

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Stevenson offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 73-307 and insert:

7 recommended benchmark replacement and that has been selected or
8 recommended by a relevant recommending body. However, if, in the
9 reasonable judgment of a calculating person, the change,
10 alteration, or modification selected or recommended by a
11 relevant recommending body does not apply to the contract,
12 security, or instrument or is insufficient to allow
13 administration and calculation of the recommended benchmark
14 replacement, the benchmark replacement conforming change may
15 include other changes, alterations, or modifications that, in
16 the reasonable judgment of the calculating person:

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17 1. Are necessary to allow administration and calculation
18 of the recommended benchmark replacement under or in respect of
19 the contract, security, or instrument in a manner consistent
20 with market practice for substantially similar contracts,
21 securities, or instruments and, to the extent practicable, the
22 manner in which the contract, security, or instrument was
23 administered immediately before the LIBOR replacement date; and

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

26 (d) "Calculating person" means, with respect to any
27 contract, security, or instrument, a person responsible for
28 calculating or determining a valuation, payment, or other
29 measurement based on a benchmark. This person may be the
30 determining person.

31 (e) "Contract, security, or instrument" includes, without
32 limitation, any contract, agreement, mortgage, deed of trust,
33 lease, instrument, obligation, or security, whether representing
34 debt or equity, and including any interest in a corporation,
35 partnership, or limited liability company.

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

39 1. A person so specified.

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

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42 a. Determine the benchmark replacement that will take
43 effect on the LIBOR replacement date.

44 b. Calculate or determine a valuation, payment, or other
45 measurement based on a benchmark.

46 c. Notify other persons of the occurrence of a LIBOR
47 discontinuance event, a LIBOR replacement date, or a benchmark
48 replacement.

49 (g) "Fallback provision" means a term in a contract,
50 security, or instrument which sets forth a methodology or
51 procedure for determining a benchmark replacement, including any
52 term relating to the date on which the benchmark replacement
53 becomes effective, without regard to whether a benchmark
54 replacement can be determined in accordance with the methodology
55 or procedure.

56 (h) "LIBOR" means, for purposes of the application of this
57 section to any particular contract, security, or instrument, the
58 United States dollar LIBOR, formerly known as the London
59 Interbank Offered Rate, as administered by ICE Benchmark
60 Administration, or any predecessor or successor thereof, or any
61 tenor thereof, as applicable, that is used in making any
62 calculation or determination of benchmark rates.

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

65 a. A public statement or publication of information by, or
66 on behalf of, the administrator of LIBOR announcing that the

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67 administrator has ceased or will cease to provide LIBOR
68 permanently or indefinitely, if, at the time of the statement or
69 publication, there is no successor administrator that will
70 continue to provide LIBOR.

71 b. A public statement or publication of information by the
72 regulatory supervisor for the administrator of LIBOR, the
73 Federal Reserve System, an insolvency official with jurisdiction
74 over the administrator of LIBOR, a resolution authority with
75 jurisdiction over the administrator of LIBOR, or a court or an
76 entity with similar insolvency or resolution authority over the
77 administrator of LIBOR, announcing that the administrator of
78 LIBOR has ceased or will cease to provide LIBOR permanently or
79 indefinitely, if, at the time of the statement or publication,
80 there is no successor administrator that will continue to
81 provide LIBOR.

82 c. A public statement or publication of information by the
83 regulatory supervisor for the administrator of LIBOR announcing
84 that LIBOR is no longer representative.

85 2. A public statement or publication of information that
86 affects one or more tenors of LIBOR does not constitute a LIBOR
87 discontinuance event with respect to a contract, security, or
88 instrument that:

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

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

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

97 a. In the case of a LIBOR discontinuance event described
98 in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the
99 later of:

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

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

105 b. In the case of a LIBOR discontinuance event described
106 in sub-subparagraph (i)1.c., the date of the public statement or
107 publication of information referenced in sub-subparagraph
108 (i)1.c.

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

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

115 b. Allows a party to choose from more than one tenor of
116 LIBOR and any of the tenors is not so affected or, if the

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117 contract, security, or instrument requires interpolation, can be
118 interpolated from LIBOR tenors that are not so affected.

119 (k) "Recommended benchmark replacement" means, with
120 respect to any particular type of contract, security, or
121 instrument, a benchmark replacement based on SOFR that must
122 include any recommended spread adjustment and any benchmark
123 replacement conforming change that have been selected or
124 recommended by a relevant recommending body with respect to the
125 type of contract, security, or instrument.

126 (l) "Recommended spread adjustment" means a spread
127 adjustment, or method for calculating or determining the spread
128 adjustment, which has been selected or recommended by a relevant
129 recommending body for a recommended benchmark replacement for a
130 particular type of contract, security, or instrument and for a
131 particular term to account for the effects of the transition or
132 change from LIBOR to a recommended benchmark replacement. This
133 term may be a positive or negative value or zero.

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

137 (n) "SOFR" means, with respect to any day, the secured
138 overnight financing rate published for the day by the Federal
139 Reserve Bank of New York as the administrator of the benchmark,
140 or a successor administrator, on the Federal Reserve Bank of New
141 York's website.

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142 (3) On the LIBOR replacement date, the recommended
143 benchmark replacement, by operation of law, shall be the
144 benchmark replacement for a contract, security, or instrument
145 that uses LIBOR as a benchmark and that:

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

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

150 (4) After the occurrence of a LIBOR discontinuance event,
151 any fallback provisions in a contract, security, or instrument
152 which provide for a benchmark replacement based on or otherwise
153 involving a poll, survey, or inquiry for quotes or information
154 concerning interbank lending rates or any interest rate or
155 dividend rate based on LIBOR shall be void and of no force or
156 effect.

157 (5) (a) A determining person may, but is not required to,
158 select the recommended benchmark replacement as the benchmark
159 replacement after the occurrence of a LIBOR discontinuance
160 event. The selection of the recommended benchmark replacement
161 must be:

162 1. Irrevocable;

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

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

169 (b) Paragraph (a) applies to a contract, security, or
170 instrument that uses LIBOR as a benchmark and that contains
171 fallback provisions allowing or requiring the selection of a
172 benchmark replacement that is:

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

174 2. The substantive equivalent of paragraph (7) (a),
175 paragraph (7) (b), or paragraph (7) (c).

176 (6) If a recommended benchmark replacement becomes the
177 benchmark replacement for a contract, security, or instrument
178 under this section, then all benchmark replacement conforming
179 changes that are applicable to the recommended benchmark
180 replacement must become an integral part of the contract,
181 security, or instrument by operation of law.

182 (7) The selection or use of a recommended benchmark
183 replacement as a benchmark replacement under or in respect of a
184 contract, security, or instrument by operation of this section
185 constitutes all of the following:

186 (a) A commercially reasonable replacement for and a
187 commercially substantial equivalent to LIBOR.

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

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

192 (d) Substantial performance by any person of any right or
193 obligation relating to or based on LIBOR under or in respect of
194 a contract, security, or instrument.

195 (8) A LIBOR discontinuance event, a LIBOR replacement
196 date, the selection or use of a recommended benchmark
197 replacement as a benchmark replacement, or the determination,
198 implementation, or performance of a benchmark replacement
199 conforming change, in each case, by operation of this section,
200 may not:

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

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

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

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

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

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215 (9) A person is not liable for damages to any other
216 person, and is not subject to any claim or request for equitable
217 relief, arising out of or related to the selection or use of a
218 recommended benchmark replacement or the determination,
219 implementation, or performance of a benchmark replacement
220 conforming change, in each case, by operation of this section.
221 The selection or use of the recommended benchmark replacement or
222 the determination, implementation, or performance of a benchmark
223 replacement conforming change may not give rise to any claim or
224 cause of action by any person in law or in equity.

225 (10) The selection or use of a recommended benchmark
226 replacement or the determination, implementation, or performance
227 of a benchmark replacement conforming change, by operation of
228 this section, may not be deemed to:

229 (a) Be an amendment or modification of a contract,
230 security, or instrument.

231 (b) Prejudice, impair, or affect a person's rights,
232 interests, or obligations under or in respect of a contract,
233 security, or instrument.

234 (11) Except as provided in subsection (3) or subsection
235 (5), this section may not be interpreted as creating a negative
236 inference or negative presumption regarding the validity or
237 enforceability of any of the following:

238 (a) A benchmark replacement that is not a recommended
239 benchmark replacement.

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T I T L E A M E N D M E N T

Remove lines 20-22 and insert:
circumstances; providing construction;