
SUBSTITUTE SENATE BILL 5946

State of Washington

67th Legislature

2022 Regular Session

By Senate Business, Financial Services & Trade (originally sponsored by Senators Mullet and Nguyen)

1 AN ACT Relating to protecting consumers from the discontinuance
2 of the London interbank offered rate; adding a new chapter to Title
3 19 RCW; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter unless the context clearly
7 requires otherwise.

8 (1) "Benchmark" means an index of interest rates or dividend
9 rates that is used, in whole or in part, as the basis of or as a
10 reference for calculating or determining any valuation, payment, or
11 other measurement under or in respect of a contract, security, or
12 instrument.

13 (2) "Benchmark replacement" means a benchmark, or an interest
14 rate or dividend rate, which may or may not be based in whole or in
15 part on a prior setting of the LIBOR, to replace the LIBOR or any
16 interest rate or dividend rate based on the LIBOR, whether on a
17 temporary, permanent, or indefinite basis, under or in respect of a
18 contract, security, or instrument.

19 (3) "Benchmark replacement conforming changes" means, with
20 respect to any type of contract, security, or instrument, any
21 technical, administrative, or operational changes, alterations, or

1 modifications that are associated with and reasonably necessary to
2 the use, adoption, calculation, or implementation of a recommended
3 benchmark replacement and that:

4 (a) Have been selected or recommended by a relevant recommending
5 body; and

6 (b) If, in the reasonable judgment of the calculating person, the
7 benchmark replacement conforming changes selected or recommended
8 pursuant to (a) of this subsection do not apply to such contract,
9 security, or instrument or are insufficient to permit administration
10 and calculation of the recommended benchmark replacement, then
11 benchmark replacement conforming changes shall include such other
12 changes, alterations, or modifications that, in the reasonable
13 judgment of the calculating person:

14 (i) Are necessary to permit administration and calculation of the
15 recommended benchmark replacement under or in respect of such
16 contract, security, or instrument in a manner consistent with market
17 practice for substantially similar contracts, securities, or
18 instruments and, to the extent practicable, the manner in which such
19 contract, security, or instrument was administered immediately prior
20 to the LIBOR replacement date; and

21 (ii) Would not result in a disposition of such contract,
22 security, or instrument for United States federal income tax
23 purposes.

24 (4) "Calculating person" means, with respect to any contract,
25 security, or instrument, any person, which may be the determining
26 person, responsible for calculating or determining any valuation,
27 payment, or other measurement based on a benchmark.

28 (5) "Contract, security, or instrument" includes, without
29 limitation, any contract, agreement, mortgage, deed of trust, lease,
30 security, whether representing debt or equity, and including any
31 interest in a corporation, a partnership, or a limited liability
32 company, instrument, or other obligation.

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

35 (a) Any person specified as a "determining person"; or

36 (b) Any person with the authority, right, or obligation to:

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

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

1 (iii) Notify other persons of the occurrence of a LIBOR
2 discontinuance event, a LIBOR replacement date, or a benchmark
3 replacement.

4 (7) "Fallback provisions" means terms in a contract, security, or
5 instrument that set forth a methodology or procedure for determining
6 a benchmark replacement, including any terms relating to the date on
7 which the benchmark replacement becomes effective, without regard to
8 whether a benchmark replacement can be determined in accordance with
9 such methodology or procedure.

10 (8) "LIBOR" means, for purposes of the application of this
11 chapter to any particular contract, security, or instrument, the
12 United States dollar London interbank offered rate as administered by
13 the intercontinental exchange benchmark administration limited or any
14 predecessor or successor thereof, or any tenor thereof, as
15 applicable, that is used in making any calculation or determination
16 thereunder.

17 (9) "LIBOR discontinuance event" means the earliest to occur of
18 any of the following:

19 (a) A public statement or publication of information by or on
20 behalf of the administrator of the LIBOR announcing that such
21 administrator has ceased or will cease to provide the LIBOR,
22 permanently or indefinitely, provided that, at the time of the
23 statement or publication, there is no successor administrator that
24 will continue to provide the LIBOR;

25 (b) A public statement or publication of information by the
26 regulatory supervisor for the administrator of the LIBOR, the United
27 States federal reserve system, an insolvency official with
28 jurisdiction over the administrator for the LIBOR, a resolution
29 authority with jurisdiction over the administrator for the LIBOR or a
30 court or an entity with similar insolvency or resolution authority
31 over the administrator for the LIBOR, which states that the
32 administrator of the LIBOR has ceased or will cease to provide the
33 LIBOR permanently or indefinitely, provided that, at the time of the
34 statement or publication, there is no successor administrator that
35 will continue to provide the LIBOR; or

36 (c) A public statement or publication of information by the
37 regulatory supervisor for the administrator of the LIBOR announcing
38 that the LIBOR is no longer representative. For purposes of this
39 subsection, a public statement or publication of information that
40 affects one or more tenors of the LIBOR does not constitute a LIBOR

1 discontinuance event with respect to any contract, security, or
2 instrument that: (i) Provides for only one tenor of the LIBOR, if
3 such contract, security, or instrument requires interpolation and
4 such tenor can be interpolated from the LIBOR tenors that are not so
5 affected; or (ii) permits a party to choose from more than one tenor
6 of the LIBOR and any of such tenors (A) is not so affected, or (B) if
7 such contract, security, or instrument requires interpolation, can be
8 interpolated from the LIBOR tenors that are not so affected.

9 (10) "LIBOR replacement date" means:

10 (a) In the case of a LIBOR discontinuance event described in
11 subsection (9) (a) and (b) of this section, the later of: (i) The date
12 of the public statement or publication of information referenced
13 therein; and (ii) the date on which the administrator of the LIBOR
14 permanently or indefinitely ceases to provide the LIBOR; and

15 (b) In the case of a LIBOR discontinuance event described in
16 subsection (9) (c) of this section, the date of the public statement
17 or publication of information referenced therein. For purposes of
18 this subsection, a date that affects one or more tenors of the LIBOR
19 does not constitute a LIBOR replacement date with respect to any
20 contract, security, or instrument that: (i) Provides for only one
21 tenor of the LIBOR, if such contract, security, or instrument
22 requires interpolation and such tenor can be interpolated from the
23 LIBOR tenors that are not so affected; or (ii) permits a party to
24 choose from more than one tenor of the LIBOR and any of such tenors
25 (A) is not so affected, or (B) if such contract, security, or
26 instrument requires interpolation, can be interpolated from the LIBOR
27 tenors that are not so affected.

28 (11) "Recommended benchmark replacement" means with respect to
29 any particular type of contract, security, or instrument, a benchmark
30 replacement based on the SOFR, which shall include any recommended
31 spread adjustment and any benchmark replacement conforming changes,
32 that shall have been selected or recommended by a relevant
33 recommending body with respect to such type of contract, security, or
34 instrument.

35 (12) "Recommended spread adjustment" means a spread adjustment,
36 or method for calculating or determining such spread adjustment,
37 which may be a positive or negative value or zero, that shall have
38 been selected or recommended by a relevant recommending body for a
39 recommended benchmark replacement for a particular type of contract,
40 security, or instrument and for a particular term to account for the

1 effects of the transition or change from the LIBOR to a recommended
2 benchmark replacement.

3 (13) "Relevant recommending body" means the federal reserve
4 board, the federal reserve bank of New York, the alternative
5 reference rates committee, or any successor to any of them.

6 (14) "SOFR" means, with respect to any day, the secured overnight
7 financing rate published for such day by the federal reserve bank of
8 New York, as the administrator of the benchmark or a successor
9 administrator, on the federal reserve bank of New York's website.

10 NEW SECTION. **Sec. 2.** EFFECT OF THE LIBOR DISCONTINUANCE ON
11 AGREEMENTS. (1) On the LIBOR replacement date, the recommended
12 benchmark replacement shall, by operation of law, be the benchmark
13 replacement for any contract, security, or instrument that uses the
14 LIBOR as a benchmark and:

15 (a) Contains no fallback provisions; or

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

19 (2) Following the occurrence of a LIBOR discontinuance event, any
20 fallback provisions in a contract, security, or instrument that
21 provide for a benchmark replacement based on or otherwise involving a
22 poll, survey, or inquiries for quotes or information concerning
23 interbank lending rates or any interest rate or dividend rate based
24 on the LIBOR shall be disregarded as if not included in such
25 contract, security, or instrument and shall be deemed null and void
26 and without any force or effect.

27 (3) This subsection applies to any contract, security, or
28 instrument that uses the LIBOR as a benchmark and contains fallback
29 provisions that permit or require the selection of a benchmark
30 replacement that is:

31 (a) Based in any way on any LIBOR value; or

32 (b) The substantive equivalent of section 3(1) (a) through (c) of
33 this act. A determining person shall have the authority under this
34 chapter, but shall not be required, to select on or after the
35 occurrence of a LIBOR discontinuance event the recommended benchmark
36 replacement as the benchmark replacement. Such selection of the
37 recommended benchmark replacement shall be:

38 (i) Irrevocable;

1 (ii) Made by the earlier of either the LIBOR replacement date, or
2 the latest date for selecting a benchmark replacement according to
3 such contract, security, or instrument; and

4 (iii) Used in any determinations of the benchmark under or with
5 respect to such contract, security, or instrument occurring on and
6 after the LIBOR replacement date.

7 (4) If a recommended benchmark replacement becomes the benchmark
8 replacement for any contract, security, or instrument pursuant to
9 subsection (1) or (3) of this section, then all benchmark replacement
10 conforming changes that are applicable, in accordance with the
11 definition of benchmark replacement conforming changes, to such
12 recommended benchmark replacement shall become an integral part of
13 such contract, security, or instrument by operation of law.

14 (5) The provisions of this chapter shall not alter or impair:

15 (a) Any written agreement by all requisite parties that,
16 retrospectively or prospectively, provides, without necessarily
17 referring specifically to this chapter, a contract, security, or
18 instrument shall not be subject to this chapter. For purposes of this
19 subsection, "requisite parties" means all parties required to amend
20 the terms and provisions of a contract, security, or instrument that
21 would otherwise be altered or affected by this chapter;

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

27 (c) Any contract, security, or instrument subject to subsection
28 (3) of this section as to which a determining person does not elect
29 to use a recommended benchmark replacement pursuant to subsection (3)
30 of this section or as to which a determining person elects to use a
31 recommended benchmark replacement prior to the occurrence of a LIBOR
32 discontinuance event, except that such contract, security, or
33 instrument shall be subject to subsection (2) of this section; or

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

38 (6) Notwithstanding the uniform commercial code or any other law
39 of this state, this chapter shall apply to all contracts, securities,
40 and instruments, including contracts with respect to commercial

1 transactions, and shall not be deemed to be displaced by any other
2 law of this state.

3 NEW SECTION. **Sec. 3.** CONTINUITY OF CONTRACT AND SAFE HARBOR.

4 (1) The selection or use of a recommended benchmark replacement as a
5 benchmark replacement under or in respect of a contract, security, or
6 instrument by operation of section 2 of this act shall constitute:

7 (a) A commercially reasonable replacement for and a commercially
8 substantial equivalent to the LIBOR;

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

11 (c) A replacement that is based on a methodology or information
12 that is similar or comparable to the LIBOR; and

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

16 (2) None of: (a) A LIBOR discontinuance event or a LIBOR
17 replacement date; (b) the selection or use of a recommended benchmark
18 replacement as a benchmark replacement; or (c) the determination,
19 implementation, or performance of benchmark replacement conforming
20 changes, in each case, by operation of section 2 of this act, shall:

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

24 (ii) Have the effect of: (A) Discharging or excusing performance
25 under any contract, security, or instrument for any reason, claim, or
26 defense including, but not limited to, any force majeure or other
27 provision in any contract, security, or instrument; (B) giving any
28 person the right to unilaterally terminate or suspend performance
29 under any contract, security, or instrument; (C) constituting a
30 breach of a contract, security, or instrument; or (D) voiding or
31 nullifying any contract, security, or instrument.

32 (3) A person shall not have any liability for damages to any
33 person or be subject to any claim or request for equitable relief
34 arising out of or related to the selection or use of a recommended
35 benchmark replacement or the determination, implementation, or
36 performance of benchmark replacement conforming changes, in each
37 case, by operation of section 2 of this act, and such selection or
38 use of the recommended benchmark replacement or such determination,
39 implementation, or performance of benchmark replacement conforming

1 changes shall not give rise to any claim or cause of action by any
2 person in law or in equity.

3 (4) The selection or use of a recommended benchmark replacement
4 or the determination, implementation, or performance of benchmark
5 replacement conforming changes, by operation of section 2 of this
6 act, shall be deemed to:

7 (a) Not be an amendment or modification of any contract,
8 security, or instrument; and

9 (b) Not prejudice, impair, or affect any person's rights,
10 interests, or obligations under or in respect of any contract,
11 security, or instrument.

12 (5) Except as provided in either section 2 (1) or (3) of this
13 act, the provisions of this chapter shall not be interpreted as
14 creating any negative inference or negative presumption regarding the
15 validity or enforceability of:

16 (a) Any benchmark replacement that is not a recommended benchmark
17 replacement;

18 (b) Any spread adjustment, or method for calculating or
19 determining a spread adjustment, that is not a recommended spread
20 adjustment; or

21 (c) Any changes, alterations, or modifications to or in respect
22 of a contract, security, or instrument that are not benchmark
23 replacement conforming changes.

24 NEW SECTION. **Sec. 4.** Sections 1 through 3 and 6 of this act
25 constitute a new chapter in Title 19 RCW.

26 NEW SECTION. **Sec. 5.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of
32 the state government and its existing public institutions, and takes
33 effect immediately.

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