

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 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1171

5 By: Representative J. Hutchinson
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7

For An Act To Be Entitled

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

Subtitle

15 AN ACT TO AMEND THE DEFINITION OF
16 SECURITY AND TO CLARIFY THE SECURITIES
17 COMMISSIONER'S POWER TO EXERCISE
18 AUTHORITY OVER PERSONS SELLING VARIABLE
19 ANNUITY CONTRACTS.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 23-42-102(15), concerning the definition of
25 "security" under the Arkansas Securities Act, is amended to read as follows:

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

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



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

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

19
 20 SECTION 2. Arkansas Code § 23-42-509(a), concerning notice filings for
 21 covered securities, is amended to add a subdivision to read as follows:

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

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

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

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

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

24 (E) This subdivision (a)(1) shall not apply to any
 25 variable annuity contract issued by or representing a debt of any insurance
 26 company authorized to do business in The State of Arkansas;

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

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

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 34 SECTION 3. Arkansas Code § 23-81-405 is amended to read as follows:
 35 23-81-405. Insurance Commissioner's authority to regulate.

36 ~~Notwithstanding any other provision of law~~ Except as provided in the

1 Arkansas Securities Act, § 23-42-101 et seq., the Insurance Commissioner
2 shall have sole authority to regulate the issuance and sale of variable
3 contracts and to issue such reasonable rules and regulations as may be
4 appropriate to carry out the purposes and provisions of this subchapter.

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