



General Assembly

February Session, 2022

Raised Bill No. 5394

LCO No. 2940



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

***AN ACT CONCERNING THE DISCONTINUANCE AND REPLACEMENT
OF THE LONDON INTERBANK OFFERED RATE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2022*) As used in this section and
2 sections 2 and 3 of this act:

3 (1) "London Interbank Offered Rate" or "LIBOR" means as applied to
4 any particular contract, security or instrument, the United States dollar
5 LIBOR as administered by the ICE Benchmark Administration, or any
6 predecessor or successor thereof, or any tenor thereof, as applicable, that
7 is used in making any calculation or determination thereunder.

8 (2) "LIBOR replacement date" means:

9 (A) In the case of one-week and two-month tenors of LIBOR, the
10 effective date of this section; and

11 (B) In the case of all other tenors of LIBOR, the first London banking
12 day after June 30, 2023, unless the relevant recommending body
13 determines that any of such other LIBOR tenors will cease to be

14 published or cease to be representative on a different date. A date that
15 affects one or more tenors of LIBOR shall not constitute a LIBOR
16 replacement date with respect to any contract, security or instrument
17 that (i) provides for only one tenor of LIBOR, if such contract, security
18 or instrument requires interpolation and such tenor can be interpolated
19 from LIBOR tenors that are not so affected, or (ii) permits a party to
20 choose from more than one tenor of LIBOR and any of such tenors are
21 not so affected or, if such contract, security or instrument requires
22 interpolation, can be interpolated from LIBOR tenors that are not so
23 affected.

24 (3) "Fallback provisions" means terms in a contract, security or
25 instrument that set forth a methodology or procedure for determining a
26 benchmark replacement, including any terms relating to the date on
27 which the benchmark replacement becomes effective, without regard to
28 whether a benchmark replacement can be determined in accordance
29 with such methodology or procedure.

30 (4) "Benchmark" means an index of interest rates or dividend rates
31 that is used, in whole or in part, as the basis of or as a reference for
32 calculating or determining any valuation, payment or other
33 measurement under or in respect of a contract, security or instrument.

34 (5) "Benchmark replacement" means a benchmark, or an interest rate
35 or dividend rate, which may or may not be based in whole or in part on
36 a prior setting of LIBOR, to replace LIBOR or any interest rate or
37 dividend rate based on LIBOR, whether on a temporary, permanent or
38 indefinite basis, under or in respect of a contract, security or instrument.

39 (6) "Recommended benchmark replacement" means, with respect to
40 any particular type of contract, security or instrument, a benchmark
41 replacement based on the secured overnight financing rate, including
42 any recommended spread adjustment and any benchmark replacement
43 conforming changes, that have been selected or recommended by a
44 relevant recommending body with respect to such type of contract,
45 security or instrument.

46 (7) "Recommended spread adjustment" means a spread adjustment,
47 or method for calculating or determining such spread adjustment,
48 which may be a positive or negative value or zero, that has been selected
49 or recommended by a relevant recommending body for a recommended
50 benchmark replacement for a particular type of contract, security or
51 instrument and for a particular term to account for the effects of the
52 transition or change from LIBOR to a recommended benchmark
53 replacement.

54 (8) "Benchmark replacement conforming changes" means, with
55 respect to any type of contract, security or instrument, any technical,
56 administrative or operational changes, alterations or modifications that
57 are associated with and reasonably necessary to the use, adoption,
58 calculation or implementation of a recommended benchmark
59 replacement and that:

60 (A) Have been selected or recommended by a relevant
61 recommending body; and

62 (B) If, in the reasonable judgment of the calculating person, the
63 benchmark replacement conforming changes selected or recommended
64 pursuant to subparagraph (A) of this subdivision do not apply to such
65 contract, security or instrument or are insufficient to permit
66 administration and calculation of the recommended benchmark
67 replacement, then benchmark replacement conforming changes shall
68 include such other changes, alterations or modifications that, in the
69 reasonable judgment of the calculating person: (i) Are necessary to
70 permit administration and calculation of the recommended benchmark
71 replacement under or in respect of such contract, security or instrument
72 in a manner consistent with market practice for substantially similar
73 contracts, securities or instruments and, to the extent practicable, the
74 manner in which such contract, security or instrument was
75 administered immediately prior to the LIBOR replacement date; and (ii)
76 would not result in a disposition of such contract, security or instrument
77 for federal income tax purposes.

78 (9) "Determining person" means, with respect to any contract,
79 security or instrument, in the following order of priority:

80 (A) Any person specified as a "determining person"; or

81 (B) Any person with the authority, right or obligation to: (i)
82 Determine the benchmark replacement that takes effect on the LIBOR
83 replacement date, (ii) calculate or determine a valuation, payment or
84 other measurement based on a benchmark, or (iii) notify other persons
85 of the occurrence of a LIBOR replacement date or a benchmark
86 replacement.

87 (10) "Relevant recommending body" means the Federal Reserve
88 Board, the Federal Reserve Bank of New York, or the Alternative
89 Reference Rates Committee, or any successor to said board, bank or
90 committee.

91 (11) "Secured Overnight Financing Rate" means, with respect to any
92 day, the secured overnight financing rate published for such day by the
93 Federal Reserve Bank of New York, as the administrator of the
94 benchmark, or a successor administrator, on the Internet web site of the
95 Federal Reserve Bank of New York.

96 (12) "Calculating person" means, with respect to any contract,
97 security or instrument, any person, including the determining person,
98 responsible for calculating or determining any valuation, payment or
99 other measurement based on a benchmark.

100 (13) "Contract, security, or instrument" includes, without limitation,
101 any contract; agreement; mortgage; deed of trust; lease; security,
102 whether representing debt or equity, and including any interest in a
103 corporation, a partnership or a limited liability company; instrument or
104 other obligation.

105 Sec. 2. (NEW) (*Effective July 1, 2022*) (a) On the LIBOR replacement
106 date, the recommended benchmark replacement shall, by operation of
107 law, be the benchmark replacement for any contract, security or

108 instrument that uses LIBOR as a benchmark and:

109 (1) Contains no fallback provisions; or

110 (2) Contains fallback provisions that result in a benchmark
111 replacement, other than a recommended benchmark replacement, that
112 is based in any way on any LIBOR value.

113 (b) Following the effective date of this section, any fallback provisions
114 in a contract, security, or instrument that provide for a benchmark
115 replacement based on or otherwise involving a poll, survey or inquiries
116 for quotes or information concerning interbank lending rates or any
117 interest rate or dividend rate based on LIBOR shall be disregarded as if
118 not included in such contract, security or instrument and shall be
119 deemed null and void and without any force or effect.

120 (c) A determining person shall have the authority under the
121 provisions of this section and sections 1 and 3 of this act, but shall not
122 be required, to select the recommended benchmark replacement as the
123 benchmark replacement. Such selection of the recommended
124 benchmark replacement shall be: (1) Irrevocable; (2) made by the earlier
125 of either the LIBOR replacement date, or the latest date for selecting a
126 benchmark replacement according to such contract, security, or
127 instrument; and (3) used in any determinations of the benchmark under
128 or with respect to such contract, security or instrument occurring on and
129 after the LIBOR replacement date. The provisions of this subsection
130 shall apply to any contract, security, or instrument that uses LIBOR as a
131 benchmark and contains fallback provisions that permit or require the
132 selection of a benchmark replacement that is: (A) Based in any way on
133 any LIBOR value; or (B) the substantive equivalent of subdivision (1),
134 (2) or (3) of subsection (a) of section 3 of this act.

135 (d) If a recommended benchmark replacement becomes the
136 benchmark replacement for any contract, security, or instrument
137 pursuant to subsection (a) or (c) of this section, then all benchmark
138 replacement conforming changes that are applicable to such
139 recommended benchmark replacement shall become an integral part of

140 such contract, security, or instrument by operation of law.

141 (e) The provisions of this section and sections 1 and 3 of this act shall
142 not alter or impair:

143 (1) Any written agreement by all requisite parties that,
144 retrospectively or prospectively, a contract, security, or instrument shall
145 not be subject to this act without necessarily referring specifically to this
146 act. For purposes of this subdivision, "requisite parties" means all parties
147 required to amend the terms and provisions of a contract, security, or
148 instrument that would otherwise be altered or affected by the provisions
149 of this section and sections 1 and 3 of this act;

150 (2) Any contract, security or instrument that contains fallback
151 provisions that would result in a benchmark replacement that is not
152 based on LIBOR, including, but not limited to, the prime rate or the
153 federal funds rate, except that such contract, security or instrument shall
154 be subject to the provisions of subsection (b) of this section;

155 (3) Any contract, security, or instrument subject to the provisions of
156 subsection (c) of this section as to which a determining person (A) does
157 not elect to use a recommended benchmark replacement pursuant to
158 subsection (c) of this section, or (B) elects to use a recommended
159 benchmark replacement prior to the effective date of this section, except
160 that such contract, security, or instrument shall be subject to the
161 provisions of subsection (b) of this section; or

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

165 (f) Notwithstanding any provision of the Uniform Commercial Code
166 or any other law of this state, the provisions of this section and sections
167 1 and 3 of this act shall apply to all contracts, securities and instruments,
168 including contracts, with respect to commercial transactions, and such
169 provisions shall not be deemed to be displaced by any other law of this
170 state.

171 Sec. 3. (NEW) (*Effective July 1, 2022*) (a) The selection or use of a
172 recommended benchmark replacement as a benchmark replacement
173 under or in respect of a contract, security or instrument by operation of
174 section 2 of this act shall constitute:

175 (1) A commercially reasonable replacement for and a commercially
176 substantial equivalent to LIBOR;

177 (2) A reasonable, comparable or analogous term for LIBOR under or
178 in respect of such contract, security or instrument;

179 (3) A replacement that is based on a methodology or information that
180 is similar or comparable to LIBOR; and

181 (4) Substantial performance by any person of any right or obligation
182 relating to or based on LIBOR under or in respect of a contract, security
183 or instrument.

184 (b) No: (1) LIBOR replacement date, or any event or condition giving
185 rise thereto, (2) selection or use of a recommended benchmark
186 replacement as a benchmark replacement; or (3) determination,
187 implementation or performance of benchmark replacement conforming
188 changes, in each case, by operation of section 2 of this act, shall: (A) Be
189 deemed to impair or affect the right of any person to receive a payment,
190 or affect the amount or timing of such payment, under any contract,
191 security, or instrument; or (B) have the effect of (i) discharging or
192 excusing performance under any contract, security or instrument for
193 any reason, claim or defense, including, but not limited to, any force
194 majeure or other provision in any contract, security or instrument; (ii)
195 giving any person the right to unilaterally terminate or suspend
196 performance under any contract, security or instrument; (iii)
197 constituting a breach of a contract, security or instrument; or (iv)
198 voiding or nullifying any contract, security or instrument.

199 (c) No person shall have any liability for damages to any person or be
200 subject to any claim or request for equitable relief arising out of or
201 related to the selection or use of a recommended benchmark

202 replacement or the determination, implementation or performance of
203 benchmark replacement conforming changes, in each case, by operation
204 of section 2 of this act, and such selection or use of the recommended
205 benchmark replacement or such determination implementation or
206 performance of benchmark replacement conforming changes shall not
207 give rise to any claim or cause of action by any person in law or in
208 equity.

209 (d) The selection or use of a recommended benchmark replacement
210 or the determination, implementation, or performance of benchmark
211 replacement conforming changes, by operation of section 2 of this act,
212 shall not be deemed to:

213 (1) Be an amendment or modification of any contract, security or
214 instrument; and

215 (2) Prejudice, impair or affect any person's rights, interests or
216 obligations under or in respect of any contract, security or instrument.

217 (e) Except as provided in subsection (a) or (c) of section 2 of this act,
218 the provisions of this section and section 1 of this act shall not be
219 interpreted as creating any negative inference or negative presumption
220 regarding the validity or enforceability of:

221 (1) Any benchmark replacement that is not a recommended
222 replacement benchmark;

223 (2) Any spread adjustment, or method for calculating or determining
224 a spread adjustment, that is not a recommended spread adjustment; or

225 (3) Any changes, alterations or modifications to or in respect of a
226 contract, security or instrument that are not benchmark replacement
227 conforming changes.

228 Sec. 4. (NEW) (*Effective July 1, 2022*) If any provision of section 1 to 3,
229 inclusive, of this act or application thereof to any person or circumstance
230 is held invalid, the invalidity shall not affect other provisions or
231 applications of sections 1 to 3, inclusive, of this act that can be given

232 effect without the invalid provision or application, and to this end the
233 provisions of sections 1 to 3, inclusive, of this act shall be severable.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2022</i>	New section
Sec. 2	<i>July 1, 2022</i>	New section
Sec. 3	<i>July 1, 2022</i>	New section
Sec. 4	<i>July 1, 2022</i>	New section

Statement of Purpose:

To establish a clear process for replacing the London Interbank Offered Rate in existing contracts.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]