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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (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



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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.;



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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.