

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1091

52nd Legislature
1991 Regular Session

Passed by the House March 12, 1991
Yeas 95 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 9, 1991
Yeas 40 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1091** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

HOUSE BILL 1091

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Representative Appelwick.

Read first time January 18, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to uniform foreign-money claims; adding a new
2 chapter to Title 6 RCW; creating a new section; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter:

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

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

13 (3) "Conversion date" means the banking day next preceding the date
14 on which money, in accordance with this chapter, is:

1 (a) Paid to a claimant in an action or distribution proceeding;

2 (b) Paid to the official designated by law to enforce a judgment or
3 award on behalf of a claimant; or

4 (c) Used to recoup, set off, or counterclaim in different moneys in
5 an action or distribution proceeding.

6 (4) "Distribution proceeding" means a judicial or nonjudicial
7 proceeding for the distribution of a fund in which one or more foreign-
8 money claims is asserted and includes an accounting, an assignment for
9 the benefit of creditors, a foreclosure, the liquidation or
10 rehabilitation of a corporation or other entity, and the distribution
11 of an estate, trust, or other fund.

12 (5) "Foreign money" means money other than money of the United
13 States of America.

14 (6) "Foreign-money claim" means a claim upon an obligation to pay,
15 or a claim for recovery of a loss, expressed in or measured by a
16 foreign money.

17 (7) "Money" means a medium of exchange for the payment of
18 obligations or a store of value authorized or adopted by a government
19 or by intergovernmental agreement.

20 (8) "Money of the claim" means the money determined as proper
21 pursuant to section 4 of this act.

22 (9) "Person" means an individual, corporation, government or
23 governmental subdivision or agency, business trust, estate, trust,
24 joint venture, partnership, association, two or more persons having a
25 joint or common interest, or any other legal or commercial entity.

26 (10) "Rate of exchange" means the rate at which money of one
27 country may be converted into money of another country in a free
28 financial market convenient to or reasonably usable by a person
29 obligated to pay or to state a rate of conversion. If separate rates
30 of exchange apply to different kinds of transactions, the term means

1 the rate applicable to the particular transaction giving rise to the
2 foreign-money claim.

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

8 (12) "State" means a state of the United States, the District of
9 Columbia, the commonwealth of Puerto Rico, or a territory or insular
10 possession subject to the jurisdiction of the United States.

11 NEW SECTION. **Sec. 2.** (1) This chapter applies only to a
12 foreign-money claim in an action or distribution proceeding.

13 (2) This chapter applies to foreign-money issues even if other law
14 under the conflict of laws rules of this state applies to other issues
15 in the action or distribution proceeding.

16 NEW SECTION. **Sec. 3.** (1) The effect of this chapter may be
17 varied by agreement of the parties made before or after commencement of
18 an action or distribution proceeding or the entry of judgment.

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

24 NEW SECTION. **Sec. 4.** (1) The money in which the parties to a
25 transaction have agreed that payment is to be made is the proper money
26 of the claim for payment.

1 (2) If the parties to a transaction have not otherwise agreed, the
2 proper money of the claim, as in each case may be appropriate, is the
3 money:

4 (a) Regularly used between the parties as a matter of usage or
5 course of dealing;

6 (b) Used at the time of a transaction in international trade, by
7 trade usage or common practice, for valuing or settling transactions in
8 the particular commodity or service involved; or

9 (c) In which the loss was ultimately felt or will be incurred by
10 the party claimant.

11 NEW SECTION. **Sec. 5.** (1) If an amount contracted to be paid
12 in a foreign money is measured by a specified amount of a different
13 money, the amount to be paid is determined on the conversion date.

14 (2) If an amount contracted to be paid in a foreign money is to be
15 measured by a different money at the rate of exchange prevailing on a
16 date before default, that rate of exchange applies only to payments
17 made within a reasonable time after default, not exceeding thirty days.
18 Thereafter, conversion is made at the bank-offered spot rate on the
19 conversion date.

20 (3) A monetary claim is neither usurious nor unconscionable because
21 the agreement on which it is based provides that the amount of the
22 debtor's obligation to be paid in the debtor's money, when received by
23 the creditor, must equal a specified amount of the foreign money of the
24 country of the creditor. If, because of unexcused delay in payment of
25 a judgment or award, the amount received by the creditor does not equal
26 the amount of the foreign money specified in the agreement, the court
27 or arbitrator shall amend the judgment or award accordingly.

1 NEW SECTION. **Sec. 6.** (1) A person may assert a claim in a
2 specified foreign money. If a foreign-money claim is not asserted, the
3 claimant makes the claim in United States dollars.

4 (2) An opposing party may allege and prove that a claim, in whole
5 or in part, is in a different money than that asserted by the claimant.

6 (3) A person may assert a defense, set-off, recoupment, or
7 counterclaim in any money without regard to the money of other claims.

8 (4) The determination of the proper money of the claim is a
9 question of law.

10 NEW SECTION. **Sec. 7.** (1) Except as provided in subsection (3)
11 of this section, a judgment or award on a foreign-money claim must be
12 stated in an amount of the money of the claim.

13 (2) A judgment or award on a foreign-money claim is payable in that
14 foreign money or, at the option of the debtor, in the amount of United
15 States dollars which will purchase that foreign money on the conversion
16 date at a bank-offered spot rate.

17 (3) Assessed costs must be entered in United States dollars.

18 (4) Each payment in United States dollars must be accepted and
19 credited on a judgment or award on a foreign-money claim in the amount
20 of the foreign money that could be purchased by the dollars at a bank-
21 offered spot rate of exchange at or near the close of business on the
22 conversion date for that payment.

23 (5) A judgment or award made in an action or distribution
24 proceeding on both (a) a defense, set-off, recoupment, or counterclaim,
25 and (b) the adverse party's claim, must be netted by converting the
26 money of the smaller into the money of the larger, and by subtracting
27 the smaller from the larger, and specify the rates of exchange used.

28 (6) A judgment substantially in the following form complies with
29 subsection (1) of this section:

1 IT IS ADJUDGED AND ORDERED, that defendant(insert name).....
2 pay to plaintiff(insert name)..... the sum of(insert amount
3 in the foreign money)..... plus interest on that sum at the rate of
4(insert rate--see section 9 of this act)..... percent a year or,
5 at the option of the judgment debtor, the number of United States
6 dollars which will purchase the(insert name of foreign
7 money)..... with interest due, at a bank-offered spot rate at or near
8 the close of business on the banking day next before the day of
9 payment, together with assessed costs of(insert amount).....
10 United States dollars.

11 (7) If a contract claim is of the type covered by section 5 (a) or
12 (b) of this act, the judgment or award must be entered for the amount
13 of money stated to measure the obligation to be paid in the money
14 specified for payment or, at the option of the debtor, the number of
15 United States dollars which will purchase the computed amount of the
16 money of payment on the conversion date at a bank-offered spot rate.

17 (8) A judgment must be filed or docketed and indexed in foreign
18 money in the same manner, and has the same effect as a lien, as other
19 judgments. It may be discharged by payment.

20 NEW SECTION. **Sec. 8.** The rate of exchange prevailing at or
21 near the close of business on the day the distribution proceeding is
22 initiated governs all exchanges of foreign money in a distribution
23 proceeding. A foreign-money claimant in a distribution proceeding
24 shall assert its claim in the named foreign money and show the amount
25 of United States dollars resulting from a conversion as of the date the
26 proceeding was initiated.

27 NEW SECTION. **Sec. 9.** (1) With respect to a foreign-money
28 claim, recovery of prejudgment or preaward interest and the rate of

1 interest to be applied in the action or distribution proceeding, except
2 as provided in subsection (2) of this section, are matters of the
3 substantive law governing the right to recovery under the conflict-of-
4 laws rules of this state.

5 (2) The court or arbitrator shall increase or decrease the amount
6 of prejudgment or preaward interest otherwise payable in a judgment or
7 award in foreign money to the extent required by the law of this state
8 governing a failure to make or accept an offer of settlement or offer
9 of judgment, or conduct by a party or its attorney causing undue delay
10 or expense.

11 (3) A judgment or award on a foreign-money claim bears interest at
12 the rate applicable to judgments of this state.

13 NEW SECTION. **Sec. 10.** (1) If an action is brought to enforce
14 a judgment of another jurisdiction expressed in a foreign money and the
15 judgment is recognized in this state as enforceable, the enforcing
16 judgment must be entered as provided in section 7 of this act, whether
17 or not the foreign judgment confers an option to pay in an equivalent
18 amount of United States dollars.

19 (2) A foreign judgment may be filed or docketed in accordance with
20 any rule or statute of this state providing a procedure for its
21 recognition and enforcement.

22 (3) A satisfaction or partial payment made upon the foreign
23 judgment, on proof thereof, must be credited against the amount of
24 foreign money specified in the judgment, notwithstanding the entry of
25 judgment in this state.

26 (4) A judgment entered on a foreign-money claim only in United
27 States dollars in another state must be enforced in this state in
28 United States dollars only.

1 NEW SECTION. **Sec. 11.** (1) Computations under this section are
2 for the limited purposes of this section and do not affect computation
3 of the United States dollar equivalent of the money of the judgment for
4 the purpose of payment.

5 (2) For the limited purpose of facilitating the enforcement of
6 provisional remedies in an action, the value in United States dollars
7 of assets to be seized or restrained pursuant to a writ of attachment,
8 garnishment, execution, or other legal process, the amount of United
9 States dollars at issue for assessing costs, or the amount of United
10 States dollars involved for a surety bond or other court-required
11 undertaking, must be ascertained as provided in subsections (3) and (4)
12 of this section.

13 (3) A party seeking process, costs, bond, or other undertaking
14 under subsection (2) of this section, shall compute in United States
15 dollars the amount of the foreign money claimed from a bank-offered
16 spot rate prevailing at or near the close of business on the banking
17 day next preceding the filing of a request or application for the
18 issuance of process or for the determination of costs, or an
19 application for a bond or other court-required undertaking.

20 (4) A party seeking the process, costs, bond, or other undertaking
21 under subsection (2) of this section shall file with each request or
22 application an affidavit or certificate executed in good faith by its
23 counsel or a bank officer, stating the market quotation used and how it
24 was obtained, and setting forth the calculation. Affected court
25 officials incur no liability, after a filing of the affidavit or
26 certificate, for acting as if the judgment were in the amount of United
27 States dollars stated in the affidavit or certificate.

28 NEW SECTION. **Sec. 12.** (1) If, after an obligation is expressed
29 or a loss is incurred in a foreign money, the country issuing or

1 adopting that money substitutes a new money in place of that money, the
2 obligation or the loss is treated as if expressed or incurred in the
3 new money at the rate of conversion the issuing country establishes for
4 the payment of like obligations or losses denominated in the former
5 money.

6 (2) If substitution under subsection (1) of this section occurs
7 after a judgment or award is entered on a foreign-money claim, the
8 court or arbitrator shall amend the judgment or award by a like
9 conversion of the former money.

10 NEW SECTION. **Sec. 13.** Unless displaced by particular
11 provisions of this chapter, the principles of law and equity, including
12 the law merchant, and the law relative to capacity to contract,
13 principal and agent, estoppel, fraud, misrepresentation, duress,
14 coercion, mistake, bankruptcy, or other validating or invalidating
15 causes supplement its provisions.

16 NEW SECTION. **Sec. 14.** This chapter shall be applied and
17 construed to effectuate its general purpose to make uniform the law
18 with respect to the subject of this chapter among states enacting it.

19 NEW SECTION. **Sec. 15.** This chapter may be cited as the uniform
20 foreign-money claims act.

21 NEW SECTION. **Sec. 16.** This act shall take effect January 1, 1992.

22 NEW SECTION. **Sec. 17.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 18.** This act applies prospectively only and
2 not retroactively. It applies only to causes of action which are
3 commenced on or after the effective date of this act.

4 NEW SECTION. **Sec. 19.** Sections 1 through 15 of this act shall
5 constitute a new chapter in Title 6 RCW.