



235134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2022	.	
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The Committee on Commerce and Tourism (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 687.15, Florida Statutes, is created to  
read:

687.15 Benchmark replacements for the London Interbank  
Offered Rate.—

(1) The Legislature finds that the discontinuation of the  
London Interbank Offered Rate (LIBOR) as a viable interest rate



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11 threatens the continued viability of certain contracts,  
12 securities, and instruments and the rights of the parties to  
13 those contracts, securities, or instruments. Furthermore, the  
14 threat of unknown and potentially unbounded liability and the  
15 viability of contracts, securities, and instruments threatens  
16 the state's economy and has created an overpowering public  
17 necessity to provide an immediate and remedial legislative  
18 solution. Therefore, the Legislature intends for parties to  
19 certain contracts, securities, or instruments, as provided in  
20 this section, to enjoy heightened legal protections as a result  
21 of the discontinuation of LIBOR. The Legislature also finds that  
22 there are no alternative means to meet this public necessity.  
23 The Legislature finds that the public interest as a whole is  
24 best served by providing certainty to these contracts,  
25 securities, and instruments and the parties thereto, so that  
26 these contracts, securities, and instruments may remain viable  
27 and continue to be enforceable in the state.

28 (2) As used in this section, the term:

29 (a) "Benchmark" means an index of interest rates or  
30 dividend rates that is used, in whole or in part, as the basis  
31 of, or as a reference for, calculating or determining a  
32 valuation, payment, or other measurement under or with respect  
33 to a contract, security, or instrument.

34 (b) "Benchmark replacement" means a benchmark, an interest  
35 rate, or a dividend rate that may or may not be based, in whole  
36 or in part, on a prior setting of LIBOR, to replace LIBOR or any  
37 interest rate or dividend rate based on LIBOR, whether on a  
38 temporary, permanent, or indefinite basis, under or with respect  
39 to a contract, security, or instrument.



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40       (c) "Benchmark replacement conforming change" means, with  
41 respect to any type of contract, security, or instrument, a  
42 technical, administrative, or operational change, alteration, or  
43 modification that is associated with and reasonably necessary to  
44 the use, adoption, calculation, or implementation of a  
45 recommended benchmark replacement and that has been selected or  
46 recommended by a relevant recommending body. However, if, in the  
47 reasonable judgment of a calculating person, the change,  
48 alteration, or modification selected or recommended by a  
49 relevant recommending body does not apply to the contract,  
50 security, or instrument or is insufficient to allow  
51 administration and calculation of the recommended benchmark  
52 replacement, the benchmark replacement conforming change may  
53 include other changes, alterations, or modifications that, in  
54 the reasonable judgment of the calculating person:

55       1. Are necessary to allow administration and calculation of  
56 the recommended benchmark replacement under or with respect to  
57 the contract, security, or instrument in a manner consistent  
58 with market practice for substantially similar contracts,  
59 securities, or instruments and, to the extent practicable, the  
60 manner in which the contract, security, or instrument was  
61 administered immediately before the LIBOR replacement date.

62       2. Would not result in a disposition of the contract,  
63 security, or instrument for federal income tax purposes.

64       (d) "Calculating person" means, with respect to any  
65 contract, security, or instrument, a person responsible for  
66 calculating or determining a valuation, payment, or other  
67 measurement based on a benchmark. This person may be the  
68 determining person.



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69 (e) "Contract, security, or instrument" includes, without  
70 limitation, any contract, agreement, mortgage, deed of trust,  
71 lease, instrument, obligation, or security, whether representing  
72 debt or equity, and including any interest in a corporation,  
73 partnership, or limited liability company.

74 (f) "Determining person" means, with respect to any  
75 contract, security, or instrument, the following persons in  
76 decreasing order of priority:

77 1. A person so specified.

78 2. A person with the authority, right, or obligation to do  
79 any of the following:

80 a. Determine the benchmark replacement that will take  
81 effect on the LIBOR replacement date.

82 b. Calculate or determine a valuation, payment, or other  
83 measurement based on a benchmark.

84 c. Notify other persons of the occurrence of a LIBOR  
85 discontinuance event, a LIBOR replacement date, or a benchmark  
86 replacement.

87 (g) "Fallback provision" means a term in a contract,  
88 security, or instrument which sets forth a methodology or  
89 procedure for determining a benchmark replacement, including any  
90 term relating to the date on which the benchmark replacement  
91 becomes effective, without regard to whether a benchmark  
92 replacement can be determined in accordance with the methodology  
93 or procedure.

94 (h) "LIBOR" means, for purposes of the application of this  
95 section to any particular contract, security, or instrument, the  
96 United States dollar LIBOR, formerly known as the London  
97 Interbank Offered Rate, as administered by ICE Benchmark



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98 Administration, or any predecessor or successor thereof, or any  
99 tenor thereof, as applicable, that is used in making any  
100 calculation or determination of benchmark rates.

101 (i)1. "LIBOR discontinuance event" means the earliest to  
102 occur of any of the following:

103 a. A public statement or publication of information by, or  
104 on behalf of, the administrator of LIBOR announcing that the  
105 administrator has ceased or will cease to provide LIBOR  
106 permanently or indefinitely, if, at the time of the statement or  
107 publication, there is no successor administrator that will  
108 continue to provide LIBOR.

109 b. A public statement or publication of information by the  
110 regulatory supervisor for the administrator of LIBOR, the  
111 Federal Reserve System, an insolvency official with jurisdiction  
112 over the administrator of LIBOR, a resolution authority with  
113 jurisdiction over the administrator of LIBOR, or a court or an  
114 entity with similar insolvency or resolution authority over the  
115 administrator of LIBOR, announcing that the administrator of  
116 LIBOR has ceased or will cease to provide LIBOR permanently or  
117 indefinitely, if, at the time of the statement or publication,  
118 there is no successor administrator that will continue to  
119 provide LIBOR.

120 c. A public statement or publication of information by the  
121 regulatory supervisor for the administrator of LIBOR announcing  
122 that LIBOR is no longer representative.

123 2. A public statement or publication of information that  
124 affects one or more tenors of LIBOR does not constitute a LIBOR  
125 discontinuance event with respect to a contract, security, or  
126 instrument that:



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127 a. Provides for only one tenor of LIBOR, if the contract,  
128 security, or instrument requires interpolation and the tenor can  
129 be interpolated from LIBOR tenors that are not so affected; or

130 b. Allows a party to choose from more than one tenor of  
131 LIBOR and any of the tenors is not so affected or, if the  
132 contract, security, or instrument requires interpolation, can be  
133 interpolated from LIBOR tenors that are not so affected.

134 (j)1. "LIBOR replacement date" means:

135 a. In the case of a LIBOR discontinuance event described in  
136 sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later  
137 of:

138 (I) The date of the public statement or publication of  
139 information referenced in sub-subparagraph (i)1.a. or sub-  
140 paragraph (i)1.b.; or

141 (II) The date on which the administrator of LIBOR  
142 permanently or indefinitely ceases to provide LIBOR.

143 b. In the case of a LIBOR discontinuance event described in  
144 sub-subparagraph (i)1.c., the date of the public statement or  
145 publication of information referenced in sub-subparagraph  
146 (i)1.c.

147 2. A date that affects one or more tenors of LIBOR does not  
148 constitute a LIBOR replacement date with respect to a contract,  
149 security, or instrument that:

150 a. Provides for only one tenor of LIBOR, if the contract,  
151 security, or instrument requires interpolation and the tenor can  
152 be interpolated from LIBOR tenors that are not so affected; or

153 b. Allows a party to choose from more than one tenor of  
154 LIBOR and any of the tenors is not so affected or, if the  
155 contract, security, or instrument requires interpolation, can be



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156 interpolated from LIBOR tenors that are not so affected.

157 (k) "Recommended benchmark replacement" means, with respect  
158 to any particular type of contract, security, or instrument, a  
159 benchmark replacement based on SOFR that must include any  
160 recommended spread adjustment and any benchmark replacement  
161 conforming change that have been selected or recommended by a  
162 relevant recommending body with respect to the type of contract,  
163 security, or instrument.

164 (l) "Recommended spread adjustment" means a spread  
165 adjustment, or method for calculating or determining the spread  
166 adjustment, which has been selected or recommended by a relevant  
167 recommending body for a recommended benchmark replacement for a  
168 particular type of contract, security, or instrument and for a  
169 particular term to account for the effects of the transition or  
170 change from LIBOR to a recommended benchmark replacement. This  
171 term may be a positive or negative value or zero.

172 (m) "Relevant recommending body" means the Federal Reserve  
173 Board, the Federal Reserve Bank of New York, the Alternative  
174 Reference Rates Committee, or a successor to any of them.

175 (n) "SOFR" means, with respect to any day, the secured  
176 overnight financing rate published for the day by the Federal  
177 Reserve Bank of New York as the administrator of the benchmark,  
178 or a successor administrator, on the Federal Reserve Bank of New  
179 York's website.

180 (3) On the LIBOR replacement date, the recommended  
181 benchmark replacement, by operation of law, shall be the  
182 benchmark replacement for a contract, security, or instrument  
183 that uses LIBOR as a benchmark and that:

184 (a) Does not contain a fallback provision; or



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185       (b) Contains fallback provisions resulting in a benchmark  
186 replacement, other than a recommended benchmark replacement,  
187 that is based in any way on a LIBOR value.

188       (4) After the occurrence of a LIBOR discontinuance event,  
189 any fallback provisions in a contract, security, or instrument  
190 which provide for a benchmark replacement based on or otherwise  
191 involving a poll, survey, or inquiry for quotes or information  
192 concerning interbank lending rates or any interest rate or  
193 dividend rate based on LIBOR shall be void and of no force or  
194 effect.

195       (5) (a) A determining person may, but is not required to,  
196 select the recommended benchmark replacement as the benchmark  
197 replacement after the occurrence of a LIBOR discontinuance  
198 event. The selection of the recommended benchmark replacement  
199 must be:

200           1. Irrevocable;

201           2. Made by the earlier of the LIBOR replacement date or the  
202 latest date for selecting a benchmark replacement according to  
203 the contract, security, or instrument; and

204           3. Used in any determination of the benchmark under or with  
205 respect to the contract, security, or instrument occurring on  
206 and after the LIBOR replacement date.

207       (b) Paragraph (a) applies to a contract, security, or  
208 instrument that uses LIBOR as a benchmark and that contains  
209 fallback provisions allowing or requiring the selection of a  
210 benchmark replacement that is:

211           1. Based in any way on a LIBOR value; or

212           2. The substantive equivalent of paragraph (7) (a),  
213 paragraph (7) (b), or paragraph (7) (c).





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214       (6) If a recommended benchmark replacement becomes the  
215 benchmark replacement for a contract, security, or instrument  
216 under this section, then all benchmark replacement conforming  
217 changes that are applicable to the recommended benchmark  
218 replacement must become an integral part of the contract,  
219 security, or instrument by operation of law.

220       (7) The selection or use of a recommended benchmark  
221 replacement as a benchmark replacement under or with respect to  
222 a contract, security, or instrument by operation of this section  
223 constitutes all of the following:

224       (a) A commercially reasonable replacement for and a  
225 commercially substantial equivalent to LIBOR.

226       (b) A reasonable, comparable, or analogous term for LIBOR  
227 under or with respect to the contract, security, or instrument.

228       (c) A replacement that is based on a methodology or  
229 information that is similar or comparable to LIBOR.

230       (d) Substantial performance by any person of any right or  
231 obligation relating to or based on LIBOR under or with respect  
232 to a contract, security, or instrument.

233       (8) A LIBOR discontinuance event, a LIBOR replacement date,  
234 the selection or use of a recommended benchmark replacement as a  
235 benchmark replacement, or the determination, implementation, or  
236 performance of a benchmark replacement conforming change, in  
237 each case, by operation of this section, may not:

238       (a) Be deemed to impair or affect the right of any person  
239 to receive a payment, or affect the amount or timing of the  
240 payment, under a contract, security, or instrument;

241       (b) Have the effect of discharging or excusing performance  
242 under a contract, security, or instrument for any reason, claim,



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243 or defense, including, but not limited to, any force majeure or  
244 other provision in a contract, security, or instrument;

245 (c) Have the effect of giving any person the right to  
246 unilaterally terminate or suspend performance under a contract,  
247 security, or instrument;

248 (d) Have the effect of constituting a breach of a contract,  
249 security, or instrument; or

250 (e) Have the effect of voiding or nullifying a contract,  
251 security, or instrument.

252 (9) A person is not liable for damages to any other person,  
253 and is not subject to any claim or request for equitable relief,  
254 arising out of or related to the selection or use of a  
255 recommended benchmark replacement or the determination,  
256 implementation, or performance of a benchmark replacement  
257 conforming change, in each case, by operation of this section.

258 The selection or use of the recommended benchmark replacement or  
259 the determination, implementation, or performance of a benchmark  
260 replacement conforming change may not give rise to any claim or  
261 cause of action by any person in law or in equity.

262 (10) The selection or use of a recommended benchmark  
263 replacement or the determination, implementation, or performance  
264 of a benchmark replacement conforming change, by operation of  
265 this section, may not be deemed to:

266 (a) Be an amendment or modification of a contract,  
267 security, or instrument.

268 (b) Prejudice, impair, or affect a person's rights,  
269 interests, or obligations under or with respect to a contract,  
270 security, or instrument.

271 (11) Except as provided in subsection (3) or subsection



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272 (5), this section may not be interpreted as creating a negative  
273 inference or negative presumption regarding the validity or  
274 enforceability of any of the following:

275 (a) A benchmark replacement that is not a recommended  
276 benchmark replacement.

277 (b) A spread adjustment, or method for calculating or  
278 determining a spread adjustment, which is not a recommended  
279 spread adjustment.

280 (c) A change, alteration, or modification to or with  
281 respect to a contract, security, or instrument which is not a  
282 benchmark replacement conforming change.

283 (12) This section does not alter or impair any of the  
284 following:

285 (a) A written agreement by all requisite parties which,  
286 retrospectively or prospectively, provides that a contract,  
287 security, or instrument is not subject to this section without  
288 necessarily referring specifically to this section. As used in  
289 this paragraph, the term "requisite parties" means all parties  
290 required to amend the terms and provisions of a contract,  
291 security, or instrument that would otherwise be altered or  
292 affected by this section.

293 (b) A contract, security, or instrument that contains  
294 fallback provisions that would result in a benchmark replacement  
295 that is not based on LIBOR, including, but not limited to, the  
296 prime rate or the federal funds rate. However, the contract,  
297 security, or instrument is subject to subsection (4).

298 (c) A contract, security, or instrument subject to  
299 subsection (5) as to which a determining person does not elect  
300 to use a recommended benchmark replacement or as to which a



301 determining person elects to use a recommended benchmark  
302 replacement before the occurrence of a LIBOR discontinuance  
303 event. However, the contract, security, or instrument is subject  
304 to subsection (4).

305 (d) The application to a recommended benchmark replacement  
306 of any cap, floor, modifier, or spread adjustment to which LIBOR  
307 had been subject pursuant to the terms of a contract, security,  
308 or instrument.

309 (13) Notwithstanding the Uniform Commercial Code or any  
310 other law of this state, and except as otherwise provided in  
311 this section, this section applies to all contracts, securities,  
312 and instruments, including contracts with respect to commercial  
313 transactions, and may not be superseded by any other law of this  
314 state.

315 Section 2. This act is remedial in nature and applies  
316 retroactively to all contracts, agreements, mortgages, deeds of  
317 trust, leases, instruments, obligations, or securities, whether  
318 representing debt or equity, and including all interests in a  
319 corporation, partnership, or limited liability company, in  
320 existence on December 31, 2021.

321 Section 3. This act shall take effect upon becoming a law.

322  
323 ===== T I T L E A M E N D M E N T =====

324 And the title is amended as follows:

325 Delete everything before the enacting clause  
326 and insert:

327 A bill to be entitled  
328 An act relating to benchmark replacements for London  
329 Interbank Offered Rate; creating s. 687.15, F.S.;



330 providing legislative findings and intent and a  
331 statement of public interest; providing definitions;  
332 requiring that recommended benchmark replacements  
333 selected or recommended by specified persons be  
334 benchmark replacements on the United States dollar  
335 London Interbank Offered Rate (LIBOR) replacement date  
336 for certain contracts, securities, and instruments;  
337 requiring certain fallback provisions in contracts,  
338 securities, and instruments providing specified  
339 benchmark replacements to be disregarded and void;  
340 authorizing specified persons to select benchmark  
341 replacements under certain circumstances; providing  
342 requirements for such selection; providing  
343 applicability; requiring benchmark replacement  
344 conforming changes to become an integral part of  
345 contracts, securities, and instruments under certain  
346 circumstances; providing construction; providing that  
347 a person is not liable for damages and is not subject  
348 to claims and requests for equitable relief under  
349 certain circumstances; providing applicability;  
350 prohibiting other laws from superseding specified  
351 provisions; providing that the act is remedial in  
352 nature; providing retroactive applicability; providing  
353 an effective date.