

51:2-1

LEGISLATIVE HISTORY CHECKLIST
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(Uniform Foreign Money Act)

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LAWS OF: 1993

CHAPTER: 317

BILL NO: S835

SPONSOR(S) Brown

DATE INTRODUCED: May 18, 1992

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: Judiciary

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1993, CHAPTER 317, approved December 23, 1993
1992 Senate No. 835

1 AN ACT concerning foreign-money claims, adopting the Uniform
2 Foreign-Money Claims Act, and repealing R.S.51:2-1.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. This act shall be known and may be cited as the "Uniform
7 Foreign-Money Claims Act."

8 2. As used in this act:

9 "Action" means a judicial proceeding or arbitration in which a
10 payment in money may be awarded or enforced with respect to a
11 foreign-money claim.

12 "Bank-offered spot rate" means the spot rate of exchange at
13 which a bank will sell foreign money at a spot rate.

14 "Conversion date" means the banking day next preceding the
15 date on which money, in accordance with this act, is:

16 a. Paid to a claimant in an action or distribution proceeding;

17 b. Paid to the official designated by law to enforce a judgment
18 or award on behalf of a claimant; or

19 c. Used to recoup, set-off, or counterclaim in different
20 moneys in an action or distribution proceeding.

21 "Distribution proceeding" means a judicial or nonjudicial
22 proceeding for the distribution of a fund in which one or more
23 foreign-money claims is asserted and includes an accounting, an
24 assignment for the benefit of creditors, a foreclosure, the
25 liquidation or rehabilitation of a corporation or other entity, and
26 the distribution of an estate, trust, or other fund.

27 "Foreign money" means money other than money of the United
28 States of America.

29 "Foreign-money claim" means a claim upon an obligation to
30 pay, or a claim for recovery of a loss, expressed in or measured
31 by a foreign money.

32 "Money" means a medium of exchange for the payment of
33 obligations or a store of value authorized or adopted by a
34 government or by inter-governmental agreement.

35 "Money of the claim" means the money determined as proper
36 pursuant to section 5 of this act.

37 "Person" means an individual, a corporation, government or
38 governmental subdivision or agency, business trust, estate, trust,
39 joint venture, partnership, association, two or more persons
40 having a joint or common interest, or any other legal or
41 commercial entity.

42 "Rate of exchange" means the rate at which money of one
43 country may be converted into money of another country in a
44 free financial market convenient to or reasonably usable by a
45 person obligated to pay or to state a rate of conversion. If

1 separate rates of exchange apply to different kinds of
2 transactions, the term means the rate applicable to the particular
3 transaction giving rise to the foreign-money claim.

4 "Spot rate" means the rate of exchange at which foreign
5 money is sold by a bank or other dealer in foreign exchange for
6 immediate or next day availability or for settlement by
7 immediate payment in cash or equivalent, by charge to an
8 account, or by an agreed delayed settlement not exceeding two
9 days.

10 "State" means a State of the United States, the District of
11 Columbia, the Commonwealth of Puerto Rico, or a territory or
12 insular possession subject to the jurisdiction of the United States.

13 3. a. This act applies only to a foreign-money claim in an
14 action or distribution proceeding.

15 b. This act applies to foreign-money issues even if other law
16 under the conflict of laws rules of this State applies to other
17 issues in the action or distribution proceeding.

18 4. a. The effect of this act may be varied by agreement of the
19 parties made before or after commencement of an action or
20 distribution proceeding or the entry of judgment.

21 b. Parties to a transaction may agree upon the money to be
22 used in a transaction giving rise to a foreign-money claim and
23 may agree to use different moneys for different aspects of the
24 transaction. Stating the price in a foreign money for one aspect
25 of a transaction does not alone require the use of that money for
26 other aspects of the transaction.

27 5. a. The money in which the parties to a transaction have
28 agreed that payment is to be made is the proper money of the
29 claim for payment.

30 b. If the parties to a transaction have not otherwise agreed,
31 the proper money of the claim, as in each case may be
32 appropriate, is the money:

33 (1) regularly used between the parties as a matter of usage or
34 course of dealing;

35 (2) used at the time of a transaction in international trade, by
36 trade usage or common practice, for valuing or settling
37 transactions in the particular commodity or service involved; or

38 (3) in which the loss was ultimately felt or will be incurred by
39 the party claimant.

40 6. a. If an amount contracted to be paid in a foreign money is
41 measured by a specified amount of a different money, the amount
42 to be paid is determined on the conversion date.

43 b. If an amount contracted to be paid in a foreign money is to
44 be measured by a different money at the rate of exchange
45 prevailing on a date before default, that rate of exchange applies
46 only to payments made within a reasonable time after default,
47 not exceeding 30 days. Thereafter, conversion is made at the
48 bank-offered spot rate on the conversion date.

49 c. A monetary claim is neither usurious nor unconscionable
50 because the agreement on which it is based provides that the
51 amount of the debtor's obligation to be paid in the debtor's
52 money, when received by the creditor, must equal a specified
53 amount of the foreign money of the country of the creditor. If,
54 because of unexcused delay in payment of a judgment or award,

1 the amount received by the creditor does not equal the amount of
2 the foreign money specified in the agreement, the court or
3 arbitrator shall amend the judgment or award accordingly.

4 7. a. A person may assert a claim in a specified foreign
5 money. If a foreign-money claim is not asserted, the claimant
6 makes the claim in United States dollars.

7 b. An opposing party may allege and prove that a claim, in
8 whole or in part, is in a different money than that asserted by the
9 claimant.

10 c. A person may assert a defense, set-off, recoupment, or
11 counterclaim in any money without regard to the money of other
12 claims.

13 d. The determination of the proper money of the claim is a
14 question of law.

15 8. a. Except as provided in subsection c. of this section, a
16 judgment or award on a foreign-money claim shall be stated in an
17 amount of the money of the claim.

18 b. A judgment or award on a foreign-money claim is payable in
19 that foreign money or, at the option of the debtor, in the amount
20 of United States dollars which will purchase that foreign money
21 on the conversion date at a bank-offered spot rate.

22 c. Assessed costs shall be entered in United States dollars.

23 d. Each payment in United States dollars shall be accepted and
24 credited on a judgment or award on a foreign-money claim in the
25 amount of the foreign money that could be purchased by the
26 dollars at a bank-offered spot rate of exchange at or near the
27 close of business on the conversion date for that payment.

28 e. A judgment or award made in an action or distribution
29 proceeding on both (1) a defense, set-off, recoupment, or
30 counterclaim and (2) the adverse party's claim, shall be netted by
31 converting the money of the smaller into the money of the larger,
32 and by subtracting the smaller from the larger, and specify the
33 rates of exchange used.

34 f. A judgment substantially complies with subsection a. of this
35 section, if it is in the following form:

36 On this ___ day of _____, 199_, it is ORDERED that judgment be
37 entered in favor of the Plaintiff and against the Defendant in the
38 sum of (insert amount in the foreign money) with interest
39 at the rate of (insert rate - see Section 9 of this act) percent a
40 year from the ___ day of _____, 199_, or, at the option of the
41 judgment debtor, the number of United States dollars which will
42 purchase the (insert name of foreign money) with interest due,
43 at a bank-offered spot rate at or near the close of business on the
44 banking day next before the day of payment, together with
45 assessed costs of (insert amount) United States dollars.

46 g. If a contract claim is of the type covered by subsections a.
47 or b. of section 6 of this act, the judgment or award shall be
48 entered for the amount of money stated to measure the
49 obligation to be paid in the money specified for payment or, at
50 the option of the debtor, the number of United States dollars
51 which will purchase the computed amount of the money of
52 payment on the conversion date at a bank-offered spot rate.

53 h. A judgment shall be entered and indexed in foreign money in
54 the same manner as other judgments, and has the same effect as

1 a lien. It may be discharged by payment.

2 9. The rate of exchange prevailing at or near the close of
3 business on the day the distribution proceeding is initiated
4 governs all exchanges of foreign money in a distribution
5 proceeding. A foreign-money claimant in a distribution
6 proceeding shall assert its claim in the named foreign money and
7 show the amount of United States dollars resulting from a
8 conversion as of the date the proceeding was initiated.

9 10. a. With respect to a foreign-money claim, recovery of
10 pre-judgment or pre-award interest and the rate of interest to be
11 applied in the action or distribution proceeding, except as
12 provided in subsection b. of this section, are matters of the
13 substantive law governing the right to recovery under the
14 conflict-of-laws rules of this State.

15 b. The court or arbitrator shall increase or decrease the
16 amount of pre-judgment or pre-award interest otherwise payable
17 in a judgment or award in foreign-money to the extent required
18 by the law of this State governing a failure to make or accept an
19 offer of settlement or offer of judgment, or conduct by a party or
20 its attorney causing undue delay or expense.

21 c. A judgment or award on a foreign-money claim bears
22 interest at the rate applicable to judgments of this State.

23 11. a. If an action is brought to enforce a judgment of another
24 jurisdiction expressed in a foreign money and the judgment is
25 recognized in this State as enforceable, the enforcing judgment
26 shall be entered as provided in section 8 of this act, whether or
27 not the foreign judgment confers an option to pay in an
28 equivalent amount of United States dollars.

29 b. A foreign judgment may be docketed in accordance with any
30 rule or statute of this State providing a procedure for its
31 recognition and enforcement.

32 c. A satisfaction or partial payment made upon the foreign
33 judgment, on proof thereof, shall be credited against the amount
34 of foreign money specified in the judgment, notwithstanding the
35 entry of judgment in this State.

36 d. A judgment entered on a foreign-money claim only in
37 United States dollars in another state shall be enforced in this
38 State in United States dollars only.

39 12. a. Computations under this section are for the limited
40 purposes of the section and do not affect computation of the
41 United States dollar equivalent of the money of the judgment for
42 the purpose of payment.

43 b. For the limited purpose of facilitating the enforcement of
44 provisional remedies in an action, the value in United States
45 dollars of assets to be seized or restrained pursuant to a writ of
46 attachment, garnishment, execution, or other legal process, the
47 amount of United States dollars at issue for assessing costs, or
48 the amount of United States dollars involved for a surety bond or
49 other court-required undertaking, shall be ascertained as
50 provided in subsections c. and d. of this section.

51 c. A party seeking process, costs, bond, or other undertaking
52 under subsection b. of this section shall compute in United States
53 dollars the amount of the foreign money claimed from a
54 bank-offered spot rate prevailing at or near the close of business

1 on the banking day next preceding the filing of a request or
2 application for the issuance of process or for the determination
3 of costs, or an application for a bond or other court-required
4 undertaking.

5 d. A party seeking the process, costs, bond, or other
6 undertaking under subsection b. of this section shall file with
7 each request or application an affidavit or certificate executed in
8 good faith by its counsel or a bank officer, stating the market
9 quotation used and how it was obtained, and setting forth the
10 calculation. Affected court officials incur no liability, after a
11 filing of the affidavit or certificate, for acting as if the judgment
12 were in the amount of United States dollars stated in the
13 affidavit or certificate.

14 13. a. If, after an obligation is expressed or a loss is incurred
15 in a foreign money, the country issuing or adopting that money
16 substitutes a new money in place of that money, the obligation or
17 the loss is treated as if expressed or incurred in the new money at
18 the rate of conversion the issuing country establishes for the
19 payment of like obligations or losses denominated in the former
20 money.

21 b. If substitution occurs under subsection a. of this section
22 after a judgment or award is entered on a foreign-money claim,
23 the court or arbitrator shall amend the judgment or award by a
24 like conversion of the former money.

25 14. Unless displaced by particular provisions of this act, the
26 principles of law and equity, including the law merchant, and the
27 law relative to capacity to contract, principal and agent,
28 estoppel, fraud, misrepresentation, duress, coercion, mistake,
29 bankruptcy, or other validating or invalidating causes supplement
30 its provisions.

31 15. This act shall be applied and construed to effectuate its
32 general purpose to make uniform the law with respect to the
33 subject of this act among states enacting it.

34 16. R.S.51:2-1 is repealed.

35 17. This act shall take effect on January 1st following its
36 enactment and shall apply to actions and distribution proceedings
37 commenced after its effective date.

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STATEMENT

41

42 This bill enacts the Uniform Foreign-Money Claims Act
43 promulgated by the National Conference of Commissioners on
44 Uniform State Laws. It was studied by the New Jersey Law
45 Revision Commission and is now recommended for enactment.

46 This bill facilitates uniform judicial determination of claims
47 expressed in the money of foreign countries. It requires
48 judgments and arbitration awards in these cases to be entered in
49 the foreign money rather than in United States dollars. The
50 debtor may pay the judgment in dollars on the basis of the rate of
51 exchange prevailing at the time of payment.

52 At present, courts considering claims involving foreign money
53 transactions convert the claim to one in dollars using an exchange
54 rate for either the day the claim arose or the date judgment is

1 entered. This approach differs from that of most other countries
2 and can produce inequitable results. The Uniform Foreign-Money
3 Claims Act will bring the adopting states into agreement with
4 most of our trading partners and satisfy foreign-money claims
5 without undercompensating or overcompensating foreign-money
6 claimants.

7 This bill would also repeal R.S.51:2-1 which is inconsistent with
8 the Uniform Foreign-Money Claims Act in requiring all court
9 judgments to be made in United States currency. That statute
10 serves no modern purpose.

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14

15 Provides for judgments on foreign-money claims by enactment of
16 the Uniform Foreign-Money Claims Act.

1 on the banking day next preceding the filing of a request or
2 application for the issuance of process or for the determination
3 of costs, or an application for a bond or other court-required
4 undertaking.

5 d. A party seeking the process, costs, bond, or other
6 undertaking under subsection b. of this section shall file with
7 each request or application an affidavit or certificate executed in
8 good faith by its counsel or a bank officer, stating the market
9 quotation used and how it was obtained, and setting forth the
10 calculation. Affected court officials incur no liability, after a
11 filing of the affidavit or certificate, for acting as if the judgment
12 were in the amount of United States dollars stated in the
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ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

SENATE, No. 835

STATE OF NEW JERSEY

DATED: MAY 10, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 835.

The bill enacts the Uniform Foreign-Money Claims Act promulgated by the National Conference of Commissioners on Uniform State Laws. The Uniform Act was reviewed by the New Jersey Law Revision Commission and is recommended for enactment in New Jersey.

The Uniform Act is intended to facilitate uniform judicial determination of claims expressed in the money of foreign countries. The act requires judgments and arbitration awards in these cases to be entered in the foreign money rather than in United States dollars. The debtor may pay the judgment in dollars on the basis of the rate of exchange prevailing at the time of payment.

At present, courts considering claims involving foreign money transactions convert the claim to one in dollars using an exchange rate for either the day the claim arose or the date judgment is entered. This approach differs from that of most other countries and can produce inequitable results. The Uniform Foreign-Money Claims Act will bring the adopting states into agreement with most of our trading partners and satisfy foreign-money claims without undercompensating or overcompensating foreign-money claimants. This bill would also repeal R.S.51:2-1 which is inconsistent with the Uniform Foreign-Money Claims Act in requiring all court judgments to be made in United States currency.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 835

STATE OF NEW JERSEY

DATED: JUNE 15, 1992

The Senate Judiciary Committee reports favorably Senate Bill No. 835.

The bill enacts the Uniform Foreign-Money Claims Act promulgated by the National Conference of Commissioners on Uniform State Laws. The Uniform Act was reviewed by the New Jersey Law Revision Commission and is recommended for enactment in New Jersey.

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