

House Bill 899

By: Representatives Williamson of the 115th, Williams of the 148th, and Wilkerson of the 38th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to
2 provide for the legal effects of the discontinuance of LIBOR on contracts, securities, or
3 instruments; to provide for the circumstances under which the recommended benchmark
4 replacement shall be used and whether it is optional or mandatory; to provide that the use of
5 such replacement does not amend or modify a contract, security, or instrument or change any
6 person's rights or obligations; to prohibit parties from refusing to perform contractual
7 obligations or declaring a breach of contract as a result of the discontinuance of LIBOR or
8 the use of a replacement; to establish that the replacement is a commercially reasonable
9 substitute for and a commercially substantial equivalent to LIBOR; to provide for a safe
10 harbor from litigation for the use of the recommended benchmark replacement; to provide
11 for definitions; to provide for related matters; to provide for an effective date; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by
16 adding a new chapter to read as follows:

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17 "13-13-1.

18 As used in this chapter, the term:

19 (1) 'Benchmark' means an index of interest rates or dividend rates that is used, in whole
20 or in part, as the basis of or as a reference for calculating or determining any valuation,
21 payment, or other measurement under or in respect of a contract, security, or instrument.

22 (2) 'Benchmark replacement' means a benchmark, or an interest rate or a dividend rate
23 which may or may not be based in whole or in part on a prior setting of LIBOR, to
24 replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a
25 temporary, permanent, or indefinite basis, under or in respect of a contract, security, or
26 instrument.

27 (3) 'Benchmark replacement conforming changes' means, with respect to any contract,
28 security, or instrument, any technical, administrative, or operational changes, alterations,
29 or modifications that are associated with and reasonably necessary to the use, adoption,
30 calculation, or implementation of a recommended benchmark replacement and that:

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

32 (B) If, in the reasonable judgment of the calculating person, the benchmark
33 replacement conforming changes selected or recommended pursuant to subparagraph
34 (A) of this paragraph do not apply to such contract, security, or instrument or are
35 insufficient to permit administration and calculation of the recommended benchmark
36 replacement, then the benchmark replacement conforming changes shall include such
37 other changes, alterations, or modifications that, in the reasonable judgment of the
38 calculating person:

39 (i) Are necessary to permit administration and calculation of the recommended
40 benchmark replacement under or in respect of such contract, security, or instrument
41 in a manner consistent with market practice for substantially similar contracts,
42 securities, or instruments, and, to the extent practicable, the manner in which such

43 contract, security, or instrument was administered immediately prior to the LIBOR
44 replacement date; and

45 (ii) Would not result in a disposition of such contract, security, or instrument for
46 federal income tax purposes.

47 (4) 'Calculating person' means, with respect to any contract, security, or instrument, any
48 person, which may be the determining person, responsible for calculating or determining
49 any valuation, payment, or other measurement based on a benchmark.

50 (5) 'Contract, security, or instrument' means and includes, but is not limited to, any
51 contract; agreement; mortgage; deed of trust; lease; security, whether representing debt
52 or equity and including any interest in a corporation, partnership, or limited liability
53 company; instrument; or other obligation.

54 (6) 'Determining person' means, with respect to any contract, security, or instrument, in
55 the following order of priority:

56 (A) Any person specified as a determining person; or

57 (B) Any person with the authority, right, or obligation to:

58 (i) Determine the benchmark replacement that will take effect on the LIBOR
59 replacement date;

60 (ii) Calculate or determine a valuation, payment, or other measurement based on a
61 benchmark; or

62 (iii) Notify other persons of the occurrence of a LIBOR discontinuance event, a
63 LIBOR replacement date, or a benchmark replacement.

64 (7) 'Fallback provisions' means terms in a contract, security, or instrument that provide
65 a methodology or procedure for determining a benchmark replacement, including any
66 terms relating to the date on which the benchmark replacement becomes effective,
67 without regard to whether a benchmark replacement can be determined in accordance
68 with such methodology or procedure.

69 (8) 'LIBOR' means, for purposes of the application of this chapter to any particular
70 contract, security, or instrument, U.S. dollar LIBOR (formerly known as the London
71 Interbank Offered Rate) as administered by ICE Benchmark Administration (or any
72 predecessor or successor thereof), or any tenor thereof, as applicable, that is used in
73 making any calculation or determination thereunder.

74 (9)(A) 'LIBOR discontinuance event' means the earliest to occur of any of the
75 following:

76 (i) A public statement or publication of information by or on behalf of the
77 administrator of LIBOR announcing that such administrator has ceased or will cease
78 to provide LIBOR, permanently or indefinitely; provided, however, that, at the time
79 of the statement or publication there is no successor administrator that will continue
80 to provide LIBOR;

81 (ii) A public statement or publication of information by the regulatory supervisor for
82 the administrator of LIBOR, the Federal Reserve System, an insolvency official with
83 jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction
84 over the administrator for LIBOR, or a court or an entity with similar insolvency or
85 resolution authority over the administrator for LIBOR, which states that the
86 administrator of LIBOR has ceased or will cease to provide LIBOR permanently or
87 indefinitely; provided, however, that, at the time of the statement or publication there
88 is no successor administrator that will continue to provide LIBOR; or

89 (iii) A public statement or publication of information by the regulatory supervisor for
90 the administrator of LIBOR announcing that LIBOR is no longer representative.

91 (B) For purposes of this paragraph, a public statement or publication of information
92 that affects one or more tenors of LIBOR shall not constitute a LIBOR discontinuance
93 event with respect to any contract, security, or instrument that:

- 94 (i) Provides for only one tenor of LIBOR, if such contract, security, or instrument
95 requires interpolation and such tenor can be interpolated from LIBOR tenors that are
96 not so affected; or
- 97 (ii) Permits a party to choose from more than one tenor of LIBOR and any of such
98 tenors:
- 99 (I) Is not so affected; or
- 100 (II) If such contract, security, or instrument requires interpolation, can be
101 interpolated from LIBOR tenors that are not so affected.
- 102 (10)(A) 'LIBOR replacement date' means:
- 103 (i) In the case of a LIBOR discontinuance event described in divisions (9)(A)(i) or
104 (9)(A)(ii) of this Code section, the later of:
- 105 (I) The date of the public statement or publication of information referenced
106 therein; and
- 107 (II) The date on which the administrator of LIBOR permanently or indefinitely
108 ceases to provide LIBOR; and
- 109 (ii) In the case of a LIBOR discontinuance event described in division (9)(A)(iii) of
110 this Code section, the date of the public statement or publication of information
111 referenced therein.
- 112 (B) For purposes of this paragraph, a date that affects one or more tenors of LIBOR
113 shall not constitute a LIBOR replacement date with respect to any contract, security,
114 or instrument that:
- 115 (i) Provides for only one tenor of LIBOR, if such contract, security, or instrument
116 requires interpolation and such tenor can be interpolated from LIBOR tenors that are
117 not so affected; or
- 118 (ii) Permits a party to choose from more than one tenor of LIBOR and any of such
119 tenors:
- 120 (I) Is not so affected; or

121 (II) If such contract, security, or instrument requires interpolation, can be
122 interpolated from LIBOR tenors that are not so affected.

123 (11) 'Recommended benchmark replacement' means with respect to any particular type
124 of contract, security, or instrument, a benchmark replacement based on SOFR that
125 includes any recommended spread adjustment and any benchmark replacement
126 conforming changes that have been selected or recommended by a relevant
127 recommending body with respect to such type of contract, security, or instrument.

128 (12) 'Recommended spread adjustment' means a spread adjustment or method for
129 calculating or determining such spread adjustment, which may be a positive or negative
130 value or zero, that shall have been selected or recommended by a relevant recommending
131 body for a recommended benchmark replacement for a particular type of contract,
132 security, or instrument and for a particular term to account for the effects of the transition
133 or change from LIBOR to a recommended benchmark replacement.

134 (13) 'Relevant recommending body' means the Federal Reserve Board, the Federal
135 Reserve Bank of New York, or the Alternative Reference Rates Committee, or any
136 successors thereof.

137 (14) 'SOFR' means, with respect to any day, the secured overnight financing rate
138 published for such day by the Federal Reserve Bank of New York, as the administrator
139 of the benchmark (or a successor administrator), on the website of the Federal Reserve
140 Bank of New York.

141 13-13-2.

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

145 (1) Contains no fallback provisions; or

146 (2) Contains fallback provisions that result in a benchmark replacement, other than a
147 recommended benchmark replacement, that is based in any way on any LIBOR value.
148 (b) Following the occurrence of a LIBOR discontinuance event, any fallback provisions
149 in a contract, security, or instrument that provide for a benchmark replacement based on
150 or otherwise involving a poll, survey, or inquiries for quotes or information concerning
151 interbank lending rates or any interest rate or dividend rate based on LIBOR shall be
152 disregarded as if not included in such contract, security, or instrument and shall be deemed
153 null and void and without any force or effect.
154 (c)(1) This subsection shall apply to any contract, security, or instrument that uses
155 LIBOR as a benchmark and contains fallback provisions that permit or require the
156 selection of a benchmark replacement that is:
157 (A) Based in any way on any LIBOR value; or
158 (B) The substantive equivalent of that provided for in paragraphs (1), (2), or (3) of
159 subsection (a) of Code Section 13-13-3.
160 (2) A determining person shall have the authority, but shall not be required, to select on
161 or after the occurrence of a LIBOR discontinuance event the recommended benchmark
162 replacement as the benchmark replacement. Such selection of the recommended
163 benchmark replacement shall be:
164 (A) Irrevocable;
165 (B) Made by the earlier of either the LIBOR replacement date or the latest date for
166 selecting a benchmark replacement according to such contract, security, or instrument;
167 and
168 (C) Used in any determinations of the benchmark under or with respect to such
169 contract, security, or instrument occurring on and after the LIBOR replacement date.
170 (d) If a recommended benchmark replacement becomes the benchmark replacement for
171 any contract, security, or instrument pursuant to subsections (a) or (c) of this Code section,
172 then all benchmark replacement conforming changes that are applicable, in accordance

173 with the definition of benchmark replacement conforming changes, to such recommended
174 benchmark replacement shall become an integral part of such contract, security, or
175 instrument by operation of law.

176 (e) The provisions of this chapter shall not alter or impair:

177 (1) Any written agreement by all requisite parties that provides, retrospectively or
178 prospectively, that a contract, security, or instrument shall not be subject to this chapter
179 without necessarily referring specifically to this chapter. As used in this paragraph, the
180 term 'requisite parties' means all parties required to amend the terms and provisions of a
181 contract, security, or instrument that would otherwise be altered or affected by this
182 chapter;

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

187 (3) Any contract, security, or instrument subject to subsection (c) of this Code section
188 as to which a determining person does not elect to use a recommended benchmark
189 replacement pursuant to subsection (c) of this Code section or as to which a determining
190 person elects to use a recommended benchmark replacement prior to the occurrence of
191 a LIBOR discontinuance event, except that such contract, security, or instrument shall be
192 subject to subsection (b) of this Code section; or

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

196 (f) Notwithstanding Title 11, the 'Uniform Commercial Code,' or any other law of this
197 state, this chapter shall apply to all contracts, securities, and instruments, including
198 contracts, with respect to commercial transactions, and shall not be deemed to be displaced
199 by any other law of this state.

200 13-13-3.

201 (a) The selection or use of a recommended benchmark replacement as a benchmark
202 replacement under or in respect of a contract, security, or instrument by operation of Code
203 Section 13-13-2 shall constitute:

204 (1) A commercially reasonable substitute for and a commercially substantial equivalent
205 to LIBOR;

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

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

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

212 (b) The occurrence of a LIBOR discontinuance event or a LIBOR replacement date, the
213 selection or use of a recommended benchmark replacement as a benchmark replacement,
214 or the determination, implementation, or performance of benchmark replacement
215 conforming changes, in each case by operation of Code Section 13-13-2, shall not:

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

218 (2) Have the effect of:

219 (A) Discharging or excusing performance under any contract, security, or instrument
220 for any reason, claim, or defense, including, but not limited to, any force majeure or
221 other provision in any contract, security, or instrument;

222 (B) Giving any person the right to unilaterally terminate or suspend performance under
223 any contract, security, or instrument;

224 (C) Constituting a breach of a contract, security, or instrument; or

225 (D) Voiding or nullifying any contract, security, or instrument.

226 (c) No person shall have any liability for damages to any person or be subject to any claim
227 or request for equitable relief arising out of or related to the selection or use of a
228 recommended benchmark replacement or the determination, implementation, or
229 performance of benchmark replacement conforming changes, in each case by operation of
230 Code Section 13-13-2, and such selection or use of the recommended benchmark
231 replacement or such determination, implementation, or performance of benchmark
232 replacement conforming changes shall not give rise to any claim or cause of action by any
233 person in law or in equity.

234 (d) The selection or use of a recommended benchmark replacement or the determination,
235 implementation, or performance of benchmark replacement conforming changes by
236 operation of Code Section 13-13-2 shall not be deemed to:

237 (1) Be an amendment or modification of any contract, security, or instrument; or

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

240 (e) Except in the case of a contract, security, or instrument covered by subsections (a) or
241 (c) of Code Section 13-13-2, the provisions of this chapter shall not be interpreted as
242 creating any negative inference or negative presumption regarding the validity or
243 enforceability of:

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

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

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

249 **SECTION 2.**

250 This Act shall become effective upon its approval by the Governor or upon its becoming law
251 without such approval.

252

SECTION 3.

253 All laws and parts of laws in conflict with this Act are repealed.