

ENROLLED

CS/HB 925

2022 Legislature

1
 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

ENROLLED

CS/HB 925

2022 Legislature

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,

ENROLLED

CS/HB 925

2022 Legislature

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,

ENROLLED

CS/HB 925

2022 Legislature

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

ENROLLED

CS/HB 925

2022 Legislature

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

ENROLLED

CS/HB 925

2022 Legislature

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

ENROLLED

CS/HB 925

2022 Legislature

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:

ENROLLED

CS/HB 925

2022 Legislature

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.

ENROLLED

CS/HB 925

2022 Legislature

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:

ENROLLED

CS/HB 925

2022 Legislature

- 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

ENROLLED

CS/HB 925

2022 Legislature

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

ENROLLED

CS/HB 925

2022 Legislature

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

ENROLLED

CS/HB 925

2022 Legislature

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

ENROLLED

CS/HB 925

2022 Legislature

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.