

1991 Assembly Bill 508

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1991 WISCONSIN ACT 236

AN ACT to amend 138.01, 138.02, 138.03, 425.109 (1) (d) to (f), 799.05 (1), 799.05 (6) and 811.03 (2) (intro.); and to create 806.30 to 806.44 of the statutes, relating to: foreign-money claims.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 138.01 of the statutes is amended to read:

138.01 Money. The money of account of this state shall be the dollar, cent and mill; and all accounts in public offices, and other public accounts, and, except as provided in ss. 806.30 to 806.44, all proceedings in courts shall be kept and had in conformity to this regulation.

SECTION 2. 138.02 of the statutes is amended to read:

138.02 Contracts not affected. Nothing contained in s. 138.01 shall vitiate or affect any account, charge or entry originally made or any note, bond or other instrument expressed in any other money of account; but, except as provided in ss. 806.30 to 806.44, the same shall be reduced to dollars or parts of a dollar as hereinbefore directed in any suit thereupon.

SECTION 3. 138.03 of the statutes is amended to read:

138.03 Judgments, how computed. ~~In~~ Except as provided in ss. 806.30 to 806.44, in all judgments or decrees rendered by any court of justice for any debt, damages or costs and in all executions issued thereon the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions; and no judgment or other proceeding shall be considered erroneous for such omissions. In actions or proceedings under ss. 806.30 to 806.44, the court, in the interest of justice, may direct that all evidence submitted to the jury and the jury verdict be in U.S. dollars at a rate of exchange established by the court. The court shall convert the jury verdict to the foreign money at that rate of exchange.

SECTION 4. 425.109 (1) (d) to (f) of the statutes are amended to read:

425.109 (1) (d) The actual or estimated ~~dollar~~ amount of U.S. dollars or of a named foreign currency that the creditor alleges he or she is entitled to recover and the figures necessary for computation of the amount, including any amount received from the sale of any collateral.

(e) Except in an action to recover goods subject to a consumer lease, a statement that the customer has the right to redeem any collateral as provided in s. 425.208 (1) (intro.) and the actual or estimated ~~dollar~~ amount of U.S. dollars or of a named foreign currency required for redemption, itemized in accordance with s. 425.208 (1) (a) to (d).

(f) Except in an action to recover goods subject to a consumer lease, the estimated ~~dollar~~ amount of U.S. dollars or of a named foreign currency of any deficiency claim which may be available to the creditor following the disposition of any collateral recovered subject to the limitations of s. 425.209 or which the creditor seeks to recover and which the creditor intends to assert subject to the limitations of s. 425.210 if the customer fails to redeem the collateral.

SECTION 5. 799.05 (1) of the statutes is amended to read:

799.05 (1) CONTENTS. The summons shall state the nature of the demand substantially in the terms of one or more of the provisions of s. 799.01, and, except as provided in ss. 806.30 to 806.44, the dollar amount of damages, if any, the last-known address of the parties and the name and address of plaintiff's attorney, if any.

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SECTION 6. 799.05 (6) of the statutes is amended to read:

799.05 (6) FORM. Except as provided in s. 799.22 (4) (b) 3., the summons shall be substantially in the following form:

STATE OF WISCONSIN
CIRCUIT COURT:County

A.B., Plaintiff

vs. SUMMONS (Small Claims)

C.D., Defendant

THE STATE OF WISCONSIN, To said defendant:

You are hereby summoned to appear and plead to the plaintiff's complaint in the above court at in the (city) (village) of, on the day of, 19.., at o'clock (a.m.) (p.m.). [A copy of the complaint is hereto attached.] [The plaintiff will state his or her demand on that date.] In case of your failure to appear, a judgment may be rendered against you in accordance with the demands made by the plaintiff. The nature of the demand being made upon you is (state in terms of s. 799.01 of the Wisconsin Statutes) and the amount of damages, if any, demanded is \$.....

Dated:, 19...

E. F.

....

Clerk of Circuit Court

or

G. H.

....

Plaintiff's Attorney

Plaintiff's Address:

....

Plaintiff's Attorney (if any):

Name:

Address:

Defendant's Address:

....

SECTION 7. 806.30 to 806.44 of the statutes are created to read:

806.30 Definitions. In ss. 806.30 to 806.44:

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

(1m) "Bank-offered spot rate" means the rate of exchange at which a bank will issue its draft in a foreign money or will cause credit to become available in a foreign money on a next-day basis.

(2) "Conversion date" means the banking day before the date that money is used, under ss. 806.30 to 806.44, for one of the following:

(a) To pay a judgment creditor.

(b) To pay the designated official enforcing a judgment on behalf of the judgment creditor.

(c) To effect a recoupment or setoff of claims in different moneys in an action.

(3) "Distribution proceeding" means a judicial or nonjudicial proceeding for an accounting, an assignment for the benefit of creditors, a foreclosure, a liquidation or rehabilitation of a corporation or other entity or a distribution of an estate, trust or other fund in which or against which a foreign-money claim is asserted.

(4) "Foreign money" means money other than money authorized or adopted by the United States of America.

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

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

(8) "Party" means an individual, corporation, government or governmental subdivision or agency, business trust, partnership, or association of 2 or more persons having a joint or common interest, or any other legal or commercial entity asserting or defending against a foreign-money claim.

(9) "Rate of exchange" means the rate at which the money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by the party obliged to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions or events, the term means the rate applicable to the particular transaction or event giving rise to the foreign-money claim.

(10) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for settlement by immediate payment, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(11) "State" means a state, territory or possession of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico or the United States Virgin Islands.

806.31 Scope. (1) Sections 806.30 to 806.44 apply only to a foreign-money claim in an action or distribution proceeding.

(2) Sections 806.30 to 806.44 apply to foreign-money issues notwithstanding the law applicable under the conflict of laws rules of this state to other issues in the action or distribution proceeding.

806.32 Variation by agreement. (1) The parties may agree to vary from the effects of ss. 806.30 to 806.44 at any time before or after the commencement of an action or distribution proceeding, or the entry of judgment.

(2) The parties may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may use different moneys for different aspects of the transaction. Stating the price in a foreign money for a

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particular transaction does not require, of itself, the use of that money for other aspects of the transaction.

806.33 Determining the money of the claim. (1) Except as provided in sub. (2), the proper money of the claim is one of the following:

(a) The money regularly used between the parties as a matter of usage or course of dealing.

(b) The money used at the time of a transaction in international trade, by trade usage, or common practice, for valuing or settling transactions in the particular commodity or service involved.

(c) The money in which the loss was ultimately felt or will be incurred by a party.

(2) The money in which the parties have contracted that a payment be made is the proper money of the claim for that payment.

806.34 Determining the amount of the money of certain contract claims. (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

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

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

806.35 Asserting and defending a foreign-money claim. (1) A claimant may assert a claim in a specified foreign money. If a foreign money is not asserted, the claimant makes a claim for a judgment in U.S. dollars.

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

(3) Any party may assert a defense, setoff, recoupment or counterclaim in any money without regard to the money of other claims.

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

806.36 Judgments and awards on foreign-money claims; times of money conversion; form of judgment. (1) Except as provided in sub. (3), a judgment or arbitra-

tion award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) The judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of U.S. dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in U.S. dollars.

(4) Each payment in U.S. dollars must be accepted and credited on the judgment or award in the amount of the foreign money that could be purchased by U.S. dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date of that payment.

(5) Judgments or awards made in an action on both a defense, setoff, recoupment or counterclaim and on the adverse party's claim must be netted by converting the money of the smaller into the money of the larger and subtracting the smaller from the larger, and must specify the rate of exchange used.

(6) A judgment substantially in the following form complies with sub. (1):

IT IS ADJUDGED AND ORDERED, that defendant ... (insert name) pay to plaintiff ... (insert name) the sum of ... (insert amount in the foreign money) plus interest on that sum at the rate of ...% (insert rate — see Section 806.38 of the Wisconsin Statutes) per year or, at the option of the judgment debtor, the number of U.S. dollars that will purchase the ... (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day before the day of payment, together with assessed costs of \$... (insert amount) U.S. dollars.

(7) If a contract claim is of the type covered by s. 806.34 (1) or (2), the judgment or award for the amount of the money stated to measure the obligation to be paid shall be entered in the money specified for payment or, at the option of the debtor, in the number of U.S. dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment shall be filed and docketed in foreign money in the same manner and shall have the same effect as other judgments.

806.37 Conversions of foreign money in a distribution proceeding. The rate of exchange prevailing at or near the closing of business on the day the distribution proceeding is initiated shall govern all exchanges of foreign money in the proceeding. A foreign-money claimant in a distribution proceeding must assert its claim in the named foreign money and show the amount of U.S. dollars resulting from a conversion as of the date the proceeding was initiated.

806.38 Prejudgment and judgment interest. (1) With respect to a foreign-money claim, recovery of pre-judgment interest and the rate of interest to be applied in

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the action or distribution proceeding are matters of the substantive law governing the right to recovery under the conflict of laws rules of this state.

(2) Notwithstanding sub. (1), an increase or decrease in the amount of prejudgment interest otherwise payable may be made in a foreign–money judgment to the extent required by s. 802.05, 805.03 or 807.01.

(3) A judgment on a foreign–money claim bears interest at the same rate applicable to other judgments of this state.

806.39 Enforcement of foreign judgments. (1) Subject to subs. (2) and (3), if an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in s. 806.36 whether or not the foreign judgment confers an option to pay in an equivalent amount of U.S. dollars. A satisfaction or partial payment made upon the foreign judgment must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(2) Notwithstanding sub. (1), a foreign judgment may be filed and docketed under s. 806.24.

(3) A judgment entered on a foreign–money claim only in U.S. dollars in another state must be enforced in this state in U.S. dollars only.

806.40 Temporarily determining the U.S. dollar value of foreign–money claims for limited purposes.

(1) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in U.S. dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution or other legal process, the amount of U.S. dollars at issue for assessing costs, or the amount of U.S. dollars involved for a surety bond or other court–required undertaking shall be ascertained as provided in subs. (2) and (3).

(2) The party seeking the process, costs, bond or other undertaking must compute the U.S. dollar amount of the foreign money claimed from a bank–offered spot rate of exchange prevailing at or near the close of business on the banking day preceding the day of the filing of a request or application for the issuance of process or for the determination of costs, or the filing of an application for a bond or other court–required undertaking.

(3) The party seeking the process, costs, bond or other undertaking shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation

used, how obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment was in the amount of U.S. dollars stated in the affidavit or certificate.

(4) Computations under this section are for the limited purposes of the section and do not affect computation of the U.S. dollar equivalent of the money of the judgment for payment purposes.

806.41 Effect of currency revalorizations. (1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under sub. (1) occurs after a judgment or award is entered on a foreign–money claim, the court or arbitrator shall amend the judgment or award by the rate of conversion of the former money.

806.42 Supplementary general principles of law. Unless displaced by ss. 806.30 to 806.44, the principles of law and equity, including the law relative to the capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating causes supplement the provisions under ss. 806.30 to 806.44.

806.43 Uniformity of application and construction. Sections 806.30 to 806.44 shall be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of ss. 806.30 to 806.44 among states enacting it.

806.44 Short title. Sections 806.30 to 806.44 may be cited as the “Uniform Foreign–Money Claims Act”.

SECTION 8. 811.03 (2) (intro.) of the statutes is amended to read:

811.03 (2) TORT ACTION. (intro.) ~~In~~ Except as provided in ss. 806.30 to 806.44, in tort actions the affidavit shall state that a cause of action in tort exists in favor of the plaintiff and against the defendant, that the damages sustained exceed ~~fifty dollars~~ \$50, specifying the amount claimed and either:

SECTION 9. Initial applicability. This act first applies to actions and distribution proceedings commenced on the effective date of this SECTION.

SECTION 10. Effective date. This act takes effect on January 1, 1992.