

SENATE BILL 2133

By Reeves

AN ACT to amend Tennessee Code Annotated, Title 47,
relative to financial transactions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, is amended by adding the following
as a new chapter:

47-33-101. Short title.

This chapter is known and may be cited as the "LIBOR Discontinuance and
Replacement Act."

47-33-102. Chapter definitions.

As used in this chapter:

(1) "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 in respect of a
contract, security, or instrument;

(2) "Benchmark replacement" means a benchmark, or an interest rate or
dividend rate, that may be based in whole or in part on a prior setting of LIBOR,
to replace LIBOR or an interest rate or dividend rate based on LIBOR, whether
on a temporary, permanent, or indefinite basis, under or in respect of a contract,
security, or instrument;

(3) "Benchmark replacement conforming changes":

(A) Means technical, administrative, or operational changes,
alterations, or modifications that are associated with and reasonably

necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that have been selected or recommended by a relevant recommending body; and

(B) Includes, if, in the reasonable judgment of the calculating person, the benchmark replacement conforming changes selected or recommended pursuant to subdivision (3)(A) do not apply to the contract, security, or instrument or are insufficient to permit administration and calculation of the recommended benchmark replacement, other changes, alterations, or modifications that:

(i) In the reasonable judgment of the calculating person, are necessary to permit administration and calculation of the recommended benchmark replacement under or in respect of 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 prior to the LIBOR replacement date; and

(ii) Would not result in a disposition of the contract, security, or instrument for United States federal income tax purposes;

(4) "Calculating person" means, with respect to a contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark, and may be the determining person;

(5) "Contract, security, or instrument" means a contract, agreement, mortgage, deed of trust, lease, instrument, other obligation, or security, whether representing debt or equity, and including an interest in a corporation, a partnership, or a limited liability company;

(6) "Determining person" means, with respect to a contract, security, or instrument, in the following order of priority:

(A) A person so specified; or

(B) A person with the authority, right, or obligation to do the following:

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

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

(iii) Notify other persons of a LIBOR replacement date or a benchmark replacement;

(7) "Fallback provisions" means terms in a contract, security, or instrument that set forth a methodology or procedure for determining a benchmark replacement, including terms 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;

(8) "LIBOR" means, for purposes of the application of this chapter to a particular contract, security, or instrument, United States dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration Limited, or a predecessor or successor thereof, and a

tenor thereof, as applicable, that is used in making a calculation or determination thereunder;

(9) "LIBOR replacement date":

(A) Means:

(i) In the case of one-week and two-month tenors of LIBOR, the effective date of this act; and

(ii) In the case of all other tenors of LIBOR, the first London banking day after June 30, 2023, unless the relevant recommending body determines that the other LIBOR tenors will cease to be published or cease to be representative on a different date; and

(B) Does not mean a date that affects one (1) or more tenors of LIBOR with respect to a contract, security, or instrument that:

(i) Provides for only one (1) tenor of LIBOR, if the contract, security, or instrument requires interpolation and the affected tenor can be interpolated from LIBOR tenors that are not so affected; or

(ii) Permits a party to choose from more than one (1) tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, the affected tenor can be interpolated from LIBOR tenors that are not so affected;

(10) "Recommended benchmark replacement" means a benchmark replacement based on SOFR, including a recommended spread adjustment and benchmark replacement conforming changes, that has been selected or

recommended by a relevant recommending body with respect to the type of contract, security, or instrument;

(11) "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, that:

(A) 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; and

(B) May be a positive or negative value or zero (0);

(12) "Relevant recommending body" means the federal reserve board, the federal reserve bank of New York, or the Alternative Reference Rates Committee, or a successor to those entities; and

(13) "SOFR" means with respect to a day, the secured overnight financing rate published for that 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.

47-33-103. Recommended benchmark replacement for certain contracts, securities, or instruments; fallback provisions.

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

(1) Contains no fallback provisions; or

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

(b) Following the effective date of this act, fallback provisions in a contract, security, or instrument that provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiries for quotes or information concerning interbank lending rates or an interest rate or dividend rate based on LIBOR must be disregarded as if not included in the contract, security, or instrument and are void.

(c)

(1) This subsection (c) applies to a contract, security, or instrument that uses LIBOR as a benchmark and contains fallback provisions that permit or require the selection of a benchmark replacement that:

(A) Is based in any way on a LIBOR value; or

(B) Is the substantive equivalent of § 47-33-104(a)(1), (a)(2), or (a)(3).

(2) A determining person has the authority under this chapter, but is not required, to select the recommended benchmark replacement as the benchmark replacement. The selection of the recommended benchmark replacement:

(A) Is irrevocable;

(B) Must be made by the earlier of either the LIBOR replacement date, or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and

(C) Must be used in determinations of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

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

(e) This chapter does not alter or impair the following:

(1) A written agreement by all requisite parties that, retrospectively or prospectively, provides, without necessarily referring specifically to this chapter, that a contract, security, or instrument is not subject to this chapter. For purposes of this subdivision (e)(1), "requisite parties" means all parties required to amend the terms and provisions of a contract, security, or instrument that otherwise would be altered or affected by this chapter;

(2) 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, except that the contract, security, or instrument is subject to subsection (b);

(3) A contract, security, or instrument subject to subsection (c) 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 prior to the effective date of this act, except that the contract, security, or instrument is subject to subsection (b); and

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

(f) Notwithstanding the uniform commercial code or another law of this state, this chapter applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions and is not displaced by another law of this state.

47-33-104. Construction and effect of selection or use of a recommended benchmark replacement; liability.

(a) The selection or use of a recommended benchmark replacement as a benchmark replacement under or in respect of a contract, security, or instrument by operation of § 47-33-103 constitutes:

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

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

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

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

(b) A LIBOR replacement date, or an event or condition giving rise to a LIBOR replacement date; the selection or use of a recommended benchmark replacement as a benchmark replacement; or the determination, implementation, or performance of benchmark replacement conforming changes, by operation of § 47-33-103, does not:

(1) Impair or affect the right of a person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;

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

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

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

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

(c) A person does not have liability for damages to another person, and is not subject to a 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 benchmark replacement conforming changes, in each case, by operation of § 47-33-103, and the selection or use of the recommended benchmark replacement or the determination, implementation, or performance of benchmark replacement conforming changes does not give rise to a claim or cause of action by a person in law or in equity.

(d) Neither the selection or use of a recommended benchmark replacement nor the determination, implementation, or performance of benchmark replacement conforming changes, by operation of § 47-33-103, amends or modifies a contract, security, or instrument or prejudices, impairs, or affects a person's rights, interests, or obligations under or in respect of a contract, security, or instrument.

(e) Except as provided in § 47-33-103(a) or (c), this chapter does not create a negative inference or negative presumption regarding the validity or enforceability of:

(1) A benchmark replacement that is not a recommended replacement benchmark;

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

(3) A change, alteration, or modification to or in respect of a contract, security, or instrument that is not a benchmark replacement conforming change.

SECTION 2. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.