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SFA



BILL ANALYSIS

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House Bill 5800 (Substitute H-2 as passed by the House)
House Bill 5835 (Substitute H-1 as passed by the House)
Sponsor: Representative Andrew Richner
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 9-16-98

CONTENT

House Bills 5800 (H-2) and 5835 (H-1) both would amend the Uniform Commercial Code to provide for conversion to the European currency the “euro” with respect to contracts, securities, or financial instruments and for the continuity of contracts after euro conversion. The bills are tie-barred.

Under the bills, “euro” would mean the currency of participating member states of the European Union that adopted a single currency in accordance with the Treaty on European Union. Member states would be those that had decided to adopt the euro, and other member states that may choose to participate. Also, “ECU” or “European Currency Unit” would mean “the currency basket that is from time to time used as the unit of account of the European Union as defined in European Council regulation no. 3320/94”.

The bills would apply to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and would not be displaced by any other Michigan law. In a circumstance of currency alteration other than the introduction of the euro, the bills would not create a negative inference or negative presumption regarding the validity or enforceability of a contract, security, or instrument denominated in whole or in part in a currency affected by that alteration. The bills would apply to a contract, security, and instrument entered into or issued before, on, or after the effective date of House Bill 5835 (H-1).

House Bill 5800 (H-2)

The bill specifies that, if a subject or medium of payment of a contract, security, or instrument were either the ECU or a currency that had been substituted or replaced by the euro, the euro would be a commercially reasonable substitute and substantial equivalent that could be used in determining the value of that currency or tendered at the conversion rate specified in and calculated according to the regulations adopted by the Council of the European Union.

Unless the parties to a contract, security, or instrument agreed otherwise, the tendering of money could be made only in euros or in the currency originally designated by the contract, security, or instrument, if that currency remained legal tender at the time of performance.

House Bill 5835 (H-1)

The bill specifies that the right under House Bill 5800 (H-2) to tender payment in the originally designated currency would not be affected if the currency had been substituted or replaced by the euro or the currency were considered a denomination of the euro and had a fixed conversion rate with respect to the euro.

None of the following could discharge or excuse performance under a contract, security, or instrument or give a party the right, unilaterally, to alter or terminate a contract, security, or instrument:

- The introduction of the euro.
- Tendering euros as authorized by House Bill 5800 (H-2) in connection with any obligation.
- Determining the value of an obligation in compliance with House Bill 5800 (H-2).
- Calculating or determining the subject or medium of payment of a contract, security, or instrument under House Bill 5800 (H-2) with reference to an interest rate or other calculation rate that had been substituted or replaced due to the introduction of the euro and that was a commercially reasonable substitute for and substantial equivalent to an original interest rate.

A reference to ECU in a contract, security, or instrument, without defining ECU, would be presumed to be a reference to the currency basket that was from time to time used as the unit of account of the European Community. The presumption would be rebuttable by showing that it was contrary to the intention of the parties.

When an agreement between parties to a contract specifically related to the introduction of the euro and was in conflict with the bill or House Bill 5800 (H-2), the agreement between the parties would control.

Proposed MCL 440.1210 (H.B. 5800)
Proposed MCL 440.1211 (H.B. 5835)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: E. Limbs