

CHAPTER 2022-57

Committee Substitute for House Bill No. 925

An act relating to benchmark replacements for London Interbank Offered Rate; creating s. 687.15, F.S.; providing legislative findings and intent and a statement of public interest; providing definitions; requiring that recommended benchmark replacements selected or recommended by specified persons be benchmark replacements on the United States dollar London Interbank Offered Rate (LIBOR) replacement date for certain contracts, securities, and instruments; requiring certain fallback provisions in contracts, securities, and instruments providing specified benchmark replacements to be disregarded and void; authorizing specified persons to select benchmark replacements under certain circumstances; providing requirements for such selection; providing applicability; requiring benchmark replacement conforming changes to become an integral part of contracts, securities, and instruments under certain circumstances; providing construction; providing that a person is not liable for damages and is not subject to claims and requests for equitable relief under certain circumstances; providing applicability; prohibiting other laws from superseding specified provisions; providing that the act is remedial in nature; providing retroactive applicability; providing an effective date.

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 of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect to a contract, security, or instrument.

(b) “Benchmark replacement” means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a contract, security, or instrument.

(c) “Benchmark replacement conforming change” means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

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

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

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

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

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

1. A person so specified.

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

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

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

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

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

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

(i)1. “LIBOR discontinuance event” means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

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

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

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

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

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

(j)1. “LIBOR replacement date” means:

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

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

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

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

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

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

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

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

(l) “Recommended spread adjustment” means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a

recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

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

(n) “SOFR” means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York’s website.

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

(a) Does not contain a fallback provision; or

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

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

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

1. Irrevocable;

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

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

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

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

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

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

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

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

(b) A reasonable, comparable, or analogous term for LIBOR under or with respect to the contract, security, or instrument.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A contract, security, or instrument subject to subsection (5) as to which a determining person does not elect to use a recommended benchmark

replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, the contract, security, or instrument is subject to subsection (4).

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

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

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

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

Approved by the Governor April 6, 2022.

Filed in Office Secretary of State April 6, 2022.