

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 477

Short Title: Foreign-Money Claims Act.

(Public)

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Sponsors: Senator Kerr.

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Referred to: Judiciary II/Election Laws

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March 23, 1995

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA FOREIGN-MONEY CLAIMS ACT,  
WHICH ACT ESTABLISHES A STANDARD FOR CONVERTING CURRENCY  
FOR MONETARY DAMAGES RESULTING FROM A FOREIGN JUDICIAL  
PROCEEDING OR ARBITRATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1C of the General Statutes is amended by adding a new  
Article to read:

**"ARTICLE 19.**

**"THE NORTH CAROLINA FOREIGN-MONEY CLAIMS ACT.**

**"§ 1C-1820. Definitions.**

As used in this Article:

- (1) 'Action' means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.
- (2) 'Bank-offered spot rate' means the spot rate of exchange at which a bank will sell foreign money at a spot rate.
- (3) 'Conversion date' means the banking day next preceding the date on which money, in accordance with this Article, is:
- a. Paid to a claimant in an action or distribution proceeding;

- 1           b.     Paid to the official designated by law to enforce a judgment or  
2           award on behalf of a claimant; or  
3           c.     Used to recoup, set off, or counterclaim in different moneys in an  
4           action or distribution proceeding.
- 5       (4)   'Distribution proceeding' means a judicial or nonjudicial proceeding for  
6       the distribution of a fund in which one or more foreign-money claims is  
7       asserted and includes an accounting, an assignment for the benefit of  
8       creditors, a foreclosure, the liquidation or rehabilitation of a corporation  
9       or other entity, and the distribution of an estate, trust, or other fund.
- 10       (5)   'Foreign money' means money other than money of the United States.
- 11       (6)   'Foreign-money claim' means a claim upon an obligation to pay, or a  
12       claim for recovery of a loss, expressed in or measured by a foreign  
13       money.
- 14       (7)   'Money' means a medium of exchange for the payment of obligations or  
15       a store of value authorized or adopted by a government or by  
16       intergovernmental agreement.
- 17       (8)   'Money of the claim' means the money determined as proper for  
18       payment of the claim pursuant to G.S. 1C-1823.
- 19       (9)   'Person' means an individual, a corporation, government or  
20       governmental subdivision or agency, business trust, estate, trust, joint  
21       venture, partnership, association, two or more persons having a joint or  
22       common interest, or any other legal or commercial entity.
- 23       (10)  'Rate of exchange' means the rate at which money of one country may  
24       be converted into money of another country in a free financial market  
25       convenient to or reasonably usable by a person obligated to pay or to  
26       state a rate of conversion. 'Rate of exchange' means, if separate rates of  
27       exchange apply to different kinds of transactions, the rate applicable to  
28       the particular transaction giving rise to the foreign-money claim.
- 29       (11)  'Spot rate' means the rate of exchange at which foreign money is sold by  
30       a bank or other dealer in foreign exchange for immediate or next day  
31       availability or for settlement by immediate payment in cash or its  
32       equivalent, by charge to an account, or by an agreed delayed settlement  
33       not exceeding two days.
- 34       (12)  'State' means a state of the United States, the District of Columbia, the  
35       Commonwealth of Puerto Rico, or a territory or insular possession  
36       subject to the jurisdiction of the United States.

37   **"§ 1C-1821. Scope of Article.**

38       (a)   This Article applies only to a foreign-money claim in an action or distribution  
39       proceeding.

40       (b)   This Article applies to foreign-money issues even if other law under the  
41       conflict of laws rules of this State applies to other issues in the action or distribution  
42       proceeding.

43   **"§ 1C-1822. Variation by agreement.**

1       (a) The effect of this Article may be varied by agreement of the parties made  
2 before or after commencement of an action or distribution proceeding or the entry of  
3 judgment.

4       (b) Parties to a transaction may agree upon the money to be used in a transaction  
5 giving rise to a foreign-money claim and may agree to use different moneys for different  
6 aspects of the transaction. Stating the price in a foreign money for one aspect of a  
7 transaction does not alone require the use of that money for other aspects of the  
8 transaction.

9 **"§ 1C-1823. Determining proper money of the claim.**

10       (a) The money in which the parties to a transaction have agreed that payment is to  
11 be made is the proper money of the claim for payment.

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

14           (1) Regularly used between the parties as a matter of usage or course of  
15 dealing;

16           (2) Used at the time of a transaction in international trade, by trade usage or  
17 common practice, for valuing or settling transactions in the particular  
18 commodity or service involved; or

19           (3) In which the loss was ultimately felt or will be incurred by the party  
20 claimant.

21 **"§ 1C-1824. Determining amount of the money of certain contract claims.**

22       (a) If an amount contracted to be paid in a foreign money is measured by a  
23 specified amount of a different money, the amount to be paid shall be determined on the  
24 conversion date.

25       (b) If an amount contracted to be paid in a foreign money is to be measured by a  
26 different money at the rate of exchange prevailing on a date before default, that rate of  
27 exchange applies only to payments made within a reasonable time after default, not  
28 exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the  
29 conversion date.

30       (c) A monetary claim is neither usurious nor unconscionable for the reason that the  
31 agreement on which it is based provides that the amount of the debtor's obligation to be  
32 paid in the debtor's money, when received by the creditor, must equal a specified amount  
33 of the foreign money of the country of the creditor. If, because of unexcused delay in  
34 payment of a judgment or award, the amount received by the creditor does not equal the  
35 amount of the foreign money specified in the agreement, the court or arbitrator shall  
36 amend the judgment or award accordingly.

37 **"§ 1C-1825. Asserting and defending foreign-money claims.**

38       (a) A person may assert a claim in a specified foreign money. If a foreign-money  
39 claim is not asserted, the claimant shall make the claim in United States dollars.

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

42       (c) A person may assert a defense, setoff, recoupment, or counterclaim in any  
43 money without regard to the money of other claims.

1 (d) The determination of the proper money of the claim pursuant to G.S. 1C-1823  
2 is a question of law.

3 **"§ 1C-1826. Judgments and awards on foreign-money claims, times of money**  
4 **conversion; form of judgments.**

5 (a) Except as provided in subsection (c) of this section, a judgment or award on a  
6 foreign-money claim must be stated in an amount of the money of the claim.

7 (b) A judgment or award on a foreign-money claim is payable in that foreign  
8 money or, at the option of the debtor, in the amount of United States dollars that will  
9 purchase that foreign money on the conversion date at a bank-offered spot rate.

10 (c) A judgment or award on a foreign-money claim shall assess costs in United  
11 States dollars.

12 (d) Each payment in United States dollars shall be accepted and credited on a  
13 judgment or award on a foreign-money claim in the amount of the foreign money that  
14 could be purchased by the dollars at a bank-offered spot rate of exchange at or near the  
15 close of business on the conversion date for that payment.

16 (e) A judgment or award made in an action or distribution proceeding on:

17 (1) A defense, setoff, recoupment, or counterclaim, and

18 (2) The adverse party's claim

19 shall be netted by converting the money of the smaller into the money of the larger, and  
20 by subtracting the smaller from the larger and shall specify the rates of exchange used.

21 (f) A judgment substantially in the following form satisfies the provisions of this  
22 section:

23 'It is ORDERED, ADJUDGED, AND DECREED that defendant (insert name) pay to  
24 Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on  
25 that sum at the rate of (insert rate pursuant to G.S. 1C-1828) percent a year or, at the  
26 option of the judgment debtor, the number of United States dollars that will purchase the  
27 (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the  
28 close of business on the banking day next before the day of payment, together with  
29 assessed costs of (insert amount) United States dollars.'

30 (g) If a contract claim is of the type covered by G.S. 1C-1824(a) or G.S. 1C-  
31 1824(b), the judgment or award shall be entered for the amount of money stated to  
32 measure the obligation to be paid in the money specified for payment or, at the option of  
33 the debtor, the number of United States dollars that will purchase the computed amount  
34 of the money of payment on the conversion date at a bank-offered spot rate.

35 (h) A judgment shall be filed, docketed, and indexed in foreign money in the same  
36 manner as other judgments and has the same effect as a lien. A judgment may be  
37 discharged by payment.

38 (i) A party seeking enforcement of a judgment entered as provided in this section  
39 shall file with each request or application an affidavit or certificate executed in good faith  
40 by its counsel or a bank officer, stating the rate of exchange used and how it was obtained  
41 and setting forth the calculation and the amount of United States dollars that would  
42 satisfy the judgment on the date of the affidavit or certificate by applying that rate of  
43 exchange. Affected court officials shall incur no liability, after a filing of the affidavit or

1 certificate, for acting as if the judgment were in the amount of United States dollars stated  
2 in the affidavit or certificate. The computation contained in the affidavit or certificate  
3 shall remain in effect for 90 days following the filing of the affidavit or certificate and  
4 may be recomputed before the expiration of 90 days by filing additional affidavits or  
5 certificates. Recomputation shall not affect any payment obtained before the filing of the  
6 recomputation.

7 **"§ 1C-1827. Conversions of foreign money in distribution proceedings.**

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

13 **"§ 1C-1828. Prejudgment and judgment interest.**

14 (a) Except as provided in subsection (b) of this section, recovery of prejudgment  
15 or pre-award interest and the rate of interest to be applied in the action or distribution  
16 proceeding shall be determined by the substantive law governing the right to recovery  
17 under the conflict of laws rules of this State.

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

23 (c) A judgment or award on a foreign-money claim bears interest at the rate  
24 applicable to judgments of this State.

25 **"§ 1C-1829. Enforcement of foreign judgments.**

26 (a) If an action is brought to enforce a judgment of another jurisdiction expressed  
27 in a foreign money and the judgment is recognized in this State as enforceable, the  
28 enforcing judgment shall be entered as provided in G.S. 1C-1826, whether or not the  
29 foreign judgment confers an option to pay in an equivalent amount of United States  
30 dollars.

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

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

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

38 **"§ 1C-1830. Determining United States dollar value of assets to be seized or**  
39 **restrained.**

40 (a) Computations under this section shall not affect computation of the United  
41 States dollar equivalent of the money of the judgment for the purpose of payment.

42 (b) For the limited purpose of facilitating the enforcement of provisional remedies  
43 in an action, the value in United States dollars of assets to be seized or restrained

1 pursuant to a writ of attachment, garnishment, execution, or other legal process, the  
2 amount of United States dollars at issue for assessing costs, or the amount of United  
3 States dollars involved for a surety bond or other court-required undertaking, shall be  
4 ascertained as provided in subsections (c) and (d) of this section.

5 (c) A party seeking process, costs, bond, or other undertaking under subsection (b)  
6 of this section shall compute in United States dollars the amount of the foreign-money  
7 claim from a bank-offered spot rate prevailing at or near the close of business on the  
8 banking day next preceding the filing of a request or application for the issuance of  
9 process or for the determination of costs, or an application for a bond or other court-  
10 required undertaking.

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

17 **"§ 1C-1831. Effect of currency revalorization.**

18 (a) If, after an obligation is expressed or a loss is incurred in a foreign money, the  
19 country issuing or adopting that money substitutes a new money in place of that money,  
20 the obligation or the loss shall be treated as if expressed or incurred in the new money at  
21 the rate of conversion the issuing country established for the payment of like obligations  
22 or losses denominated in the former money.

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

26 **"§ 1C-1832. Supplementary general principles of law.**

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

31 **"§ 1C-1833. Uniformity of application and construction.**

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

34 **"§ 1C-1834. Short title.**

35 This Article may be cited as the North Carolina Foreign-Money Claims Act."

36 Sec. 2. If any provision of this act or its application to any person or  
37 circumstance is held invalid, the invalidity does not affect other provisions of this act that  
38 can be given effect without the invalid provision or application, and to this end the  
39 provisions of Article 19 of Chapter 1C of the General Statutes, as enacted in Section 1 of  
40 this act, are severable.

41 Sec. 3. This act becomes effective October 1, 1995, and applies to actions and  
42 distribution proceedings commenced on or after that date.