

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

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

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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.