

By the Committee on Commerce and Tourism; and Senator Gruters

577-02788-22

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

28
29 Be It Enacted by the Legislature of the State of Florida:

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

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

(a) "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect

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59 to a contract, security, or instrument.

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

66 (c) "Benchmark replacement conforming change" means, with
67 respect to any type of contract, security, or instrument, a
68 technical, administrative, or operational change, alteration, or
69 modification that is associated with and reasonably necessary to
70 the use, adoption, calculation, or implementation of a
71 recommended benchmark replacement and that has been selected or
72 recommended by a relevant recommending body. However, if, in the
73 reasonable judgment of a calculating person, the change,
74 alteration, or modification selected or recommended by a
75 relevant recommending body does not apply to the contract,
76 security, or instrument or is insufficient to allow
77 administration and calculation of the recommended benchmark
78 replacement, the benchmark replacement conforming change may
79 include other changes, alterations, or modifications that, in
80 the reasonable judgment of the calculating person:

81 1. Are necessary to allow administration and calculation of
82 the recommended benchmark replacement under or with respect to
83 the contract, security, or instrument in a manner consistent
84 with market practice for substantially similar contracts,
85 securities, or instruments and, to the extent practicable, the
86 manner in which the contract, security, or instrument was
87 administered immediately before the LIBOR replacement date.

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

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

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

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

103 1. A person so specified.

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

106 a. Determine the benchmark replacement that will take
107 effect on the LIBOR replacement date.

108 b. Calculate or determine a valuation, payment, or other
109 measurement based on a benchmark.

110 c. Notify other persons of the occurrence of a LIBOR
111 discontinuance event, a LIBOR replacement date, or a benchmark
112 replacement.

113 (g) "Fallback provision" means a term in a contract,
114 security, or instrument which sets forth a methodology or
115 procedure for determining a benchmark replacement, including any
116 term relating to the date on which the benchmark replacement

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117 becomes effective, without regard to whether a benchmark
118 replacement can be determined in accordance with the methodology
119 or procedure.

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

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

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

135 b. A public statement or publication of information by the
136 regulatory supervisor for the administrator of LIBOR, the
137 Federal Reserve System, an insolvency official with jurisdiction
138 over the administrator of LIBOR, a resolution authority with
139 jurisdiction over the administrator of LIBOR, or a court or an
140 entity with similar insolvency or resolution authority over the
141 administrator of LIBOR, announcing that the administrator of
142 LIBOR has ceased or will cease to provide LIBOR permanently or
143 indefinitely, if, at the time of the statement or publication,
144 there is no successor administrator that will continue to
145 provide LIBOR.

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146 c. A public statement or publication of information by the
147 regulatory supervisor for the administrator of LIBOR announcing
148 that LIBOR is no longer representative.

149 2. A public statement or publication of information that
150 affects one or more tenors of LIBOR does not constitute a LIBOR
151 discontinuance event with respect to a contract, security, or
152 instrument that:

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

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

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

161 a. In the case of a LIBOR discontinuance event described in
162 sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later
163 of:

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

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

169 b. In the case of a LIBOR discontinuance event described in
170 sub-subparagraph (i)1.c., the date of the public statement or
171 publication of information referenced in sub-subparagraph
172 (i)1.c.

173 2. A date that affects one or more tenors of LIBOR does not
174 constitute a LIBOR replacement date with respect to a contract,

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175 security, or instrument that:

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

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

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

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

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

201 (n) "SOFR" means, with respect to any day, the secured
202 overnight financing rate published for the day by the Federal
203 Reserve Bank of New York as the administrator of the benchmark,

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204 or a successor administrator, on the Federal Reserve Bank of New
205 York's website.

206 (3) On the LIBOR replacement date, the recommended
207 benchmark replacement, by operation of law, shall be the
208 benchmark replacement for a contract, security, or instrument
209 that uses LIBOR as a benchmark and that:

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

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

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

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

226 1. Irrevocable;

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

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

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233 (b) Paragraph (a) applies to a contract, security, or
234 instrument that uses LIBOR as a benchmark and that contains
235 fallback provisions allowing or requiring the selection of a
236 benchmark replacement that is:

- 237 1. Based in any way on a LIBOR value; or
238 2. The substantive equivalent of paragraph (7) (a),
239 paragraph (7) (b), or paragraph (7) (c).

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

246 (7) The selection or use of a recommended benchmark
247 replacement as a benchmark replacement under or with respect to
248 a contract, security, or instrument by operation of this section
249 constitutes all of the following:

250 (a) A commercially reasonable replacement for and a
251 commercially substantial equivalent to LIBOR.

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

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

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

259 (8) A LIBOR discontinuance event, a LIBOR replacement date,
260 the selection or use of a recommended benchmark replacement as a
261 benchmark replacement, or the determination, implementation, or

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262 performance of a benchmark replacement conforming change, in
263 each case, by operation of this section, may not:

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

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

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

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

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

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

288 (10) The selection or use of a recommended benchmark
289 replacement or the determination, implementation, or performance
290 of a benchmark replacement conforming change, by operation of

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291 this section, may not be deemed to:

292 (a) Be an amendment or modification of a contract,
293 security, or instrument.

294 (b) Prejudice, impair, or affect a person's rights,
295 interests, or obligations under or with respect to a contract,
296 security, or instrument.

297 (11) Except as provided in subsection (3) or subsection
298 (5), this section may not be interpreted as creating a negative
299 inference or negative presumption regarding the validity or
300 enforceability of any of the following:

301 (a) A benchmark replacement that is not a recommended
302 benchmark replacement.

303 (b) A spread adjustment, or method for calculating or
304 determining a spread adjustment, which is not a recommended
305 spread adjustment.

306 (c) A change, alteration, or modification to or with
307 respect to a contract, security, or instrument which is not a
308 benchmark replacement conforming change.

309 (12) This section does not alter or impair any of the
310 following:

311 (a) A written agreement by all requisite parties which,
312 retrospectively or prospectively, provides that a contract,
313 security, or instrument is not subject to this section without
314 necessarily referring specifically to this section. As used in
315 this paragraph, the term "requisite parties" means all parties
316 required to amend the terms and provisions of a contract,
317 security, or instrument that would otherwise be altered or
318 affected by this section.

319 (b) A contract, security, or instrument that contains

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320 fallback provisions that would result in a benchmark replacement
321 that is not based on LIBOR, including, but not limited to, the
322 prime rate or the federal funds rate. However, the contract,
323 security, or instrument is subject to subsection (4).

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

331 (d) The application to a recommended benchmark replacement
332 of any cap, floor, modifier, or spread adjustment to which LIBOR
333 had been subject pursuant to the terms of a contract, security,
334 or instrument.

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

341 Section 2. This act is remedial in nature and applies
342 retroactively to all contracts, agreements, mortgages, deeds of
343 trust, leases, instruments, obligations, or securities, whether
344 representing debt or equity, and including all interests in a
345 corporation, partnership, or limited liability company, in
346 existence on December 31, 2021.

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