

1 SB279
2 212863-4
3 By Senators Roberts, Orr, Shelnutt, Waggoner, Smitherman,
4 Singleton and Givhan
5 RFD: Banking and Insurance
6 First Read: 02-MAR-21

1 SB279

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4 ENROLLED, An Act,

5 Relating to financial transactions; to add Chapter
6 28, commencing with Section 5-28-1, to Title 5 of the Code of
7 Alabama 1975, to provide that parties to a contract would be
8 prohibited from refusing to perform contractual obligations or
9 declaring a breach of contract as a result of the
10 discontinuance of the U.S. dollar London Interbank Offered
11 Rate or the use of a replacement interest rate index that is a
12 replacement interest rate index to U.S. dollar LIBOR; to
13 provide for replacement interest rate indexes to U.S. dollar
14 LIBOR; and to provide a safe harbor from litigation for the
15 use of the recommended benchmark replacement.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Chapter 28, commencing with Section
18 5-28-1, is added to Title 5 of the Code of Alabama 1975, to
19 read as follows:

20 §5-28-1.

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

23 §5-28-2.

24 As used in this chapter, the following terms shall
25 have the following meanings:

1 (1) BENCHMARK. An index of interest rates or
2 dividend rates that is used, in whole or in part, as the basis
3 of, or as a reference for, calculating or determining any
4 valuation, payment, or other measurement under or in respect
5 of a contract, security, or instrument.

6 (2) BENCHMARK REPLACEMENT. A benchmark, or an
7 interest rate or dividend rate, which may or may not be based
8 in whole or in part on a prior setting of LIBOR, to replace
9 LIBOR or any interest rate or dividend rate based on LIBOR,
10 whether on a temporary, permanent, or indefinite basis, under
11 or in respect of a contract, security, or instrument.

12 (3) BENCHMARK REPLACEMENT CONFORMING CHANGES. With
13 respect to any type of contract, security, or instrument, any
14 technical, administrative, or operational changes,
15 alterations, or modifications that are associated with and
16 reasonably necessary to the use, adoption, calculation, or
17 implementation of a recommended benchmark replacement and that
18 both:

19 a. Have been selected or recommended by a relevant
20 recommending body; and

21 b. If, in the reasonable judgment of the calculating
22 person, the benchmark replacement conforming changes selected
23 or recommended pursuant to paragraph a. do not apply to the
24 contract, security, or instrument or are insufficient to
25 permit administration and calculation of the recommended

1 benchmark replacement, then benchmark replacement conforming
2 changes shall include other changes, alterations, or
3 modifications that, in the reasonable judgment of the
4 calculating person, are necessary to permit administration and
5 calculation of the recommended benchmark replacement under or
6 in respect of the contract, security, or instrument in a
7 manner consistent with market practice for substantially
8 similar contracts, securities, or instruments and, to the
9 extent practicable, the manner in which the contract,
10 security, or instrument was administered immediately prior to
11 the LIBOR replacement date; and would not result in a
12 disposition of the contract, security, or instrument for U.S.
13 federal income tax purposes.

14 (4) CALCULATING PERSON. With respect to any
15 contract, security, or instrument, any person responsible for
16 calculating or determining any valuation, payment, or other
17 measurement based on a benchmark. This person may be the
18 determining person.

19 (5) CONTRACT, SECURITY, OR INSTRUMENT. Includes,
20 without limitation, any contract, agreement, mortgage, deed of
21 trust, lease, instrument, other obligation, or security,
22 whether representing debt or equity, and including any
23 interest in a corporation, a partnership, or a limited
24 liability company.

1 (6) DETERMINING PERSON. With respect to any
2 contract, security, or instrument, in the following order of
3 priority:

4 a. Any person so specified.

5 b. Any person with the authority, right, or
6 obligation to do any of the following:

7 1. Determine the benchmark replacement that will
8 take effect on the LIBOR replacement date.

9 2. Calculate or determine a valuation, payment, or
10 other measurement based on a benchmark.

11 3. Notify other persons of the occurrence of a LIBOR
12 discontinuance event, a LIBOR replacement date, or a benchmark
13 replacement.

14 (7) FALLBACK PROVISIONS. Terms in a contract,
15 security, or instrument that set forth a methodology or
16 procedure for determining a benchmark replacement, including
17 any terms relating to the date on which the benchmark
18 replacement becomes effective, without regard to whether a
19 benchmark replacement can be determined in accordance with the
20 methodology or procedure.

21 (8) LIBOR. For purposes of the application of this
22 act to any particular contract, security, or instrument, U.S.
23 dollar LIBOR, formerly known as the London Interbank Offered
24 Rate, as administered by ICE Benchmark Administration Limited,
25 or any predecessor or successor thereof, or any tenor thereof,

1 as applicable, that is used in making any calculation or
2 determination thereunder.

3 (9) LIBOR DISCONTINUANCE EVENT. The earliest to
4 occur of any of the following:

5 a. A public statement or publication of information
6 by, or on behalf of, the administrator of LIBOR announcing
7 that the administrator 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 b. A public statement or publication of information
12 by the regulatory supervisor for the administrator of LIBOR,
13 the United States Federal Reserve System, an insolvency
14 official with jurisdiction over the administrator for LIBOR, a
15 resolution authority with jurisdiction over the administrator
16 for LIBOR, or a court or an entity with similar insolvency or
17 resolution authority over the administrator for LIBOR, which
18 states that the administrator of LIBOR has ceased, or will
19 cease, to provide LIBOR permanently or indefinitely, provided
20 that, at the time of the statement or publication, there is no
21 successor administrator that will continue to provide LIBOR.

22 c. A public statement or publication of information
23 by the regulatory supervisor for the administrator of LIBOR
24 announcing that LIBOR is no longer representative. For
25 purposes of this definition, a public statement or publication

1 of information that affects one or more tenors of LIBOR shall
2 not constitute a LIBOR discontinuance event with respect to
3 any contract, security, or instrument that does either of the
4 following:

5 1. Provides for only one tenor of LIBOR, if the
6 contract, security, or instrument requires interpolation and
7 the tenor can be interpolated from LIBOR tenors that are not
8 so affected.

9 2. Permits a party to choose from more than one
10 tenor of LIBOR and any of the tenors is not so affected or if
11 the contract, security, or instrument requires interpolation,
12 can be interpolated from LIBOR tenors that are not so
13 affected.

14 (10) LIBOR REPLACEMENT DATE. a. In the case of a
15 LIBOR discontinuance event described in paragraph a. or b. of
16 subdivision (9), the later of:

17 1. The date of the public statement or publication
18 of information referenced therein.

19 2. The date on which the administrator of LIBOR
20 permanently or indefinitely ceases to provide LIBOR.

21 b. In the case of a LIBOR discontinuance event
22 described in paragraph c. of subdivision (9), the date of the
23 public statement or publication of information referenced
24 therein. For purposes of this chapter, a date that affects one
25 or more tenors of LIBOR shall not constitute a LIBOR

1 replacement date with respect to any contract, security, or
2 instrument that does either of the following:

3 1. Provides for only one tenor of LIBOR, if the
4 contract, security, or instrument requires interpolation and
5 the tenor can be interpolated from LIBOR tenors that are not
6 so affected.

7 2. Permits a party to choose from more than one
8 tenor of LIBOR and any of the tenors is not so affected, or if
9 the contract, security, or instrument requires interpolation,
10 can be interpolated from LIBOR tenors that are not so
11 affected.

12 (11) RECOMMENDED BENCHMARK REPLACEMENT. With respect
13 to any particular type of contract, security, or instrument, a
14 benchmark replacement based on SOFR, which shall include any
15 recommended spread adjustment and any benchmark replacement
16 conforming changes, that shall have been selected or
17 recommended by a relevant recommending body with respect to
18 the type of contract, security, or instrument.

19 (12) RECOMMENDED SPREAD ADJUSTMENT. A spread
20 adjustment, or method for calculating or determining the
21 spread adjustment, that shall have been selected or
22 recommended by a relevant recommending body for a recommended
23 benchmark replacement for a particular type of contract,
24 security, or instrument and for a particular term to account
25 for the effects of the transition or change from LIBOR to a

1 recommended benchmark replacement. This term may be a positive
2 or negative value or zero.

3 (13) RELEVANT RECOMMENDING BODY. The Federal Reserve
4 Board, the Federal Reserve Bank of New York, or the
5 Alternative Reference Rates Committee, or any successor to any
6 of them.

7 (14) SOFR. With respect to any day, the secured
8 overnight financing rate published for the day by the Federal
9 Reserve Bank of New York, as the administrator of the
10 benchmark, or a successor administrator, on the Federal
11 Reserve Bank of New York's website.

12 §5-28-3.

13 (a) On the LIBOR replacement date, the recommended
14 benchmark replacement, by operation of law, shall be the
15 benchmark replacement for any contract, security, or
16 instrument that uses LIBOR as a benchmark and meets one of the
17 following requirements:

18 (1) Contains no fallback provisions.

19 (2) 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

1 inquiries for quotes or information concerning interbank
2 lending rates or any interest rate or dividend rate based on
3 LIBOR shall be disregarded as if not included in the contract,
4 security, or instrument and shall be deemed void and without
5 any force or effect.

6 (c) (1) This subsection shall apply to any contract,
7 security, or instrument that uses LIBOR as a benchmark and
8 contains fallback provisions that permit or require the
9 selection of a benchmark replacement that is either of the
10 following:

11 a. Based in any way on any LIBOR value.

12 b. The substantive equivalent of subdivision (1),
13 (2), or (3) of subsection (a) of Section 5-28-4.

14 (2) A determining person shall have the authority
15 under this act, but shall not be required, to select on or
16 after the occurrence of a LIBOR discontinuance event the
17 recommended benchmark replacement as the benchmark
18 replacement. The selection of the recommended benchmark
19 replacement shall be all of the following:

20 a. Irrevocable.

21 b. Made by the earlier of either the LIBOR
22 replacement date, or the latest date for selecting a benchmark
23 replacement according to the contract, security, or
24 instrument.

1 c. Used in any determinations of the benchmark under
2 or with respect to the contract, security, or instrument
3 occurring on and after the LIBOR replacement date.

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

11 (e) The provisions of this chapter shall not alter
12 or impair any of the following:

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

21 (2) Any contract, security, or instrument that
22 contains fallback provisions that would result in a benchmark
23 replacement that is not based on LIBOR, including, but not
24 limited to, the prime rate or the federal funds rate, except

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

3 (3) Any contract, security, or instrument subject to
4 subsection (c) as to which a determining person does not elect
5 to use a recommended benchmark replacement or as to which a
6 determining person elects to use a recommended benchmark
7 replacement prior to the occurrence of a LIBOR discontinuance
8 event, except that the contract, security, or instrument shall
9 be subject to subsection (b).

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

14 (f) Notwithstanding the uniform commercial code or
15 any other law of this state, this act shall apply to all
16 contracts, securities, and instruments, including contracts,
17 with respect to commercial transactions, and shall not be
18 deemed to be displaced by any other law of this state.

19 §5-28-4.

20 (a) The selection or use of a recommended benchmark
21 replacement as a benchmark replacement under or in respect of
22 a contract, security, or instrument by operation of Section
23 5-28-3 shall constitute all of the following:

24 (1) A commercially reasonable replacement for and a
25 commercially substantial equivalent to LIBOR.

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

4 (3) A replacement that is based on a methodology or
5 information that is similar or comparable to LIBOR.

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

9 (b) None of: a LIBOR discontinuance event, a LIBOR
10 replacement date, the selection or use of a recommended
11 benchmark replacement as a benchmark replacement, or the
12 determination, implementation, or performance of benchmark
13 replacement conforming changes, in each case, by operation of
14 Section 5-28-3, shall do any of the following:

15 (1) Be deemed to impair or affect the right of any
16 person to receive a payment, or affect the amount or timing of
17 the payment, under any contract, security, or instrument.

18 (2) Have the effect of discharging or excusing
19 performance under any contract, security, or instrument for
20 any reason, claim, or defense, including, but not limited to,
21 any force majeure or other provision in any contract, security
22 or instrument.

23 (3) Have the effect of giving any person the right
24 to unilaterally terminate or suspend performance under any
25 contract, security, or instrument.

1 (4) Have the effect of constituting a breach of a
2 contract, security, or instrument.

3 (5) Have the effect of voiding or nullifying any
4 contract, security, or instrument.

5 (c) No person shall have any liability for damages
6 to any person or be subject to any claim or request for
7 equitable relief arising out of or related to the selection or
8 use of a recommended benchmark replacement or the
9 determination, implementation, or performance of benchmark
10 replacement conforming changes, in each case, by operation of
11 Section 5-28-3, and the selection or use of the recommended
12 benchmark replacement or the determination, implementation, or
13 performance of benchmark replacement conforming changes shall
14 not give rise to any claim or cause of action by any person in
15 law or in equity.

16 (d) The selection or use of a recommended benchmark
17 replacement or the determination, implementation, or
18 performance of benchmark replacement conforming changes, by
19 operation of Section 5-28-3, shall be deemed to do both of the
20 following:

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

23 (2) Not prejudice, impair, or affect any person's
24 rights, interests, or obligations under or in respect of any
25 contract, security, or instrument.

1 (e) Except as provided in either subsection (a) or
2 subsection (c) of Section 5-28-3, this act shall not be
3 interpreted as creating any negative inference or negative
4 presumption regarding the validity or enforceability of any of
5 the following:

6 (1) Any benchmark replacement that is not a
7 recommended replacement benchmark.

8 (2) Any spread adjustment, or method for calculating
9 or determining a spread adjustment, that is not a recommended
10 spread adjustment.

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

14 §5-28-5.

15 If any provision of this chapter or application
16 thereof to any person or circumstance is held invalid, the
17 invalidity shall not affect other provisions or applications
18 of this chapter that can be given effect without the invalid
19 provision or application, and to this end the provisions of
20 this chapter shall be severable.

21 Section 2. This act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB279

Senate 11-MAR-21

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 20-APR-21

Senate concurred in House amendment 22-APR-21

By: Senator Roberts