily marketable securities with established
2 market values.

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

16 4. This chapter shall not be construed to prohibit the
17 protected cell company from contracting with or arranging for
18 an investment advisor, commodity trading advisor, or other
19 third party to manage the protected cell assets of a protected
20 cell, provided that all remuneration, expenses, and other
21 compensation of the third-party advisor or manager are payable
22 from the protected cell assets of that protected cell and not
23 from the protected cell assets of other protected cells or the
24 assets of the protected cell company's general account.

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

31 (1) Keep protected cell assets and protected cell
32 liabilities separate and separately identifiable from the
33 assets and liabilities of the protected cell company's general
34 account.

35 (2) Keep protected cell assets and protected cell

1 liabilities attributable to one protected cell separate and
2 separately identifiable from protected cell assets and
3 protected cell liabilities attributable to other protected
4 cells.

5 b. Tracing shall be applicable to protected cell assets
6 when commingled with protected cell assets of other protected
7 cells or the assets of the protected cell company's general
8 account. The remedy of tracing shall not be construed as an
9 exclusive remedy.

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

14 Sec. 6. NEW SECTION. 521G.6 USE AND OPERATION OF
15 PROTECTED CELLS.

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

24 2. The income, gains, and losses, realized or unrealized,
25 from protected cell assets and protected cell liabilities
26 shall be credited to or charged against the protected cell
27 without regard to other income, gains, or losses of the
28 protected cell company, including income, gains, or losses of
29 another protected cell. An amount attributed to a protected
30 cell and accumulations on the attributed amount may be
31 invested and reinvested without regard to the requirements and
32 limitations of section 515.35, and the investments in a
33 protected cell shall not be taken into account in applying the
34 investment limitations otherwise applicable to the investments
35 of the protected cell company.

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

3 4. a. A protected cell company, with respect to its
4 protected cells, shall engage in fully funded indemnity
5 triggered insurance securitization to support in full the
6 protected cell exposures attributable to that protected cell.
7 A protected cell company insurance securitization that is
8 nonindemnity triggered qualifies as an insurance
9 securitization under this chapter only after the commissioner
10 adopts rules providing for all of the following:

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

13 (2) Accounting requirements.

14 (3) Disclosure requirements.

15 (4) Risk-based capital treatment.

16 (5) Assessment of risks associated with such
17 securitizations.

18 b. A protected cell company insurance securitization that
19 is not fully funded, whether indemnity triggered or
20 nonindemnity triggered, is prohibited. Protected cell assets
21 may be used to pay interest or other consideration on an
22 outstanding debt or other obligation attributable to that
23 protected cell. This subsection shall not be construed or
24 interpreted to prevent a protected cell company from entering
25 into a swap agreement or other transaction for the account of
26 the protected cell that has the effect of guaranteeing
27 interest or other consideration.

28 5. In a protected cell company insurance securitization, a
29 contract or other documentation effecting the transaction
30 shall contain provisions identifying the protected cell to
31 which the transaction is attributed. In addition, the
32 contract or other documentation shall clearly disclose that
33 the assets of the protected cell, and only those assets, are
34 available to pay the obligations of that protected cell.
35 Notwithstanding this subsection, the failure to include such

1 language in a contract or other documentation shall not be
2 used as the sole basis by a creditor, reinsurer, or other
3 claimant to circumvent this chapter.

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

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

14 Sec. 7. NEW SECTION. 521G.7 CREDITORS AND OTHER
15 CLAIMANTS OF PROTECTED CELLS.

16 1. a. Protected cell assets shall only be available to a
17 creditor of the protected cell company that is a creditor with
18 respect to that protected cell. Such a creditor shall have
19 recourse to the protected cell assets attributable to that
20 protected cell, to the exclusion of other creditors of the
21 protected cell company that are not creditors with respect to
22 that protected cell. Such other creditors shall have no
23 recourse to the protected cell assets attributable to that
24 protected cell. A creditor with respect to a protected cell
25 does not have recourse against the protected cell assets of
26 other protected cells or the assets of the protected cell
27 company's general account.

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

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

1 following:

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

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

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

20 4. A protected cell is not subject to any requirements
21 relating to a guaranty fund or guaranty association, and shall
22 not be assessed by or otherwise be required to contribute to
23 any guaranty fund or guaranty association in this state with
24 respect to the activities, assets, or obligations of a
25 protected cell. This section does not affect the activities
26 or obligations of a protected cell company's general account.

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

29 a. A fraudulent conveyance.

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

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

34 Sec. 8. NEW SECTION. 521G.8 SUPERVISION, REHABILITATION,
35 OR LIQUIDATION OF A PROTECTED CELL COMPANY.

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

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

13 Sec. 9. NEW SECTION. 521G.9 TRANSACTION OF INSURANCE
14 BUSINESS PROHIBITED.

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

26 Sec. 10. NEW SECTION. 521G.10 RULES.

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

29 EXPLANATION

30 This bill creates a new Code chapter 521G which authorizes
31 a domestic insurer authorized to transact the business of
32 insurance under Code chapter 515 to establish protected cells
33 as a means of accessing alternative sources of capital.

34 New Code section 521G.1 establishes the title of the new
35 Code chapter as the "Protected Cell Company Act".

1 New Code section 521G.2 sets forth the purpose of the new
2 Code chapter.

3 New Code section 521G.3 sets forth the definitions of key
4 terms used in the new Code chapter.

5 New Code section 521G.4 establishes the manner for
6 determining the fair value of protected cell assets and
7 liabilities.

8 New Code section 521G.5 provides for the establishment of
9 protected cells. The new Code section provides that a
10 protected cell company may establish one or more protected
11 cells with the prior written approval of the commissioner of a
12 plan of operation submitted by the protected cell company with
13 respect to each protected cell related to an insurance
14 securitization. The new Code section provides that the plan
15 shall include, but not be limited to, the specific business
16 objectives and investment guidelines of the protected cell
17 company.

18 New Code section 521G.6 provides for the use and operation
19 of protected cells.

20 New Code section 521G.7 provides for the rights of
21 creditors and other claimants with respect to the assets of a
22 protected cell company. The new Code section provides that
23 protected cell assets shall only be available to a creditor of
24 the protected cell company that is a creditor with respect to
25 that protected cell. Such creditor shall have recourse to the
26 protected cell assets attributable to that protected cell, to
27 the exclusion of other creditors of the protected cell company
28 that are not creditors with respect to that protected cell.

29 New Code section 521G.8 provides for the supervision,
30 rehabilitation, and liquidation of protected cell companies.

31 New Code section 521G.9 provides that a protected cell
32 company insurance securitization is not an insurance or
33 reinsurance contract, and that a person participating in such
34 protected cell company insurance securitization, solely as a
35 result of such participation, is not deemed to be transacting

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1 an insurance business in this state.

2 New Code section 521G.10 directs the commissioner to adopt
3 rules under Code chapter 17A to implement new Code chapter
4 521G.

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REPRINTED

FILED FEB 17 2000

SENATE FILE 2200
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3126)

Passed Senate, Date (P.527) 3/6/00 Passed House, Date (P.895) 3/22/00
Vote: Ayes 49 Nays 0 Vote: Ayes 99 Nays 0
Approved 4/5/00

A BILL FOR

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3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 2200

S-5037

1 Amend Senate File 2200 as follows:
 2 1. Page 1, line 7, by inserting after the word
 3 "chapter" the following: "508 or".
 4 2. Page 1, line 19, by inserting after the word
 5 "chapter" the following: "508 or".
 6 3. Page 6, line 32, by inserting after the word
 7 "section" the following: "511.8 or".
 By JEFF LAMBERTI

S-5037 FILED FEBRUARY 29, 2000
Adopted
3/6/00
(P.527)

SF 2200

15-10-21

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3 "Protected Cell Company Act".

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29 possible exposure attributable to the protected cell with
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32 protected cell company other than protected cell assets and
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4 cells.

5 b. Tracing shall be applicable to protected cell assets
6 when commingled with protected cell assets of other protected
7 cells or the assets of the protected cell company's general
8 account. The remedy of tracing shall not be construed as an
9 exclusive remedy.

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

14 Sec. 6. NEW SECTION. 521G.6 USE AND OPERATION OF
15 PROTECTED CELLS.

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

24 2. The income, gains, and losses, realized or unrealized,
25 from protected cell assets and protected cell liabilities
26 shall be credited to or charged against the protected cell
27 without regard to other income, gains, or losses of the
28 protected cell company, including income, gains, or losses of
29 another protected cell. An amount attributed to a protected
30 cell and accumulations on the attributed amount may be
31 invested and reinvested without regard to the requirements and
32 limitations of section 515.35, and the investments in a
33 protected cell shall not be taken into account in applying the
34 investment limitations otherwise applicable to the investments
35 of the protected cell company.

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

3 4. a. A protected cell company, with respect to its
4 protected cells, shall engage in fully funded indemnity
5 triggered insurance securitization to support in full the
6 protected cell exposures attributable to that protected cell.
7 A protected cell company insurance securitization that is
8 nonindemnity triggered qualifies as an insurance
9 securitization under this chapter only after the commissioner
10 adopts rules providing for all of the following:

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

13 (2) Accounting requirements.

14 (3) Disclosure requirements.

15 (4) Risk-based capital treatment.

16 (5) Assessment of risks associated with such
17 securitizations.

18 b. A protected cell company insurance securitization that
19 is not fully funded, whether indemnity triggered or
20 nonindemnity triggered, is prohibited. Protected cell assets
21 may be used to pay interest or other consideration on an
22 outstanding debt or other obligation attributable to that
23 protected cell. This subsection shall not be construed or
24 interpreted to prevent a protected cell company from entering
25 into a swap agreement or other transaction for the account of
26 the protected cell that has the effect of guaranteeing
27 interest or other consideration.

28 5. In a protected cell company insurance securitization, a
29 contract or other documentation affecting the transaction
30 shall contain provisions identifying the protected cell to
31 which the transaction is attributed. In addition, the
32 contract or other documentation shall clearly disclose that
33 the assets of the protected cell, and only those assets, are
34 available to pay the obligations of that protected cell.
35 Notwithstanding this subsection, the failure to include such

1 language in a contract or other documentation shall not be
2 used as the sole basis by a creditor, reinsurer, or other
3 claimant to circumvent this chapter.

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

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

14 Sec. 7. NEW SECTION. 521G.7 CREDITORS AND OTHER
15 CLAIMANTS OF PROTECTED CELLS.

16 1. a. Protected cell assets shall only be available to a
17 creditor of the protected cell company that is a creditor with
18 respect to that protected cell. Such a creditor shall have
19 recourse to the protected cell assets attributable to that
20 protected cell, to the exclusion of other creditors of the
21 protected cell company that are not creditors with respect to
22 that protected cell. Such other creditors shall have no
23 recourse to the protected cell assets attributable to that
24 protected cell. A creditor with respect to a protected cell
25 does not have recourse against the protected cell assets of
26 other protected cells or the assets of the protected cell
27 company's general account.

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

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

1 following:

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

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

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

20 4. A protected cell is not subject to any requirements
21 relating to a guaranty fund or guaranty association, and shall
22 not be assessed by or otherwise be required to contribute to
23 any guaranty fund or guaranty association in this state with
24 respect to the activities, assets, or obligations of a
25 protected cell. This section does not affect the activities
26 or obligations of a protected cell company's general account.

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

29 a. A fraudulent conveyance.

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

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

34 Sec. 8. NEW SECTION. 521G.8 SUPERVISION, REHABILITATION,
35 OR LIQUIDATION OF A PROTECTED CELL COMPANY.

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

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

13 Sec. 9. NEW SECTION. 521G.9 TRANSACTION OF INSURANCE
14 BUSINESS PROHIBITED.

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

26 Sec. 10. NEW SECTION. 521G.10 RULES.

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

29 EXPLANATION

30 This bill creates a new Code chapter 521G which authorizes
31 a domestic insurer authorized to transact the business of
32 insurance under Code chapter 515 to establish protected cells
33 as a means of accessing alternative sources of capital.

34 New Code section 521G.1 establishes the title of the new
35 Code chapter as the "Protected Cell Company Act".

1 New Code section 521G.2 sets forth the purpose of the new
2 Code chapter.

3 New Code section 521G.3 sets forth the definitions of key
4 terms used in the new Code chapter.

5 New Code section 521G.4 establishes the manner for
6 determining the fair value of protected cell assets and
7 liabilities.

8 New Code section 521G.5 provides for the establishment of
9 protected cells. The new Code section provides that a
10 protected cell company may establish one or more protected
11 cells with the prior written approval of the commissioner of a
12 plan of operation submitted by the protected cell company with
13 respect to each protected cell related to an insurance
14 securitization. The new Code section provides that the plan
15 shall include, but not be limited to, the specific business
16 objectives and investment guidelines of the protected cell
17 company.

18 New Code section 521G.6 provides for the use and operation
19 of protected cells.

20 New Code section 521G.7 provides for the rights of
21 creditors and other claimants with respect to the assets of a
22 protected cell company. The new Code section provides that
23 protected cell assets shall only be available to a creditor of
24 the protected cell company that is a creditor with respect to
25 that protected cell. Such creditor shall have recourse to the
26 protected cell assets attributable to that protected cell, to
27 the exclusion of other creditors of the protected cell company
28 that are not creditors with respect to that protected cell.

29 New Code section 521G.8 provides for the supervision,
30 rehabilitation, and liquidation of protected cell companies.

31 New Code section 521G.9 provides that a protected cell
32 company insurance securitization is not an insurance or
33 reinsurance contract, and that a person participating in such
34 protected cell company insurance securitization, solely as a
35 result of such participation, is not deemed to be transacting

1 an insurance business in this state.

2 New Code section 521G.10 directs the commissioner to adopt
3 rules under Code chapter 17A to implement new Code chapter
4 521G.

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H. 3/7/00 Commerce + Reg
H. 3/14/00 Do Pass

SENATE FILE 2200
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3126)

(AS AMENDED AND PASSED BY THE SENATE MARCH 6, 2000)

_____ - New Language by the Senate

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the establishment of protected cells by
2 domestic insurers.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

S.F. 2200

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1 Section 1. NEW SECTION. 521G.1 SHORT TITLE.

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

4 Sec. 2. NEW SECTION. 521G.2 PURPOSE.

5 The purpose of this chapter is to authorize the
6 establishment of protected cells by a domestic insurer
7 authorized to transact the business of insurance under chapter
8 508 or 515 as a means of accessing alternative sources of
9 capital and achieving the benefits of insurance
10 securitization. Investors in fully funded insurance
11 securitization transactions provide funds that are available
12 to pay the insurer's insurance obligations or to repay the
13 investors, or both. Protected cells are intended to achieve
14 more efficiencies with respect to such insurance
15 securitization.

16 Sec. 3. NEW SECTION. 521G.3 DEFINITIONS.

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

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

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

26 3. "Fully funded" means, with respect to any exposure
27 attributed to a protected cell, that the fair value of the
28 protected cell assets, on the date on which the insurance
29 securitization is effected, equals or exceeds the maximum
30 possible exposure attributable to the protected cell with
31 respect to such exposures.

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

35 5. "Indemnity trigger" means a transaction term by which

1 relief of the issuer's obligation to repay investors is
2 triggered by its incurring a specified level of losses under
3 its insurance or reinsurance contracts.

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

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

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

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

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

25 11. "Protected cell company insurance securitization"
26 means the issuance of a debt instrument, the proceeds from
27 which support the exposures attributed to a protected cell, by
28 a protected cell company where repayment of principal or
29 interest, or both, to investors pursuant to the transaction
30 terms is contingent upon the occurrence or nonoccurrence of an
31 event with respect to which the protected cell company is
32 exposed to loss under insurance or reinsurance contracts which
33 the protected cell company has issued.

34 12. "Protected cell liabilities" means all liabilities and
35 other obligations identified with and attributable to a

1 specific protected cell of a protected cell company.

2 Sec. 4. NEW SECTION. 521G.4 DETERMINATION OF FAIR VALUE.

3 A quoted market price in an active market is deemed to be
4 the best evidence of fair value of an asset and shall be used
5 as the basis for the measurement of fair value, if available.
6 If a quoted market price is available, the fair value is the
7 product of the number of trading units times the quoted market
8 price. If a quoted market price is not available, the
9 estimate of fair value shall be based on the best information
10 available. The estimate of fair value shall consider the
11 price for similar assets and liabilities and the results of a
12 valuation technique to the extent available in the
13 circumstances. For purposes of this section, "valuation
14 technique" includes, but is not limited to, the present value
15 of estimated expected future cash flows using a discount rate
16 commensurate with the risks involved, option-pricing models,
17 matrix pricing, option-adjusted spread models, and fundamental
18 analysis. A valuation technique for measuring financial
19 assets and liabilities and servicing assets and liabilities
20 shall be consistent with the objective of measuring fair
21 value. A valuation technique shall incorporate assumptions
22 that a market participant would use in estimating value,
23 future revenue, and future expenses, including assumptions
24 about interest rates, default, prepayment, and volatility. In
25 measuring financial liabilities and servicing liabilities at
26 fair value by discounting estimated future cash flows,
27 discount rates shall be used at which those liabilities could
28 be settled in an open and competitive transaction. An
29 estimate of expected future cash flow, if used to estimate
30 fair value, shall be the best estimate based on reasonable and
31 supportable assumptions and projections. All available
32 evidence shall be considered in developing an estimate of
33 expected future cash flow. The weight given to the evidence
34 shall be commensurate with the extent to which the evidence
35 can be verified objectively. If a range is estimated for

1 either the amount or timing of possible cash flows, the
2 likelihood of possible outcomes shall be considered in
3 determining the best estimate of such future cash flows.

4 Sec. 5. NEW SECTION. 521G.5 ESTABLISHMENT OF PROTECTED
5 CELLS.

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

27 2. Attribution of assets and liabilities between a
28 protected cell and the general account shall be pursuant to
29 the plan of operation. Other attribution of assets or
30 liabilities shall not be made by a protected cell company
31 between the protected cell company's general account and its
32 protected cells. The attribution of assets and liabilities
33 between the general account and a protected cell, or from
34 investors in the form of principal on a debt instrument issued
35 by a protected cell company in connection with a protected

1 cell company insurance securitization transaction, shall be in
2 cash or in readily marketable securities with established
3 market values.

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

17 4. This chapter shall not be construed to prohibit the
18 protected cell company from contracting with or arranging for
19 an investment advisor, commodity trading advisor, or other
20 third party to manage the protected cell assets of a protected
21 cell, provided that all remuneration, expenses, and other
22 compensation of the third-party advisor or manager are payable
23 from the protected cell assets of that protected cell and not
24 from the protected cell assets of other protected cells or the
25 assets of the protected cell company's general account.

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

32 (1) Keep protected cell assets and protected cell
33 liabilities separate and separately identifiable from the
34 assets and liabilities of the protected cell company's general
35 account.

1 (2) Keep protected cell assets and protected cell
2 liabilities attributable to one protected cell separate and
3 separately identifiable from protected cell assets and
4 protected cell liabilities attributable to other protected
5 cells.

6 b. Tracing shall be applicable to protected cell assets
7 when commingled with protected cell assets of other protected
8 cells or the assets of the protected cell company's general
9 account. The remedy of tracing shall not be construed as an
10 exclusive remedy.

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

15 Sec. 6. NEW SECTION. 521G.6 USE AND OPERATION OF
16 PROTECTED CELLS.

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

25 2. The income, gains, and losses, realized or unrealized,
26 from protected cell assets and protected cell liabilities
27 shall be credited to or charged against the protected cell
28 without regard to other income, gains, or losses of the
29 protected cell company, including income, gains, or losses of
30 another protected cell. An amount attributed to a protected
31 cell and accumulations on the attributed amount may be
32 invested and reinvested without regard to the requirements and
33 limitations of section 511.8 or 515.35, and the investments in
34 a protected cell shall not be taken into account in applying
35 the investment limitations otherwise applicable to the

1 investments of the protected cell company.

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

4 4. a. A protected cell company, with respect to its
5 protected cells, shall engage in fully funded indemnity
6 triggered insurance securitization to support in full the
7 protected cell exposures attributable to that protected cell.

8 A protected cell company insurance securitization that is
9 nonindemnity triggered qualifies as an insurance
10 securitization under this chapter only after the commissioner
11 adopts rules providing for all of the following:

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

14 (2) Accounting requirements.

15 (3) Disclosure requirements.

16 (4) Risk-based capital treatment.

17 (5) Assessment of risks associated with such
18 securitizations.

19 b. A protected cell company insurance securitization that
20 is not fully funded, whether indemnity triggered or
21 nonindemnity triggered, is prohibited. Protected cell assets
22 may be used to pay interest or other consideration on an
23 outstanding debt or other obligation attributable to that
24 protected cell. This subsection shall not be construed or
25 interpreted to prevent a protected cell company from entering
26 into a swap agreement or other transaction for the account of
27 the protected cell that has the effect of guaranteeing
28 interest or other consideration.

29 5. In a protected cell company insurance securitization, a
30 contract or other documentation affecting the transaction
31 shall contain provisions identifying the protected cell to
32 which the transaction is attributed. In addition, the
33 contract or other documentation shall clearly disclose that
34 the assets of the protected cell, and only those assets, are
35 available to pay the obligations of that protected cell.

1 Notwithstanding this subsection, the failure to include such
2 language in a contract or other documentation shall not be
3 used as the sole basis by a creditor, reinsurer, or other
4 claimant to circumvent this chapter.

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

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

15 Sec. 7. NEW SECTION. 521G.7 CREDITORS AND OTHER
16 CLAIMANTS OF PROTECTED CELLS.

17 1. a. Protected cell assets shall only be available to a
18 creditor of the protected cell company that is a creditor with
19 respect to that protected cell. Such a creditor shall have
20 recourse to the protected cell assets attributable to that
21 protected cell, to the exclusion of other creditors of the
22 protected cell company that are not creditors with respect to
23 that protected cell. Such other creditors shall have no
24 recourse to the protected cell assets attributable to that
25 protected cell. A creditor with respect to a protected cell
26 does not have recourse against the protected cell assets of
27 other protected cells or the assets of the protected cell
28 company's general account.

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

34 2. An obligation of a protected cell company to a person
35 which arises from a transaction, or is otherwise imposed, with

1 respect to a protected cell, is subject to both of the
2 following:

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

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

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

21 4. A protected cell is not subject to any requirements
22 relating to a guaranty fund or guaranty association, and shall
23 not be assessed by or otherwise be required to contribute to
24 any guaranty fund or guaranty association in this state with
25 respect to the activities, assets, or obligations of a
26 protected cell. This section does not affect the activities
27 or obligations of a protected cell company's general account.

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

30 a. A fraudulent conveyance.

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

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

35 Sec. 8. NEW SECTION. 521G.8 SUPERVISION, REHABILITATION,

1 OR LIQUIDATION OF A PROTECTED CELL COMPANY.

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

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

14 Sec. 9. NEW SECTION. 521G.9 TRANSACTION OF INSURANCE
15 BUSINESS PROHIBITED.

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

27 Sec. 10. NEW SECTION. 521G.10 RULES.

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

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SENATE FILE 2200

AN ACT

PROVIDING FOR THE ESTABLISHMENT OF PROTECTED CELLS BY
DOMESTIC INSURERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 521G.1 SHORT TITLE.

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

Sec. 2. NEW SECTION. 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.

Sec. 3. NEW SECTION. 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.

Sec. 4. NEW SECTION. 521G.4 DETERMINATION OF FAIR VALUE.

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.

Sec. 5. NEW SECTION. 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.

Sec. 6. NEW SECTION. 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 company 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.

Sec. 7. NEW SECTION. 521G.7 CREDITORS AND OTHER CLAIMANTS OF PROTECTED CELLS.

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.

Sec. 8. NEW SECTION. 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.

Sec. 9. NEW SECTION. 521G.9 TRANSACTION OF INSURANCE BUSINESS PROHIBITED.

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,

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brokerage, intermediary, advisory, or consulting business as a result of such participation.

Sec. 10. NEW SECTION. 521G.10 RULES.

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

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2200, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/5, 2000

THOMAS J. VILSACK
Governor