

By Senator Gruters

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1 A bill to be entitled
2 An act relating to benchmark replacements for London
3 Interbank Offered Rate; creating s. 687.15, F.S.;
4 providing legislative findings and intent and a
5 statement of public interest; defining terms;
6 requiring that recommended benchmark replacements
7 selected or recommended by specified persons be
8 benchmark replacements on the United States dollar
9 London Interbank Offered Rate (LIBOR) replacement date
10 for certain contracts, securities, and instruments;
11 requiring that certain fallback provisions in
12 contracts, securities, and instruments providing
13 specified benchmark replacements be disregarded and
14 void; authorizing specified persons to select
15 benchmark replacements under certain circumstances;
16 providing requirements for such selection; providing
17 applicability; requiring that benchmark replacement
18 conforming changes become an integral part of
19 contracts, securities, and instruments under certain
20 circumstances; providing requirements for selections
21 or uses of recommended benchmark replacements as
22 benchmark replacements; providing construction;
23 providing that a person is not liable for damages and
24 is not subject to claims and requests for equitable
25 relief under certain circumstances; providing
26 applicability; prohibiting other laws from superseding
27 specified provisions; providing that the act is
28 remedial in nature; providing retroactive
29 applicability; providing an effective date.

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31 Be It Enacted by the Legislature of the State of Florida:

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

35 687.15 Benchmark replacements for the London Interbank
36 Offered Rate.—

37 (1) The Legislature finds that the discontinuation of the
38 London Interbank Offered Rate (LIBOR) as a viable interest rate
39 threatens the continued viability of certain contracts,
40 securities, and instruments and the rights of the parties to
41 those contracts, securities, or instruments. Furthermore, the
42 threat of unknown and potentially unbounded liability and the
43 viability of contracts, securities, and instruments threatens
44 the state's economy and has created an overpowering public
45 necessity to provide an immediate and remedial legislative
46 solution. Therefore, the Legislature intends for parties to
47 certain contracts, securities, or instruments, as provided in
48 this section, to enjoy heightened legal protections as a result
49 of the discontinuation of LIBOR. The Legislature also finds that
50 there are no alternative means to meet this public necessity.
51 The Legislature finds that the public interest as a whole is
52 best served by providing certainty to these contracts,
53 securities, and instruments and the parties thereto, so that
54 these contracts, securities, and instruments may remain viable
55 and continue to be enforceable in the state.

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

57 (a) "Benchmark" means an index of interest rates or
58 dividend rates that is used, in whole or in part, as the basis

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59 of, or as a reference for, calculating or determining a
60 valuation, payment, or other measurement under or in respect of
61 a contract, security, or instrument.

62 (b) "Benchmark replacement" means a benchmark, an interest
63 rate, or a dividend rate that may or may not be based, in whole
64 or in part, on a prior setting of LIBOR, to replace LIBOR or any
65 interest rate or dividend rate based on LIBOR, whether on a
66 temporary, permanent, or indefinite basis, under or in respect
67 of a contract, security, or instrument.

68 (c) "Benchmark replacement conforming change" means, with
69 respect to any type of contract, security, or instrument, a
70 technical, administrative, or operational change, alteration, or
71 modification that is associated with and reasonably necessary to
72 the use, adoption, calculation, or implementation of a
73 recommended benchmark replacement and that meets the following
74 conditions:

75 1. The change, alteration, or modification has been
76 selected or recommended by a relevant recommending body.

77 2. If, in the reasonable judgment of the calculating
78 person, the change, alteration, or modification selected or
79 recommended under subparagraph 1. does not apply to the
80 contract, security, or instrument or is insufficient to allow
81 administration and calculation of the recommended benchmark
82 replacement, the benchmark replacement conforming change must
83 include other changes, alterations, or modifications that, in
84 the reasonable judgment of the calculating person:

85 a. Are necessary to allow administration and calculation of
86 the recommended benchmark replacement under or in respect of the
87 contract, security, or instrument in a manner consistent with

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88 market practice for substantially similar contracts, securities,
89 or instruments and, to the extent practicable, the manner in
90 which the contract, security, or instrument was administered
91 immediately before the LIBOR replacement date; and

92 b. Would not result in a disposition of the contract,
93 security, or instrument for federal income tax purposes.

94 (d) "Calculating person" means, with respect to any
95 contract, security, or instrument, a person responsible for
96 calculating or determining a valuation, payment, or other
97 measurement based on a benchmark. This person may be the
98 determining person.

99 (e) "Contract, security, or instrument" includes, without
100 limitation, any contract, agreement, mortgage, deed of trust,
101 lease, instrument, obligation, or security, whether representing
102 debt or equity, and including any interest in a corporation,
103 partnership, or limited liability company.

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

107 1. A person so specified.

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

110 a. Determine the benchmark replacement that will take
111 effect on the LIBOR replacement date.

112 b. Calculate or determine a valuation, payment, or other
113 measurement based on a benchmark.

114 c. Notify other persons of the occurrence of a LIBOR
115 discontinuance event, a LIBOR replacement date, or a benchmark
116 replacement.

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117 (g) "Fallback provision" means a term in a contract,
118 security, or instrument which sets forth a methodology or
119 procedure for determining a benchmark replacement, including any
120 term relating to the date on which the benchmark replacement
121 becomes effective, without regard to whether a benchmark
122 replacement can be determined in accordance with the methodology
123 or procedure.

124 (h) "LIBOR" means, for purposes of the application of this
125 section to any particular contract, security, or instrument, the
126 United States dollar LIBOR, formerly known as the London
127 Interbank Offered Rate, as administered by ICE Benchmark
128 Administration, or any predecessor or successor thereof, or any
129 tenor thereof, as applicable, that is used in making any
130 calculation or determination of benchmark rates.

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

133 a. A public statement or publication of information by, or
134 on behalf of, the administrator of LIBOR announcing that the
135 administrator has ceased or will cease to provide LIBOR
136 permanently or indefinitely, if, at the time of the statement or
137 publication, there is no successor administrator that will
138 continue to provide LIBOR.

139 b. A public statement or publication of information by the
140 regulatory supervisor for the administrator of LIBOR, the
141 Federal Reserve System, an insolvency official with jurisdiction
142 over the administrator of LIBOR, a resolution authority with
143 jurisdiction over the administrator of LIBOR, or a court or an
144 entity with similar insolvency or resolution authority over the
145 administrator of LIBOR, announcing that the administrator of

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146 LIBOR has ceased or will cease to provide LIBOR permanently or
147 indefinitely, if, at the time of the statement or publication,
148 there is no successor administrator that will continue to
149 provide LIBOR.

150 c. A public statement or publication of information by the
151 regulatory supervisor for the administrator of LIBOR announcing
152 that LIBOR is no longer representative.

153 2. A public statement or publication of information that
154 affects one or more tenors of LIBOR does not constitute a LIBOR
155 discontinuance event with respect to a contract, security, or
156 instrument that:

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

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

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

165 a. In the case of a LIBOR discontinuance event described in
166 sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later
167 of:

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

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

173 b. In the case of a LIBOR discontinuance event described in
174 sub-subparagraph (i)1.c., the date of the public statement or

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175 publication of information referenced in sub-subparagraph
176 (i)1.c.

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

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

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

187 (k) "Recommended benchmark replacement" means, with respect
188 to any particular type of contract, security, or instrument, a
189 benchmark replacement based on SOFR that must include any
190 recommended spread adjustment and any benchmark replacement
191 conforming change that have been selected or recommended by a
192 relevant recommending body with respect to the type of contract,
193 security, or instrument.

194 (l) "Recommended spread adjustment" means a spread
195 adjustment, or method for calculating or determining the spread
196 adjustment, which has been selected or recommended by a relevant
197 recommending body for a recommended benchmark replacement for a
198 particular type of contract, security, or instrument and for a
199 particular term to account for the effects of the transition or
200 change from LIBOR to a recommended benchmark replacement. This
201 term may be a positive or negative value or zero.

202 (m) "Relevant recommending body" means the Federal Reserve
203 Board, the Federal Reserve Bank of New York, the Alternative

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204 Reference Rates Committee, or a successor to any of them.

205 (n) "SOFR" means, with respect to any day, the secured
206 overnight financing rate published for the day by the Federal
207 Reserve Bank of New York as the administrator of the benchmark,
208 or a successor administrator, on the Federal Reserve Bank of New
209 York's website.

210 (3) On the LIBOR replacement date, the recommended
211 benchmark replacement, by operation of law, shall be the
212 benchmark replacement for a contract, security, or instrument
213 that uses LIBOR as a benchmark and that:

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

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

218 (4) After the occurrence of a LIBOR discontinuance event,
219 any fallback provisions in a contract, security, or instrument
220 which provide for a benchmark replacement based on or otherwise
221 involving a poll, survey, or inquiry for quotes or information
222 concerning interbank lending rates or any interest rate or
223 dividend rate based on LIBOR shall be void and of no force or
224 effect.

225 (5) (a) A determining person may, but is not required to,
226 select the recommended benchmark replacement as the benchmark
227 replacement after the occurrence of a LIBOR discontinuance
228 event. The selection of the recommended benchmark replacement
229 must be:

230 1. Irrevocable;

231 2. Made by the earlier of the LIBOR replacement date or the
232 latest date for selecting a benchmark replacement according to

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233 the contract, security, or instrument; and

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

237 (b) Paragraph (a) applies to a contract, security, or
238 instrument that uses LIBOR as a benchmark and that contains
239 fallback provisions allowing or requiring the selection of a
240 benchmark replacement that is:

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

242 2. The substantive equivalent of paragraph (7) (a),
243 paragraph (7) (b), or paragraph (7) (c).

244 (6) If a recommended benchmark replacement becomes the
245 benchmark replacement for a contract, security, or instrument
246 under this section, then all benchmark replacement conforming
247 changes that are applicable to the recommended benchmark
248 replacement must become an integral part of the contract,
249 security, or instrument by operation of law.

250 (7) The selection or use of a recommended benchmark
251 replacement as a benchmark replacement under or in respect of a
252 contract, security, or instrument by operation of this section
253 must constitute all of the following:

254 (a) A commercially reasonable replacement for and a
255 commercially substantial equivalent to LIBOR.

256 (b) A reasonable, comparable, or analogous term for LIBOR
257 under or in respect of the contract, security, or instrument.

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

260 (d) Substantial performance by any person of any right or
261 obligation relating to or based on LIBOR under or in respect of

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262 a contract, security, or instrument.

263 (8) A LIBOR discontinuance event, a LIBOR replacement date,
264 the selection or use of a recommended benchmark replacement as a
265 benchmark replacement, or the determination, implementation, or
266 performance of a benchmark replacement conforming change, in
267 each case, by operation of this section, may not:

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

271 (b) Have the effect of discharging or excusing performance
272 under a contract, security, or instrument for any reason, claim,
273 or defense, including, but not limited to, any force majeure or
274 other provision in a contract, security, or instrument;

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

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

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

282 (9) A person is not liable for damages to any other person,
283 and is not subject to any claim or request for equitable relief,
284 arising out of or related to the selection or use of a
285 recommended benchmark replacement or the determination,
286 implementation, or performance of a benchmark replacement
287 conforming change, in each case, by operation of this section.
288 The selection or use of the recommended benchmark replacement or
289 the determination, implementation, or performance of a benchmark
290 replacement conforming change may not give rise to any claim or

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291 cause of action by any person in law or in equity.

292 (10) The selection or use of a recommended benchmark
293 replacement or the determination, implementation, or performance
294 of a benchmark replacement conforming change, by operation of
295 this section, may not be deemed to:

296 (a) Be an amendment or modification of a contract,
297 security, or instrument.

298 (b) Prejudice, impair, or affect a person's rights,
299 interests, or obligations under or in respect of a contract,
300 security, or instrument.

301 (11) Except as provided in subsection (3) or subsection
302 (5), this section may not be interpreted as creating a negative
303 inference or negative presumption regarding the validity or
304 enforceability of any of the following:

305 (a) A benchmark replacement that is not a recommended
306 replacement benchmark.

307 (b) A spread adjustment, or method for calculating or
308 determining a spread adjustment, which is not a recommended
309 spread adjustment.

310 (c) A change, alteration, or modification to or in respect
311 of a contract, security, or instrument which is not a benchmark
312 replacement conforming change.

313 (12) This section does not alter or impair any of the
314 following:

315 (a) A written agreement by all requisite parties which,
316 retrospectively or prospectively, provides that a contract,
317 security, or instrument is not subject to this section without
318 necessarily referring specifically to this section. As used in
319 this paragraph, the term "requisite parties" means all parties

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320 required to amend the terms and provisions of a contract,
321 security, or instrument that would otherwise be altered or
322 affected by this section.

323 (b) A contract, security, or instrument that contains
324 fallback provisions that would result in a benchmark replacement
325 that is not based on LIBOR, including, but not limited to, the
326 prime rate or the federal funds rate. However, the contract,
327 security, or instrument is subject to subsection (4).

328 (c) A contract, security, or instrument subject to
329 subsection (5) as to which a determining person does not elect
330 to use a recommended benchmark replacement or as to which a
331 determining person elects to use a recommended benchmark
332 replacement before the occurrence of a LIBOR discontinuance
333 event. However, the contract, security, or instrument is subject
334 to subsection (4).

335 (d) The application to a recommended benchmark replacement
336 of any cap, floor, modifier, or spread adjustment to which LIBOR
337 had been subject pursuant to the terms of a contract, security,
338 or instrument.

339 (13) Notwithstanding the Uniform Commercial Code or any
340 other law of this state, and except as otherwise provided in
341 this section, this section applies to all contracts, securities,
342 and instruments, including contracts with respect to commercial
343 transactions, and may not be superseded by any other law of this
344 state.

345 Section 2. This act is remedial in nature and applies
346 retroactively to all contracts, agreements, mortgages, deeds of
347 trust, leases, instruments, obligations, or securities, whether
348 representing debt or equity, and including all interests in a

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349 corporation, partnership, or limited liability company, in
350 existence on December 31, 2021.

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