

1 SB279  
2 210577-3  
3 By Senators Roberts, Orr, Shelnutt, Waggoner, Smitherman,  
4 Singleton and Givhan  
5 RFD: Banking and Insurance  
6 First Read: 02-MAR-21

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to financial transactions; to add Chapter  
12 28, commencing with Section 5-28-1, to Title 5 of the Code of  
13 Alabama 1975; to provide that parties to a contract would be  
14 prohibited from refusing to perform contractual obligations or  
15 declaring a breach of contract as a result of the  
16 discontinuance of the London Interbank Offered Rate or the use  
17 of a replacement interest rate index that is a replacement  
18 interest rate index to LIBOR; to provide for replacement  
19 interest rate indexes to LIBOR; and to provide a safe harbor  
20 from litigation for the use of the recommended benchmark  
21 replacement.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Chapter 28, commencing with Section  
24 5-28-1, is added to Title 5 of the Code of Alabama 1975, to  
25 read as follows:

26 §5-28-1. Short title.

1           This chapter shall be known and may be cited as the  
2 LIBOR Discontinuance and Replacement Act of 2021.

3           §5-28-2. Definitions.

4           As used in this chapter, the following terms have  
5 the following meanings:

6           (1) BENCHMARK. An index for interest rates, discount  
7 rates, or dividend rates that is used, in whole or in part, as  
8 the basis of, or as a reference for, calculating or  
9 determining any valuation, payment, or other measurement under  
10 or with respect to a contract, security, or instrument.

11           (2) BENCHMARK REPLACEMENT. A benchmark, or an  
12 interest rate, discount rate, or dividend rate which may or  
13 may not be based in whole or in part on a prior setting of  
14 LIBOR, to replace LIBOR or any interest rate, discount rate,  
15 or dividend rate based on LIBOR, whether on a temporary,  
16 permanent, or indefinite basis, under or with respect to a  
17 contract, security, or instrument.

18           (3) BENCHMARK REPLACEMENT CONFORMING CHANGES. With  
19 respect to any type of contract, security, or instrument, any  
20 technical, administrative, or operational changes,  
21 alterations, or modifications that are associated with or  
22 considered necessary for the use, adoption, calculation, or  
23 implementation of a recommended benchmark replacement and that  
24 have been selected or recommended by a relevant recommending  
25 body, provided that if, in the judgment of the determining  
26 person, the benchmark replacement conforming changes selected  
27 or recommended pursuant to this subdivision do not apply to

1 the contract, security, or instrument, or are insufficient to  
2 permit administration and calculation of the recommended  
3 benchmark replacement, then the term includes such other  
4 changes, alterations, or modifications that, in the judgment  
5 of the determining person, are necessary to permit  
6 administration, and calculation of the recommended benchmark  
7 replacement under or with respect to such contract, security,  
8 or instrument in a manner determined by the determining person  
9 to be consistent with market practice for similar contracts,  
10 securities, or instruments and, to the extent practicable, the  
11 manner in which the contract, security, or instrument was  
12 administered immediately prior to the LIBOR replacement date.

13 (4) CONTRACT, SECURITY, OR INSTRUMENT. Without  
14 limitation, any contract, agreement, promissory note,  
15 mortgage, deed of trust, lease, derivative, swap, security  
16 (whether representing debt or equity, and including any  
17 interest in a corporation, a partnership, or a limited  
18 liability company), instrument, or other obligation.

19 (5) DETERMINING PERSON. With respect to any  
20 contract, security, or instrument, any person, lender, agent,  
21 or other entity, except for borrowers or lessees, with the  
22 authority, right, or obligation to do any of the following:

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

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

1           c. Notify borrowers, lessees, co-lenders, or other  
2 persons of the occurrence of a LIBOR discontinuance event, a  
3 LIBOR replacement date, or a benchmark replacement.

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

11           (7) LIBOR. The London Interbank Offered Rate as  
12 administered by ICE Benchmark Administration, or any  
13 predecessor or successor thereof, or any tenor thereof, as  
14 applicable, that is used in making any calculation or  
15 determination thereunder. The term also includes, but is not  
16 limited to, any interest rate index rate determined in whole  
17 or in part by reference to LIBOR.

18           (8) LIBOR DISCONTINUANCE EVENT.

19           a. The earliest to occur of any of the following:

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

26           2. A public statement or publication of information  
27 by any one of the following: The regulatory supervisor for the

1 administrator of LIBOR, the United States Federal Reserve  
2 System, an insolvency official with jurisdiction over the  
3 administrator for LIBOR, a resolution authority with  
4 jurisdiction over the administrator for LIBOR, or a court or  
5 an entity with similar insolvency or resolution authority over  
6 the administrator for LIBOR, which states that the  
7 administrator of LIBOR has ceased or will cease to provide  
8 LIBOR permanently or indefinitely, provided that, at the time  
9 of the statement or publication, there is no successor  
10 administrator that will continue to provide LIBOR.

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

14 b. For purposes of this subdivision, a public  
15 statement or publication of information that affects one or  
16 more tenors of LIBOR shall not constitute a LIBOR  
17 discontinuance event with respect to any contract, security,  
18 or instrument that provides for only one tenor of LIBOR, if  
19 the contract, security, or instrument requires interpolation  
20 and the tenor can be interpolated from LIBOR tenors that are  
21 not so affected, or permits a party to choose from more than  
22 one tenor of LIBOR and any of those tenors is not so affected  
23 or if the contract, security, or instrument requires  
24 interpolation, it can be interpolated from LIBOR tenors that  
25 are not so affected.

26 (9) LIBOR REPLACEMENT DATE.

1           a.1. In the case of a LIBOR discontinuance event  
2 described in subparagraph (8)a.1. or (8)a.2., the later of:  
3 (i) The date of the public statement or publication of  
4 information referenced therein; and (ii) the date on which the  
5 administrator of LIBOR permanently or indefinitely ceases to  
6 provide LIBOR, provided that, at the time of the statement or  
7 publication, there is no successor administrator that will  
8 continue to provide LIBOR.

9           2. In the case of a LIBOR discontinuance event  
10 described in subparagraph (8)a.3., the date of the public  
11 statement or publication of information referenced therein.

12           b. For purposes of this definition, a date that  
13 affects one or more tenors of LIBOR shall not constitute a  
14 LIBOR replacement date with respect to any contract, security,  
15 or instrument that provides for only one tenor of LIBOR, if  
16 the contract, security, or instrument requires interpolation  
17 and the tenor can be interpolated from LIBOR tenors that are  
18 not so affected, or permits a party to choose from more than  
19 one tenor of LIBOR and any of those tenors is not so affected  
20 or if the contract, security, or instruments requires  
21 interpolation, it can be interpolated from LIBOR tenors that  
22 are not so affected.

23           (10) RECOMMENDED BENCHMARK REPLACEMENT. With respect  
24 to any particular type of contract, security, or instrument, a  
25 benchmark replacement based on any one the following, as  
26 selected by the determining person:

1           a. Term SOFR, which shall include, if applicable,  
2 the fallback spread adjustment for the applicable term set on  
3 March 5, 2021, pursuant to the International Swaps and  
4 Derivatives Association's fallbacks protocol or any  
5 commercially reasonable recommended spread adjustment and any  
6 commercially reasonable benchmark replacement conforming  
7 changes, that shall have been selected or recommended by a  
8 relevant recommending body with respect to the type of  
9 contract, security, or instrument.

10           b. SOFR, which shall include, if applicable, the  
11 fallback spread adjustment for the applicable term set on  
12 March 5, 2021, pursuant to the International Swaps and  
13 Derivatives Association's fallbacks protocol or any  
14 commercially reasonable recommended spread adjustment and any  
15 commercially reasonable benchmark replacement conforming  
16 changes, that shall have been selected or recommended by a  
17 relevant recommending body with respect to the type of  
18 contract, security, or instrument.

19           c. Any other benchmark that is recommended by a  
20 relevant recommending body.

21           d. Any other commercially reasonable benchmark that  
22 is compliant with international organizations' of securities  
23 commissions' principles for financial benchmarks.

24           (11) RECOMMENDED SPREAD ADJUSTMENT. A spread  
25 adjustment, or method for calculating or determining the  
26 spread adjustment (which may be a positive or negative value  
27 or zero) that shall have been selected or recommended by a



1 relevant recommending body for a recommended benchmark  
2 replacement for a particular term or tenor to account for the  
3 effects of the transition or change from LIBOR to a  
4 recommended benchmark replacement.

5 (12) REFERENCE TIME. With respect to LIBOR, 11:00  
6 a.m. GMT on the day that is two London business days preceding  
7 the date of the setting, and if the benchmark is not LIBOR,  
8 the time determined by the determining person in its  
9 discretion.

10 (13) RELEVANT RECOMMENDING BODY. As applicable, the  
11 Federal Reserve Board or any Federal Reserve Bank, the Office  
12 of the Comptroller of the Currency, the Federal Deposit  
13 Insurance Corporation, the Consumer Financial Protection  
14 Bureau, the Alternative Reference Rates Committee, the  
15 Internal Revenue Service, the Alabama State Banking  
16 Department, the National Credit Union Administration, the  
17 Alabama Credit Union Administration, or any successor entity  
18 to any aforementioned body.

19 (14) SOFR. With respect to any day, the Secured  
20 Overnight Financing Rate published for that day by the Federal  
21 Reserve Bank of New York, as the administrator of the  
22 Benchmark, or a successor administrator, on the Federal  
23 Reserve Bank of New York's website.

24 (15) TERM SOFR. For the applicable corresponding  
25 tenor as of the applicable reference time, the forward-looking  
26 term rate based on SOFR that has been selected or recommended  
27 by a relevant governmental body.

1 §5-28-3. Applicability.

2 Notwithstanding any other law of this state, this  
3 chapter shall apply to all contracts, securities, and  
4 instruments, including contracts, with respect to commercial  
5 transactions, and shall not be deemed to be displaced by any  
6 other law of this state.

7 §5-28-4. Effect of LIBOR Discontinuance.

8 (a) On the LIBOR replacement date, the recommended  
9 benchmark replacement selected by the determining person for  
10 any contract, security, or instrument shall, by operation of  
11 law, without need for notice to or consent of any party, be  
12 the benchmark replacement for the contract, security, or  
13 instrument that uses LIBOR as a benchmark and that meets one  
14 of the following:

15 (1) Contains no fallback provisions.

16 (2) Contains fallback provisions that the  
17 determining person determines are not viable or cannot be  
18 operationalized.

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

22 (b) Following the occurrence of a LIBOR  
23 discontinuance event, any fallback provisions in a contract,  
24 security, or instrument that provide for a benchmark  
25 replacement based on or otherwise involving a poll, survey, or  
26 inquiries for quotes or information concerning interbank  
27 lending rates or any interest rate, discount rate, or dividend

1 rate based on LIBOR shall be disregarded as if not included in  
2 the contract, security, or instrument and shall be deemed null  
3 and void and without any force or effect.

4 (c) This section shall apply to any contract,  
5 security, or instrument that, retrospectively or  
6 prospectively, uses LIBOR as a benchmark and contains fallback  
7 provisions that permit or require the selection of a benchmark  
8 replacement that is based in any way on any LIBOR value.

9 (d) A determining person shall have the authority  
10 under this section, but shall not be required, to select on or  
11 after the occurrence of a LIBOR discontinuance event, the  
12 recommended benchmark replacement as the benchmark replacement  
13 for a contract, security, or instrument. Any such selection of  
14 the recommended benchmark replacement shall meet all of the  
15 following:

16 (1) Be irrevocable.

17 (2) Be made by the earlier of either the LIBOR  
18 replacement date or the latest date for selecting a benchmark  
19 replacement according to the contract, security, or  
20 instrument.

21 (3) Be used in any determinations of the benchmark  
22 under or with respect to the contract, security, or instrument  
23 occurring on and after the LIBOR replacement date.

24 (e) If a recommended benchmark replacement becomes  
25 the benchmark replacement for any contract, security, or  
26 instrument pursuant to this section, then, all benchmark  
27 replacement conforming changes that are applicable (in

1 accordance with the definition of benchmark replacement  
2 conforming changes) to the recommended benchmark replacement  
3 shall become an integral part of the contract, security, or  
4 instrument by operation of law.

5 (f) The provisions of this section shall not alter  
6 or impair any of the following:

7 (1) Any contract, security, or instrument between  
8 requisite parties that, retrospectively or prospectively,  
9 provides that the contract, security, or instrument shall not  
10 be subject to this chapter, without necessarily referring  
11 specifically to this chapter. For purposes of this  
12 subdivision, "requisite parties" means all parties required to  
13 amend the terms and provisions of a contract, security, or  
14 instrument that would otherwise be altered or affected by this  
15 chapter.

16 (2) Any contract, security or instrument that  
17 contains fallback provisions that would result in a benchmark  
18 replacement that is not based on LIBOR, including, but not  
19 limited to, the prime rate or the federal funds rate, except  
20 that the contract, security, or instrument shall be subject to  
21 subsection (b).

22 (3) Any contract, security, or instrument subject to  
23 this section as to which a determining person does not elect  
24 to use a recommended benchmark replacement or as to which a  
25 determining person elects to use a recommended benchmark  
26 replacement prior to the occurrence of a LIBOR discontinuance

1 event, except that the contract, security, or instrument shall  
2 be subject to subsection (b).

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

7 §5-28-5. Continuity of Contracts and Safe Harbor.

8 (a) The selection or use of a recommended benchmark  
9 replacement as a benchmark replacement by a designated person  
10 under or with respect to a contract, security, or instrument  
11 by operation of Section 5-28-4 shall constitute all of the  
12 following:

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

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

18 (3) Substantial performance by any person, lender,  
19 agent, or other entity of any right or obligation relating to  
20 or based on LIBOR under or with respect to a contract,  
21 security, or instrument.

22 (b) A LIBOR discontinuance event or a LIBOR  
23 replacement date, the selection or use of a recommended  
24 benchmark replacement as a benchmark replacement or the  
25 determination, implementation, or performance of benchmark  
26 replacement, conforming changes, in each case, by operation of  
27 Section 5-28-3, shall not do either of the following:

1           (1) Be deemed to impair or affect the right of any  
2 person, lender, agent, or other entity to receive a payment,  
3 or affect the timing of a payment under any contract,  
4 security, or instrument.

5           (2) Have the effect of any of the following:

6           a. Discharging or excusing performance under any  
7 contract, security, or instrument for any reason, claim, or  
8 defense, including, but not limited to, any force majeure or  
9 other provision in any contract, security, or instrument.

10          b. Giving any person the right to unilaterally  
11 terminate or suspend performance under any contract, security,  
12 or instrument.

13          c. Constituting a breach of a contract, security, or  
14 instrument.

15          d. Voiding or nullifying any contract, security, or  
16 instrument.

17          (c) No person, lender, agent, or other entity shall  
18 have any liability for damages to any person, lender, agent,  
19 or other entity or be subject to any claim or request for  
20 equitable relief arising out of or related to the selection or  
21 use of a recommended benchmark replacement or the  
22 determination, implementation, or performance of benchmark  
23 replacement conforming changes, in each case, by operation of  
24 Section 5-28-4, and the selection or use of the recommended  
25 benchmark replacement or the determination, implementation, or  
26 performance of benchmark replacement conforming changes shall

1 not give rise to any claim or cause of action by any person,  
2 lender, agent, or other entity in law or in equity.

3 (d) The selection or use of a recommended benchmark  
4 replacement or the determination, implementation, or  
5 performance of benchmark replacement conforming changes, by  
6 operation of Section 5-28-4, shall be deemed to do all of the  
7 following:

8 (1) Not be an amendment or modification of any  
9 contract, security, or instrument.

10 (2) Not prejudice, impair, or affect any person's,  
11 lender's, agent's, or other entity's rights, interests, or  
12 obligations under or with respect to any contract, security,  
13 or instrument.

14 (3) Conform with generally accepted accounting  
15 principles and not result in a taxable event with respect to  
16 any contract, security, or instrument for federal and state  
17 income tax purposes.

18 (e) Except as provided in Section 5-28-4, this  
19 section shall not be interpreted as creating any negative  
20 inference or negative presumption regarding the validity or  
21 enforceability of any of the following:

22 (1) Any benchmark replacement that is not a  
23 recommended replacement benchmark.

24 (2) Any spread adjustment, or method for calculating  
25 or determining a spread adjustment, that is not a recommended  
26 spread adjustment.

1                   (3) Any changes, alterations, or modifications to or  
2 with respect to a contract, security, or instrument that are  
3 not benchmark replacement conforming changes.

4                   (f) Notwithstanding any other provision of this  
5 section, except for obligations in connection with an interest  
6 rate swap agreement or other derivatives contract, a borrower  
7 may choose to prepay voluntarily the remaining balance of any  
8 credit owed within six months of the use and implementation of  
9 a recommended benchmark replacement without being charged or  
10 assessed a prepayment penalty.

11                   Section 2. This act shall become effective  
12 immediately following its passage and approval by the  
13 Governor, or its otherwise becoming law.



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Senate

Read for the first time and referred to the Senate  
committee on Banking and Insurance..... 02-MAR-21

Read for the second time and placed on the calen-  
dar 1 amendment..... 03-MAR-21

Read for the third time and passed as amended .... 11-MAR-21

Yeas 28  
Nays 0

Patrick Harris,  
Secretary.