

**SENATE CHAMBER**  
**STATE OF OKLAHOMA**

DISPOSITION

☐ FLOOR AMENDMENT

No. \_\_\_\_\_

\_\_\_\_\_

☐ COMMITTEE AMENDMENT

\_\_\_\_\_

(Date)

Mr./Madame President:

I move to amend House Bill No. 1335, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

\_\_\_\_\_  
Senator Stanislawski

Stanislawski-CB-FS-Req#2227  
4/16/2019 1:33 PM

(Floor Amendments Only)    Date and Time Filed: \_\_\_\_\_

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

FLOOR SUBSTITUTE  
FOR ENGROSSED

HOUSE BILL NO. 1335

By: Sims and McEntire of the  
House

and

Stanislowski of the Senate

FLOOR SUBSTITUTE

An Act relating to insurance; creating the Protected Cell Companies Act; declaring purpose; providing definitions; providing for establishment of protective cell; requiring plan of operation; requiring approval of the Insurance Commissioner; providing for attributions of assets and liabilities; providing for legal status of protected cell; permitting right to contract; directing protected cell company to establish administrative and accounting procedures; prohibiting certain liabilities for protected cell assets; providing for valuation of assets; authorizing a protected cell company to engage in insurance securitization; requiring certain provisions be included in contracts or other documentation effecting the transaction; providing for close-out of protected cell account at the cessation of business; prohibiting issuance of certain contracts directly to policyholders or reinsureds; precluding availability of assets to certain creditors; precluding availability of assets to certain persons; providing for obligations relating solely to the general account; providing exception; providing for applicability and procedures during administrative supervision; providing exceptions for certain persons; authorizing the Insurance Commissioner to promulgate rules; providing for codification; and providing an effective date.

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

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

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

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

10 The Protected Cell Companies Act is adopted to provide a basis  
11 for the creation of protected cells by a domestic insurer as a means  
12 of accessing alternative sources of capital and achieving the  
13 benefits of insurance securitization or effectuating insurance  
14 business transfers in accordance with the Insurance Business  
15 Transfer Act. Investors in fully funded insurance securitization  
16 transactions provide funds that are available to pay the insurer's  
17 insurance obligations or to repay investors or both. The creation  
18 of protected cells is intended to be a means to achieve more  
19 efficiencies in conducting insurance securitizations or insurance  
20 business transfers.

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

24 As used in the Protected Cell Companies Act:

1        1. "Commissioner" means the Oklahoma Insurance Commissioner;

2        2. "Domestic insurer" means an insurance or reinsurance company  
3 domiciled in the State of Oklahoma or a captive insurance or  
4 reinsurance company domiciled in the State of Oklahoma;

5        3. "Fair value" of an asset or liability means the monetary  
6 amount at which that asset or liability could be bought, incurred,  
7 sold or settled in a current transaction between willing parties  
8 other than in a forced or liquidation sale. Quoted market prices in  
9 active markets are the best evidence of fair value and shall be used  
10 as the basis for the measurement, if available. If a quoted market  
11 price is available, the fair value is the product of the number of  
12 trading units times market price. If quoted market prices are not  
13 available, the estimate of fair value shall be based on the best  
14 information available. The estimate of fair value shall consider  
15 prices for similar assets and liabilities and the results of  
16 valuation techniques to the extent available in the circumstances.  
17 Examples of valuation techniques include the present value of  
18 estimated expected future cash flows using a discount rate  
19 commensurate with the risks involved, option pricing models, matrix  
20 pricing, option-adjusted spread models and fundamental analysis.  
21 Valuation techniques for measuring financial assets and liabilities  
22 and servicing assets and liabilities shall be consistent with the  
23 objective of measuring fair value. Those techniques shall  
24 incorporate assumptions that market participants would use in their

1 estimates of values, future revenues and future expenses, including  
2 assumptions about interest rates, default, prepayment and  
3 volatility. When measuring financial liabilities and servicing  
4 liabilities at fair value by discounting estimated future cash  
5 flows, the objective is to use discount rates at which those  
6 liabilities could be settled in an arm's-length transaction.  
7 Estimates of expected future cash flows, if used to estimate fair  
8 value, shall be the best estimate based on reasonable and  
9 supportable assumptions and projections. All available evidence  
10 shall be considered in developing estimates of expected future cash  
11 flows. The weight given to the evidence shall be commensurate with  
12 the extent to which the evidence can be verified objectively. If a  
13 range is estimated for the amount or timing of possible cash flows,  
14 the likelihood of possible outcomes shall be considered in  
15 determining the best estimate of future cash flows;

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

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

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

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

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

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

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

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

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

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

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

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

19        A. A protected cell company may establish one or more protected  
20 cells, with the prior written approval of the Insurance Commissioner  
21 of a plan of operation or amendments to a plan of operation  
22 submitted by the protected cell company with respect to each  
23 protected cell. Upon the written approval of the Commissioner of  
24 the plan of operation or amendments to a plan of operation, which

1 shall include, but not be limited to, the specific business  
2 objectives and investment guidelines of the protected cell, the  
3 protected cell company may, in accordance with the approved plan of  
4 operations, attribute to the protected cell amounts both reflective  
5 of insurance obligations with respect to its insurance business and  
6 obligations relating to the insurance securitization and assets to  
7 fund the obligations. Each protected cell of a protected cell  
8 company shall have its own distinct name or designation, which shall  
9 include the words "protected cell". The protected cell company  
10 shall transfer all assets attributable to each protected cell to one  
11 or more separately established and identified protected cell  
12 accounts bearing the name or designation of that protected cell.  
13 Protected cell assets shall be held in the protected cell accounts  
14 for the purpose of satisfying the obligations of that protected  
15 cell.

16 B. All attributions of assets and liabilities between a  
17 protected cell and the general account shall be in accordance with  
18 the plan of operation approved by the Commissioner or shall be  
19 otherwise approved by the Commissioner. Unless otherwise approved  
20 by the Commissioner, no other attribution of assets or liabilities  
21 shall be made by a protected cell company between the protected cell  
22 company's general account and one or more of its protected cells.  
23 Any attribution of assets and liabilities between the general  
24 account and a protected cell, or from investors in the form of



1 principal on a debt instrument issued by a protected cell company in  
2 connection with a protected cell company securitization, shall be in  
3 cash or readily marketable securities with established market values  
4 unless otherwise approved in advance in writing by the Commissioner.

5 C. The creation of a protected cell does not create, in respect  
6 of that protected cell, a legal person separate from the protected  
7 cell company. Amounts attributed to a protected cell under this  
8 act, including assets transferred to a protected cell account, are  
9 owned by the protected cell company and the protected cell company  
10 may not be, nor hold itself out to be, a trustee with respect to  
11 those protected cell assets of that protected cell account.

12 Notwithstanding the foregoing, the protected cell company may allow  
13 for a security interest to attach to protected cell assets or a  
14 protected cell account when in favor of a creditor of the protected  
15 cell and otherwise allowed under applicable law.

16 D. Nothing in the Protected Cell Companies Act shall be  
17 construed to prohibit the protected cell company from contracting  
18 with or arranging for an investment advisor, commodity trading  
19 advisor or other third party to manage the protected cell assets of  
20 a protected cell, provided that all remuneration, expenses and other  
21 compensation of the third-party advisor or manager are payable from  
22 the protected cell assets of that protected cell and not from the  
23 protected cell assets of other protected cells or the assets of the  
24 protected cell company's general account. The contract shall

1 clearly reference the protected cell or cells for which the contract  
2 has been arranged and shall contain a nonrecourse provision in favor  
3 of the company that prohibits the contracting party from seeking  
4 recourse against, or attaching the assets of the general account, or  
5 the assets of another protected cell, to satisfy the obligations of  
6 any one or more protected cells which are the subject of the  
7 contract.

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

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

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

21 Notwithstanding other provisions of this section, if this  
22 section is violated, the remedy of tracing shall be applicable to  
23 protected cell assets when commingled with protected cell assets of  
24 other protected cells or the assets of the protected cell company's

1 general account. The remedy of tracing shall not be construed as an  
2 exclusive remedy.

3 F. Unless otherwise approved by the Commissioner, the protected  
4 cell company shall, when establishing a protected cell, attribute  
5 the protected cell assets a value at least equal to the reserves and  
6 other insurance liabilities attributed to that protected cell.

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

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

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

19 C. The income, gains and losses, realized or unrealized, from  
20 protected cell assets and protected cell liabilities shall be  
21 credited to or charged against the protected cell without regard to  
22 other income, gains or losses of the protected cell company,  
23 including income, gains or losses of other protected cells. Amounts  
24 attributed to any protected cell and accumulations on the attributed

1 amounts may be invested and reinvested without regard to any  
2 requirements or limitations imposed on investments of insurance  
3 companies domiciled in this state and the investments in any  
4 protected cell or cells may not be taken into account in applying  
5 the investment limitations otherwise applicable to the investments  
6 of the protected cell company, subject to any restrictions that may  
7 be imposed by the Commissioner in accordance with Section 9 of this  
8 act.

9       D. As permitted by the Commissioner, a protected cell company  
10 may, in respect of any of its protected cells, engage in fully  
11 funded indemnity triggered and/or fully funded nonindemnity  
12 triggered insurance securitization to support in full the protected  
13 cell exposures attributable to that protected cell. A protected  
14 cell company insurance securitization that is nonindemnity triggered  
15 shall qualify as an insurance securitization under the terms of this  
16 section only after the Commissioner, in accordance with the  
17 authority granted under Section 9 of this act, adopts regulations  
18 addressing the methods of funding of the portion of the risk that is  
19 not indemnity-based, accounting, disclosure, risk-based capital  
20 treatment, and assessing risks associated with those  
21 securitizations. A protected cell company insurance securitization  
22 that is not fully funded, whether indemnity triggered or  
23 nonindemnity triggered, is prohibited. Protected cell assets may be  
24 used to pay interest or other consideration on any outstanding debt

1 or other obligation attributable to that protected cell, and nothing  
2 in this section shall be construed or interpreted as preventing a  
3 protected cell company from entering into a swap agreement or other  
4 transaction for the account of the protected cell that has the  
5 effect of guaranteeing that interest or other consideration.

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

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

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

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

11       A. 1. Protected cell assets shall only be available to the  
12 creditors of the protected cell company that are creditors in  
13 respect to that protected cell and shall be entitled, in conformity  
14 with the provisions of the Protected Cell Companies Act, to have  
15 recourse to the protected cell assets attributable to that protected  
16 cell, and shall be absolutely protected from the creditors of the  
17 protected cell company that are not creditors in respect of that  
18 protected cell and, who accordingly, shall not be entitled to have  
19 recourse to the protected cell assets attributable to that protected  
20 cell. Creditors, with respect to a protected cell, shall not be  
21 entitled to have recourse against the protected cell assets of other  
22 protected cells or the assets of the protected cell company's  
23 general account.

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

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

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

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

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

1 D. Other than with regard to the application of this section,  
2 the activities, assets and obligations relating to a protected cell  
3 are not subject to the provisions of Articles 20A and 20B of Title  
4 36 of the Oklahoma Statutes. Neither a protected cell nor a  
5 protected cell company shall be assessed by or be required to  
6 contribute to any guaranty fund or guaranty association in this  
7 state with respect to the activities, assets or obligations of a  
8 protected cell. Nothing in this section shall affect the activities  
9 or obligations of an insurer's general account.

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

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

18 A. Notwithstanding any contrary provision in the Oklahoma  
19 Insurance Code, the rules promulgated under the Oklahoma Insurance  
20 Code or any other applicable law or rule, upon placement under  
21 administrative supervision or upon any order of conservation,  
22 rehabilitation or liquidation of a protected cell company, the  
23 receiver shall be bound to deal with the protected cell company's  
24 assets and liabilities, including protected cell assets and



1 protected cell liabilities, in accordance with the requirements set  
2 forth in the Protected Cell Companies Act.

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

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

15 A protected cell company insurance securitization shall not be  
16 deemed to be an insurance or reinsurance contract. An investor in a  
17 protected cell company insurance securitization shall not, by sole  
18 means of this investment, be deemed to be transacting an insurance  
19 business in this state. The underwriters or selling agents and  
20 their partners, directors, officers, members, managers, employees,  
21 agents, representatives and advisors involved in a protected cell  
22 company insurance securitization shall not be deemed to be  
23 conducting an insurance or reinsurance agency, brokerage,  
24

1 intermediary, advisory or consulting business by virtue of their  
2 activities in connection with those businesses.

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

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

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

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