

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2193 Session of 1998

INTRODUCED BY L. I. COHEN, ORIE, RUBLEY, LEDERER, LAUGHLIN,
SAYLOR, SEMMEL, YOUNGBLOOD, CLYMER, C. WILLIAMS, SEYFERT,
HENNESSEY, RAMOS, THOMAS, CIVERA, McNAUGHTON, PRESTON AND
ZUG, FEBRUARY 4, 1998

AS REPORTED FROM COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 20, 1998

AN ACT

1 ~~Requiring the substitution of and equivalency for the single~~ <—
2 ~~currency of the European Union in certain contracts,~~
3 ~~securities and instruments.~~

4 AMENDING TITLE 12 (COMMERCE AND TRADE) OF THE PENNSYLVANIA <—
5 CONSOLIDATED STATUTES, PROVIDING FOR CONTINUITY OF CONTRACT
6 UNDER THE MONETARY UNION IN MEMBER STATES OF THE EUROPEAN
7 UNION.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Short title.~~ <—

11 ~~This act shall be known and may be cited as the European~~
12 ~~Union Currency Equivalency Law.~~

13 ~~Section 2. Definitions.~~

14 ~~The following words and phrases when used in this act shall~~
15 ~~have the meanings given to them in this section unless the~~
16 ~~context clearly indicates otherwise:~~

17 ~~"Euro." The currency of participating member states of the~~
18 ~~European Union that adopt a single currency in accordance with~~
19 ~~the treaty on European Union signed February 7, 1992.~~

~~"European currency unit" or "ECU." The currency basket that is from time to time used as the unit of account of the European Community as defined in European Council Regulation No.3320/94. At such time as the euro first becomes the monetary unit of participating member states of the European Union:~~

~~(1) References to the ECU in a contract, security or instrument that defines or refers to the ECU in terms similar to this definition shall be replaced by references to the euro at a rate of one euro to one ECU.~~

~~(2) References to the ECU in a contract, security or instrument that does not define or refer to the ECU in terms similar to this definition shall be presumed, unless demonstrated or proven to the contrary by the intention of the parties, to refer to the currency basket that is from time to time used as the unit of account of the European Community in accordance with the treaty of the European Union signed February 7, 1992.~~

~~"Introduction of the euro." This term includes the implementation from time to time of economic and monetary union in member states of the European Union in accordance with the treaty of European Union signed February 7, 1992.~~

~~Section 3. Equivalents required.~~

~~(a) General rule. If a subject or medium of payment of a contract, security or instrument is a currency that has been substituted for or replaced by the euro, the euro shall be a commercially reasonable substitute and substantial equivalent that may be either:~~

~~(1) used in determining the value of the currency; or~~

~~(2) tendered in each case at the conversion rate~~

~~specified in and otherwise calculated in accordance with the~~

~~regulations adopted by the Council of the European Union.~~

~~(b) Substitution for ECU. If a subject or medium of payment of a contract, security or instrument is the ECU, the euro shall be a commercially reasonable substitute and substantial equivalent that may be either:~~

~~(1) used in determining the value of the ECU; or~~

~~(2) tendered in each case at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.~~

~~(c) Operation. Performance of any of the obligations described in subsections (a) and (b) may be made either in the currency or currencies originally designated in the contract, security or instrument, provided that such currency or currencies remain legal tender or in euro. No other currency shall be used, whether or not such other currency:~~

~~(1) has been substituted or replaced by the euro; or~~

~~(2) is a currency that is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.~~

~~(d) Operation not to excuse performance or create unilateral rights. None of the following events shall have the effect of discharging or excusing performance under any contract, security or instrument or giving a party to any contract, security or instrument the right to unilaterally alter or terminate the contract, security or instrument:~~

~~(1) the introduction of the euro;~~

~~(2) the tendering of euro in connection with any obligation in compliance with subsection (a) or (b);~~

~~(3) the determining of the value of any obligation in compliance with subsection (a) or (b); or~~

~~(4) the calculating or determining of the subject or medium of payment of a contract, security or instrument with reference to interest rate or other basis that has been substituted or replaced due to the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent.~~

~~Section 4. Construction of act.~~

~~Nothing in this act shall be construed to alter or impair the rights of parties to any contract, security or instrument that specifically refers to the introduction of the euro. In circumstances involving currency alteration, other than the introduction of the euro, nothing in this act shall be construed as creating any negative inference or negative presumption regarding the validity or enforceability of any contract, security or instrument denominated in whole or in part in a currency affected by that alteration.~~

~~Section 5. Applicability.~~

~~Notwithstanding the provisions of Title 13 of the Pennsylvania Consolidated Statutes or any other law of this Commonwealth, this act shall apply to all contracts, securities and instruments, including, but not limited to, commercial transactions.~~

~~Section 6. Effective date.~~

~~This act shall take effect in 60 days.~~

SECTION 1. TITLE 12 OF THE PENNSYLVANIA CONSOLIDATED
STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

CHAPTER 97

FOREIGN CURRENCY

SEC.

9701. CONTINUITY OF CONTRACT UNDER EUROPEAN MONETARY UNION.

1 § 9701. CONTINUITY OF CONTRACT UNDER EUROPEAN MONETARY UNION.

2 (A) CONTINUITY OF CONTRACT.--

3 (1) IF A SUBJECT OR MEDIUM OF PAYMENT OF A CONTRACT,
4 SECURITY OR INSTRUMENT IS A CURRENCY THAT HAS BEEN
5 SUBSTITUTED OR REPLACED BY THE EURO, THE EURO SHALL BE A
6 COMMERCIALY REASONABLE SUBSTITUTE AND SUBSTANTIAL EQUIVALENT
7 THAT MAY BE EITHER:

8 (I) USED IN DETERMINING THE VALUE OF THAT CURRENCY;

9 OR

10 (II) TENDERED;

11 IN EACH CASE AT THE CONVERSION RATE SPECIFIED IN AND
12 OTHERWISE CALCULATED IN ACCORDANCE WITH THE REGULATIONS
13 ADOPTED BY THE COUNCIL OF THE EUROPEAN UNION.

14 (2) IF A SUBJECT OR MEDIUM OF PAYMENT OF A CONTRACT,
15 SECURITY OR INSTRUMENT IS THE ECU, THE EURO WILL BE A
16 COMMERCIALY REASONABLE SUBSTITUTE AND SUBSTANTIAL EQUIVALENT
17 THAT MAY BE EITHER:

18 (I) USED IN DETERMINING THE VALUE OF THAT CURRENCY;

19 OR

20 (II) TENDERED;

21 IN EACH CASE AT THE CONVERSION RATE SPECIFIED IN AND
22 OTHERWISE CALCULATED IN ACCORDANCE WITH THE REGULATIONS
23 ADOPTED BY THE COUNCIL OF THE EUROPEAN UNION.

24 (3) PERFORMANCE OF ANY OF THE OBLIGATIONS DESCRIBED IN
25 PARAGRAPH (1) OR (2) MAY BE MADE IN THE CURRENCY OR
26 CURRENCIES ORIGINALLY DESIGNATED IN THE CONTRACT, SECURITY OR
27 INSTRUMENT, SO LONG AS THE CURRENCY OR CURRENCIES REMAIN
28 LEGAL TENDER, OR IN EURO, BUT NOT IN ANY OTHER CURRENCY,
29 WHETHER OR NOT THE OTHER CURRENCY:

30 (I) HAS BEEN SUBSTITUTED OR REPLACED BY THE EURO; OR

(II) IS A CURRENCY THAT IS CONSIDERED A DENOMINATION
OF THE EURO AND HAS A FIXED CONVERSION RATE WITH RESPECT
TO THE EURO.

(B) EFFECT OF CURRENCY SUBSTITUTION ON PERFORMANCE.--NONE OF
THE FOLLOWING SHALL HAVE THE EFFECT OF DISCHARGING OR EXCUSING
PERFORMANCE UNDER ANY CONTRACT, SECURITY OR INSTRUMENT OR GIVE A
PARTY THE RIGHT UNILATERALLY TO ALTER OR TERMINATE ANY CONTRACT,
SECURITY OR INSTRUMENT:

(1) INTRODUCTION OF THE EURO.

(2) TENDER OF EUROS IN CONNECTION WITH ANY OBLIGATION IN
COMPLIANCE WITH SUBSECTION (A)(1) OR (2).

(3) DETERMINATION OF THE VALUE OF ANY OBLIGATION IN
COMPLIANCE WITH SUBSECTION (A)(1) OR (2).

(4) CALCULATION OR DETERMINATION OF THE SUBJECT OR
MEDIUM OF PAYMENT OF A CONTRACT, SECURITY OR INSTRUMENT WITH
REFERENCE TO AN INTEREST RATE OR OTHER BASIS THAT HAS BEEN
SUBSTITUTED OR REPLACED DUE TO THE INTRODUCTION OF THE EURO
AND THAT IS A COMMERCIALY REASONABLE SUBSTITUTE AND
SUBSTANTIAL EQUIVALENT.

(C) REFERENCES TO ECU IN CONTRACTS.--WHEN THE EURO FIRST
BECOMES THE MONETARY UNIT OF PARTICIPATING MEMBER STATES OF THE
EUROPEAN UNION, REFERENCES TO THE ECU IN A CONTRACT, SECURITY OR
INSTRUMENT THAT ALSO REFERS IN SUBSTANCE TO THE DEFINITION OF
THE ECU AS SET FORTH IN SUBSECTION (G) SHALL BE REPLACED BY
REFERENCES TO THE EURO AT A RATE OF ONE EURO TO ONE ECU.
REFERENCES TO THE ECU IN A CONTRACT, SECURITY OR INSTRUMENT
WITHOUT SUCH A DEFINITION OF THE ECU SHALL BE PRESUMED,
REBUTTABLE BY PROOF OF THE CONTRARY INTENTION OF THE PARTIES, TO
BE REFERENCES TO THE CURRENCY BASKET THAT IS FROM TIME TO TIME
USED AS THE UNIT OF ACCOUNT OF THE EUROPEAN COMMUNITY.

1 (D) EFFECT OF AGREEMENTS.--THIS SECTION SHALL NOT ALTER OR
2 IMPAIR AND SHALL BE SUBJECT TO ANY AGREEMENTS BETWEEN PARTIES
3 WITH SPECIFIC REFERENCE TO THE INTRODUCTION OF THE EURO.

4 (E) APPLICATION.--NOTWITHSTANDING THE PROVISIONS OF TITLE 13
5 (RELATING TO COMMERCIAL CODE) OR ANY OTHER LAW OF THIS
6 COMMONWEALTH, THIS SECTION SHALL APPLY TO ALL CONTRACTS,
7 SECURITIES AND INSTRUMENTS, INCLUDING CONTRACTS WITH RESPECT TO
8 COMMERCIAL TRANSACTIONS, AND SHALL NOT BE DEEMED TO BE DISPLACED
9 BY ANY OTHER LAW OF THIS COMMONWEALTH.

10 (F) NO APPLICATION TO OTHER CURRENCY ALTERATION.--IN
11 CIRCUMSTANCES OF CURRENCY ALTERATION OTHER THAN THE INTRODUCTION
12 OF THE EURO, THIS SECTION SHALL NOT BE INTERPRETED AS CREATING
13 ANY NEGATIVE INFERENCE OR NEGATIVE PRESUMPTION REGARDING THE
14 VALIDITY OR ENFORCEABILITY OF CONTRACTS, SECURITIES OR
15 INSTRUMENTS DENOMINATED IN WHOLE OR PART IN A CURRENCY AFFECTED
16 BY THAT ALTERATION.

17 (G) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
18 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
19 SUBSECTION:

20 "ECU" OR "EUROPEAN CURRENCY UNIT." THE CURRENCY BASKET THAT
21 IS FROM TIME TO TIME USED AS THE UNIT OF ACCOUNT OF THE EUROPEAN
22 COMMUNITY, AS DEFINED IN EUROPEAN COUNCIL REGULATION NO.3320/94.

23 "EURO." THE CURRENCY OF PARTICIPATING MEMBER STATES OF THE
24 EUROPEAN UNION THAT ADOPT A SINGLE CURRENCY IN ACCORDANCE WITH
25 THE TREATY ON EUROPEAN UNION SIGNED FEBRUARY 7, 1992.

26 "INTRODUCTION OF THE EURO." INCLUDES, BUT IS NOT LIMITED TO,
27 THE IMPLEMENTATION FROM TIME TO TIME OF ECONOMIC AND MONETARY
28 UNION IN MEMBER STATES OF THE EUROPEAN UNION IN ACCORDANCE WITH
29 THE TREATY ON EUROPEAN UNION SIGNED FEBRUARY 7, 1992.

30 SECTION 2. THE ADDITION OF 12 PA.C.S. CH. 97 SHALL APPLY TO

1 CONTRACTS, SECURITIES AND INSTRUMENTS ENTERED INTO OR ISSUED
2 BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.
3 SECTION 3. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.