

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

HOUSE BILL 1529

5 By: Representative Hutchinson  
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## For An Act To Be Entitled

9 AN ACT TO AMEND THE DEFINITION OF "SECURITY"; TO  
10 CLARIFY THE ARKANSAS SECURITIES COMMISSIONER'S  
11 POWER TO EXERCISE AUTHORITY OVER PERSONS SELLING  
12 VARIABLE ANNUITY CONTRACTS; AND FOR OTHER  
13 PURPOSES.  
14

## Subtitle

15 AN ACT TO AMEND THE DEFINITION OF  
16 "SECURITY" AND TO CLARIFY THE ARKANSAS  
17 SECURITIES COMMISSIONER'S POWER TO  
18 EXERCISE AUTHORITY OVER PERSONS SELLING  
19 VARIABLE ANNUITY CONTRACTS.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 23-42-102(15), concerning the definition of  
26 "security" under the Arkansas Securities Act, is amended to read as follows:

27 (15)(A) "Security" means any:

- 28 (i) Note;
- 29 (ii) Stock;
- 30 (iii) Treasury stock;
- 31 (iv) Bond;
- 32 (v) Debenture;
- 33 (vi) Evidence of indebtedness;
- 34 (vii) Certificate of interest or participation in any  
35 profit-sharing agreement;
- 36 (viii) Collateral-trust certificate;



- 1 (ix) Preorganization certificate or subscription;
- 2 (x) Transferable share;
- 3 (xi) Investment contract;
- 4 (xii) Variable annuity contract;
- 5 (xiii) Viatical settlement contract or fractionalized or
- 6 pooled interest therein;
- 7 (xiv) Voting-trust certificate;
- 8 (xv) Certificate of deposit for a security;
- 9 (xvi) Certificate of interest or participation in an oil,
- 10 gas, or mining title or lease or in payments out of production under such a
- 11 title or lease; or
- 12 (xvii) In general, any interest or instrument commonly
- 13 known as a "security" or any certificate of interest or participation in,
- 14 temporary or interim certificate for, guarantee of, or warrant or right to
- 15 subscribe to or purchase, any of the foregoing.

16 (B) Except as set forth in subdivision (15)(A)(xiii) of this  
 17 section, "security" does not include any insurance or endowment policy or  
 18 fixed annuity contract ~~or variable annuity contract~~ issued by any insurance  
 19 company; and

20  
 21 SECTION 2. Arkansas Code § 23-42-509(a), concerning notice filings for  
 22 covered securities, is amended to add a subdivision to read as follows:

23 (a) The Securities Commissioner, by rule or order, may require a  
 24 notice filing consisting of any or all of the following documents with  
 25 respect to a covered security under Section 18(b)(2) of the Securities Act of  
 26 1933:

27 (1)(A) Prior to the initial offering of such covered security in  
 28 this state, all documents that are part of a current federal registration  
 29 statement filed with the Securities and Exchange Commission under the  
 30 Securities Act of 1933, together with a consent to service of process signed  
 31 by the issuer and with a fee in the amount of one-tenth percent (0.1%) of the  
 32 maximum aggregate offering price at which the covered securities are to be  
 33 offered in this state, but the fee shall in no case be less than one hundred  
 34 fifty dollars (\$150) nor more than two thousand dollars (\$2,000). Any portion  
 35 of the fee in excess of one thousand dollars (\$1,000) shall be designated as  
 36 special revenues and shall be deposited in the Securities Department Fund.

1 When a notice filing is withdrawn before the effective date, the commissioner  
2 shall retain one hundred fifty dollars (\$150) of the filing fee.

3 (B) Sales of the covered securities in excess of the  
4 amount of covered securities to have been offered in this state shall require  
5 the person making the notice filing to pay a fee, calculated in the manner  
6 specified in subdivision (a)(1)(A) of this section, for all securities sold.  
7 In addition, if the sales are in excess of one hundred five percent (105%) of  
8 the amount to have been offered, the person making the notice filing shall  
9 pay a penalty fee of two hundred dollars (\$200).

10 (C) The initial notice filing of an investment company, as  
11 defined in the Investment Company Act of 1940, shall be effective for a  
12 period commencing upon the commissioner’s receipt of the notice filing, or,  
13 if not yet effective with the Securities and Exchange Commission,  
14 concurrently with the Securities and Exchange Commission effectiveness, and  
15 ending two (2) months after the investment company’s fiscal year end.  
16 Thereafter, the investment company must renew the notice filing by submitting  
17 the appropriate forms and documents as filed with the Securities and Exchange  
18 Commission, along with the appropriate fee, calculated in the manner  
19 specified in subdivision (a)(1) of this section, with respect to the  
20 additional securities proposed to be offered, within two (2) months after the  
21 expiration of the registrant’s fiscal year end.

22 (D) The notice filing of a unit investment trust, as  
23 defined in the Investment Company Act of 1940, shall be effective for one (1)  
24 year from the date of effectiveness granted by the Securities and Exchange  
25 Commission.

26 (E) This subdivision (a)(1) shall not apply to any  
27 variable annuity contract issued by or representing a debt of any insurance  
28 company authorized to do business in Arkansas.

29 (2) After the initial offer of such covered securities in this  
30 state, all documents that are part of an amendment to a current federal  
31 registration statement filed with the Securities and Exchange Commission  
32 under the Securities Act of 1933;

33 (3) An annual or periodic report of the value of the covered  
34 securities offered or sold in this state as necessary to compute fees.

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36 SECTION 3. Arkansas Code § 23-81-405 is amended to read as follows:

1 23-81-405. Insurance Commissioner's authority to regulate.

2 ~~Notwithstanding any other provision of law~~ Except as provided in the  
3 Arkansas Securities Act, § 23-42-101 et seq., the Insurance Commissioner  
4 shall have sole authority to regulate the issuance and sale of variable  
5 contracts and to issue such reasonable rules and regulations as may be  
6 appropriate to carry out the purposes and provisions of this subchapter.

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