

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; 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:

30

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

33 687.15 Benchmark replacements for the London Interbank  
 34 Offered Rate.—

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

51 securities, and instruments and the parties thereto, so that  
52 these contracts, securities, and instruments may remain viable  
53 and continue to be enforceable in the state.

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

55 (a) "Benchmark" means an index of interest rates or  
56 dividend rates that is used, in whole or in part, as the basis  
57 of, or as a reference for, calculating or determining a  
58 valuation, payment, or other measurement under or with respect  
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  
82 of the recommended benchmark replacement under or with respect  
83 to 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.

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  
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.

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  
162 in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the  
163 later 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  
170 in 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  
174 not constitute a LIBOR replacement date with respect to a  
175 contract, 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  
184 respect to any particular type of contract, security, or  
185 instrument, a benchmark replacement based on SOFR that must  
186 include any recommended spread adjustment and any benchmark  
187 replacement conforming change that have been selected or  
188 recommended by a relevant recommending body with respect to the  
189 type of contract, 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,  
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  
228 the latest date for selecting a benchmark replacement according  
229 to the contract, security, or instrument; and
- 230       3. Used in any determination of the benchmark under or  
231 with respect to the contract, security, or instrument occurring  
232 on and after the LIBOR replacement date.
- 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  
260 date, the selection or use of a recommended benchmark  
261 replacement as a benchmark replacement, or the determination,  
262 implementation, or performance of a benchmark replacement  
263 conforming change, in each case, by operation of this section,  
264 may not:

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

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

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

275 (d) Have the effect of constituting a breach of a

276 contract, security, or instrument; or

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

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

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

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

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

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

301 enforceability of any of the following:

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

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

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

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

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

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

325 (c) A contract, security, or instrument subject to

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

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

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

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

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