

1 AN ACT concerning insurance.

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

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 107.06a, 107.07, 107.15, 179A-5, 179A-10,
6 179A-15, 179A-20, 179A-25, 179A-30, and 179A-35 as follows:

7 (215 ILCS 5/107.06a) (from Ch. 73, par. 719.06a)
8 Sec. 107.06a. Organization under Illinois Insurance
9 Code.

10 (a) After December 31, 1997, a syndicate or limited
11 syndicate, except for a limited syndicate formed as a
12 partnership or a special purpose limited syndicate, may only
13 be organized pursuant to Sections 7, 8, 10, 11, 12, 14, 14.1
14 (other than subsection (d) thereof), 15 (other than
15 subsection (d) thereof), 18, 19, 20, 21, 22, 23, 25, 27.1,
16 28, 28.1, 28.2, 29, 30, 31, 32, 32.1, 33, and 35.1 and
17 Article X of this Code, to carry on the business of a
18 syndicate, or limited syndicate under Article V-1/2 of this
19 Code; provided that such syndicate or limited syndicate is
20 admitted to the Exchange.

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

23 (1) Articles I, IIA, VIII, VIII 1/2, X, XI, XI 1/2,
24 XII, XII 1/2, XIII, XIII 1/2, XXIV, XXV (Sections 408 and
25 412 only), and XXVIII (except for Sections 445, 445.1,
26 445.2, 445.3, 445.4, and 445.5) of this Code;

27 (2) Subsections (2) and (3) of Section 155.04 and
28 Sections 13, 132.1 through 140, 141a, 144, 155.01,
29 155.03, 378, 379.1, 393.1, 395, and 396 of this Code;

30 (3) the Reinsurance Intermediary Act; and

31 (4) the Producer Controlled Insurer Act.

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

4 (Source: P.A. 90-499, eff. 8-19-97; 90-794, eff. 8-14-98;
5 91-278, eff. 7-23-99.)

6 (215 ILCS 5/107.07) (from Ch. 73, par. 719.07)

7 Sec. 107.07. Admission. Capitalization:

8 Syndicate - at least \$2,000,000.

9 Subscriber - at least \$30,000.

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

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

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

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

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

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

24 (215 ILCS 5/107.15) (from Ch. 73, par. 719.15)

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

28 Syndicate: A syndicate is a subscriber, group of
29 subscribers, limited syndicate or group of limited syndicates
30 which meets the minimum capital requirement of Section
31 107.07.

32 Limited Syndicate: A limited syndicate is a corporation

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

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

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

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

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

19 Reinsurance: Means reinsuring insurance.

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

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

25 (215 ILCS 5/179A-5)

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

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

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

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

27 (215 ILCS 5/179A-10)

28 Sec. 179A-10. Definitions.

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

31 "Fully funded" means that, with respect to any exposure
 32 attributed to a protected cell, the market value of the
 33 protected cell assets, on the date on which the insurance

1 securitization is effected, equals or exceeds the maximum
2 possible exposure attributable to the protected cell with
3 respect to those exposures.

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

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

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

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

23 "Non-indemnity trigger" means a transaction term by which
24 relief of the issuer's obligation to repay investors is
25 triggered solely by some event or condition other than the
26 individual protected cell company incurring a specified level
27 of losses under its insurance or reinsurance contracts.

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

32 "Protected cell account" means a specifically identified
33 bank or custodial account established by a protected cell
34 company for the purpose of legally segregating the protected

1 cell assets of one protected cell from the protected cell
2 assets of other protected cells and from the assets of the
3 protected cell company's general account.

4 "Protected cell assets" means all assets, contract
5 rights, and general intangibles identified with and
6 attributable to a specific protected cell of a protected cell
7 company, ~~including assets physically segregated in a~~
8 ~~protected cell account.~~

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

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

20 "Protected cell liabilities" means all liabilities and
21 other obligations identified with and attributable to a
22 specific protected cell of a protected cell company.
23 ~~Protected cell liabilities include liabilities representing~~
24 ~~the insurance obligations of the protected cell as well as~~
25 ~~obligations of the protected cell arising out of any~~
26 ~~insurance securitization transactions of the protected cell.~~

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

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

30 (215 ILCS 5/179A-15)

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

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

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

21 (b) All sales,---exchanges,---transfers,---or---other
 22 attributions of assets and liabilities between a protected
 23 cell and the general account shall be in accordance with the
 24 plan of operation approved by the Director, or shall be
 25 otherwise--approved--by--the--Director,---Unless---otherwise
 26 approved--by--the--Director,---no--sale,---exchange,---transfer,---or No
 27 other attribution of assets or liabilities may be made by a
 28 protected cell company between the protected cell company's
 29 general account and one--or--more--of its protected cells,
 30 unless,---in--the--case--of--an--attribution--to--a--protected--cell,
 31 the--attribution--is--made--solely--to--establish--the--protected
 32 cell--or,---in--the--case--of--an--attribution--from--a--protected--cell
 33 to--the--company's--general--account,---the--attribution--is--made
 34 solely--to--support--the--company's--insurance--obligations--that

1 are-the-subject-of-the-business-of-the-protected--cell.---Any
 2 sale,--exchange,--transfer,--or-ether Any attribution of assets
 3 and liabilities between the general account and a protected
 4 cell or from investors in the form of principal on a debt
 5 instrument issued by a protected cell company shall be in
 6 cash or in readily marketable securities with established
 7 market values unless--otherwise---approved--in--advance--in
 8 writing-by-the-Director.

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

21 (d) This Article shall not be construed to prohibit the
 22 protected cell company from contracting with or arranging for
 23 an investment advisor, commodity trading advisor, or other
 24 third party to manage the protected cell assets of a
 25 protected cell, provided that all remuneration, expenses, and
 26 other compensation of the third party advisor or manager are
 27 payable from the protected cell assets of that protected cell
 28 and not from the protected cell assets of other protected
 29 cells or the assets of the protected cell company's general
 30 account.

31 (e) A ~~domestic-company-that-is-a~~ protected cell company
 32 shall establish such administrative and accounting procedures
 33 as-are necessary to properly identify the one or more
 34 protected cells of the protected cell company and the

1 protected cell assets and protected cell liabilities
2 attributable to the protected cells thereto. It shall be the
3 duty of the directors of a protected cell company to:

4 (1)(i) keep protected cell assets and protected
5 cell liabilities separate and separately identifiable
6 from the assets and liabilities of the protected cell
7 company's general account; and

8 (2)(ii) keep protected cell assets and protected
9 cell liabilities attributable to one protected cell
10 separate and separately identifiable from protected cell
11 assets and protected cell liabilities attributable to
12 other protected cells.

13 If this Section is violated Notwithstanding---the
14 foregoing, the remedy of tracing shall be applicable to
15 protected cell assets when commingled with protected cell
16 assets of other protected cells or the assets of the
17 protected cell company's general account. The remedy of
18 tracing shall not be construed as an exclusive remedy.

19 (f) The protected cell Unless-otherwise-approved-by--the
20 Director,--the company shall, when establishing a protected
21 cell, attribute to the protected cell assets with a value at
22 least equal to the reserves and other insurance liabilities
23 attributed to that protected cell.

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

25 (215 ILCS 5/179A-20)
26 Sec. 179A-20. Use and operation of protected cells.

27 (a) The protected cell assets of any protected cell may
28 not be charged with liabilities arising out of any other
29 business the protected cell company may conduct. All
30 contracts or other documentation reflecting protected cell
31 liabilities the-obligations---of--a--protected--cell--to--the
32 general--account shall clearly indicate that only the-assets
33 of the protected cell assets are available for the

1 satisfaction of those obligations--of--the protected cell
2 liabilities.

3 (b) The income, gains, and losses, realized or
4 unrealized, from protected cell assets and protected cell
5 liabilities must be credited to or charged against the
6 protected cell without regard to other income, gains, or
7 losses of the protected cell company, including income,
8 gains, or losses of other protected cells. Amounts
9 attributed to a protected cell and accumulations thereon may
10 be invested and reinvested without regard to any requirements
11 or limitations of Article VIII of this Code (Investments of
12 Domestic Companies), and the investments in a protected cell
13 or cells may not be taken into account in applying the
14 investment limitations otherwise applicable to the
15 investments of the protected cell company.

16 (c) ~~Unless--otherwise--approved--by--the--Director,~~ Assets
17 attributed to a protected cell must be valued at their
18 market value on the date of valuation, or if there is no
19 readily available market, then as provided in the contract or
20 the rules or other written documentation applicable to the
21 protected cell.

22 (d) A protected cell company shall, in respect of any of
23 its protected cells, engage in fully funded
24 indemnity-triggered insurance securitization to support in
25 full the protected cell exposures liabilities attributable to
26 that protected cell. A protected cell company An insurance
27 securitization that is not indemnity-triggered may qualify as
28 an insurance securitization under the terms of this Article
29 only after the Director adopts rules addressing the methods
30 of:(i) funding of the portion of the risk that is not
31 indemnity based, (ii) accounting, and disclosure, (iii)
32 risk-based capital treatment, and (iv) assessing risk
33 associated with such securitizations ~~and--does--not--support--in~~
34 ~~full--the--protected--cell--obligations--of--a--protected--cell--shall~~

1 be-prohibited-absent-specific-permission-by-the--Director--in
2 accordance--with--the-authority-granted-under-Section-179A-40
3 and-the-guidance-of-the--National--Association--of--Insurance
4 Commissioners,--as--such-guidance-is--developed. A protected
5 cell company An insurance securitization transaction that is
6 not fully funded, whether indemnity triggered or
7 non-indemnity triggered ~~indemnity-triggered~~---or---not
8 ~~indemnity-triggered~~, is prohibited. Protected cell assets
9 may be used to A-protected-cell-may pay interest or other
10 consideration on any outstanding debt or other obligation
11 attributable to that protected cell, and nothing in this
12 subsection shall be construed or interpreted to prevent a
13 protected cell company from entering into a swap agreement or
14 other transaction for the account of the protected cell that
15 has the effect of guaranteeing such interest or other
16 consideration.

17 (e) In all cases--in--which--a protected cell company
18 engages-in-an insurance securitizations securitization, the
19 contracts or other documentation ~~financial--instrument~~
20 effecting such transaction shall contain provisions
21 identifying the protected cell to which the transaction will
22 be attributed. In addition, the contracts or other
23 documentation ~~financial--instrument~~ shall clearly disclose
24 that the assets of that protected cell, and only those
25 assets, are available to pay the obligations of that
26 protected cell. Notwithstanding the foregoing, and subject to
27 the provisions of this Article and any other applicable law
28 or rule, the failure to include such language in the
29 contracts or other documentation ~~financial--instrument~~ shall
30 not be used as the sole basis by creditors, reinsurers, or
31 other claimants to circumvent the provisions of this Article.

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

1 protected cell may not issue insurance or reinsurance
 2 contracts directly to policyholders or reinsureds or have any
 3 obligation to the policyholders or reinsureds of the
 4 protected cell company's general account.

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

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

10 (215 ILCS 5/179A-25)

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

12 (a) Protected cell assets are ~~shall-only-be~~ available
 13 only to the creditors of the protected cell company who are
 14 creditors in respect of that protected cell and ~~shall-thereby~~
 15 be entitled, in conformity with the provisions of this
 16 Article, to have recourse to the protected cell assets
 17 attributable to that protected cell. Protected cell assets
 18 and shall be absolutely protected from the creditors of the
 19 protected cell company who are not creditors in respect of
 20 that protected cell and who, accordingly, are ~~shall~~ not be
 21 entitled to have recourse to the protected cell assets
 22 attributable to that protected cell. Creditors with respect
 23 to ~~of~~ a protected cell shall not be entitled to have
 24 recourse against the protected cell assets of other protected
 25 cells or the assets of the protected cell company's general
 26 account.

27 Protected cell assets are available only to creditors of
 28 a protected cell company after all protected cell liabilities
 29 have been extinguished or otherwise provided for in
 30 accordance with the plan of operation relating to that
 31 protected cell.

32 (b) When an obligation of a protected cell company to a
 33 person arises from a transaction, or is otherwise imposed, in

1 respect of a protected cell:

2 (1) that obligation of the protected cell company
3 shall extend only to the protected cell assets
4 attributable to that protected cell, and the person
5 shall, in respect of that obligation, be entitled to have
6 recourse only to the protected cell assets attributable
7 to that protected cell; and

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

15 (c) When an obligation of a protected cell company
16 relates solely to the general account, the obligation of the
17 protected cell company shall extend only to, and that
18 creditor shall, in respect of that obligation, be entitled to
19 have recourse only to, the assets of the protected cell
20 company's general account.

21 ~~(d) A-protected-cell-shall-only-be-authorized-to--assume~~
22 ~~an--insurance--obligation-directly-from-the-company's-general~~
23 ~~account,-and-under-no-circumstances-shall-a-protected-cell-be~~
24 ~~authorized-to-issue--insurance--or--reinsurance--policies--or~~
25 ~~contracts-directly-to-policyholders-or-reinsureds-or-have-any~~
26 ~~obligation--to--the--policyholders--of--the-company's-general~~
27 ~~account. The activities, assets, and obligations relating to~~
28 ~~of a protected cell are not subject to the provisions of~~
29 ~~Article XXXIII1/2 (Illinois Life and Health Guaranty~~
30 ~~Association Law) or Article XXXIV (Illinois Insurance~~
31 ~~Guaranty Fund), and neither a protected cell nor a protected~~
32 ~~cell company ~~protected--cells~~ shall not be assessed by or~~
33 ~~otherwise be required to contribute to any guaranty fund or~~
34 ~~guaranty association in this State with respect to the~~

1 activities, assets, or obligations of a protected cell.
 2 Nothing in this subsection shall affect the activities or
 3 obligations of a company's general account.

4 (e) In no event shall the establishment of one or more
 5 protected cells alone constitute or be deemed to be a
 6 fraudulent conveyance, an intent by the protected cell
 7 company to defraud creditors, or the carrying out of business
 8 by the protected cell company for any other fraudulent
 9 purpose.

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

11 (215 ILCS 5/179A-30)

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

14 (a) Notwithstanding any contrary provision in this Code,
 15 the rules promulgated under this Code, or any other
 16 applicable law or rule, upon any order of rehabilitation,
 17 conservation, or liquidation of ~~a domestic company that is~~ a
 18 protected cell company, the receiver shall be bound to deal
 19 with the protected cell company's assets and liabilities,
 20 including protected cell assets and protected cell
 21 liabilities, in accordance with the requirements set forth in
 22 this Article.

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

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

1 (215 ILCS 5/179A-35)

2 Sec. 179A-35. No transaction of an insurance business.

3 A protected cell insurance securitization shall not No
4 insurance-securitization-effected--under--the--provisions--of
5 this---Article---shall be deemed to be an insurance or
6 reinsurance contract. An policy-or-contract-of-insurance-and
7 no investor in a protected cell company insurance
8 securitization transaetion shall not, by sole means of such
9 investment, be deemed to be transacting an insurance business
10 in this State. The underwriters or selling agents (and their
11 partners, directors, officers, members, managers, employees,
12 agents, representatives, and advisors) involved in a
13 protected cell company insurance securitization shall not be
14 deemed to be conducting an insurance or reinsurance agency,
15 brokerage, intermediary, advisory, or consulting business by
16 virtue of their activities in connection therewith required
17 to-be-licensed-as--an--insurance--company--in--the--State--of
18 Illinois.

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

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