

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 738

Introduced by Bostar, 29.

Read first time January 05, 2022

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to LIBOR; to adopt the LIBOR Transition Act;
- 2 to provide severability; and to declare an emergency.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 4 of this act shall be known and may be
2 cited as the LIBOR Transition Act.

3 Sec. 2. For purposes of the LIBOR Transition Act:

4 (1) Benchmark means an index of interest rates or dividend rates
5 that is used, in whole or in part, as the basis of or as a reference for
6 calculating or determining any valuation, payment, or other measurement
7 under or in respect of a contract, security, or instrument;

8 (2) Benchmark replacement means a benchmark, or an interest rate or
9 dividend rate, which may or may not be based in whole or in part on a
10 prior setting of LIBOR, to replace LIBOR or any interest rate or dividend
11 rate based on LIBOR, whether on a temporary, permanent, or indefinite
12 basis, under or in respect of a contract, security, or instrument;

13 (3) Benchmark replacement conforming changes means, with respect to
14 any type of contract, security, or instrument, any technical,
15 administrative, or operational changes, alterations, or modifications
16 that are associated with and reasonably necessary to the use, adoption,
17 calculation, or implementation of a recommended benchmark replacement and
18 that:

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

21 (b) If, in the reasonable judgment of the calculating person, the
22 benchmark replacement conforming changes selected or recommended pursuant
23 to subdivision (3)(a) of this section do not apply to such contract,
24 security, or instrument or are insufficient to permit administration and
25 calculation of the recommended benchmark replacement, then benchmark
26 replacement conforming changes shall include such other changes,
27 alterations, or modifications that, in the reasonable judgment of the
28 calculating person:

29 (i) Are necessary to permit administration and calculation of the
30 recommended benchmark replacement under or in respect of such contract,
31 security, or instrument in a manner consistent with market practice for

1 substantially similar contracts, securities, or instruments and, to the
2 extent practicable, the manner in which such contract, security, or
3 instrument was administered immediately prior to the LIBOR replacement
4 date; and

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

7 (4) Calculating person means, with respect to any contract,
8 security, or instrument, any person, which may be the determining person,
9 responsible for calculating or determining any valuation, payment, or
10 other measurement based on a benchmark;

11 (5) Contract, security, or instrument includes, without limitation,
12 any contract, agreement, mortgage, deed of trust, lease, security,
13 whether representing debt or equity and including any interest in a
14 corporation, a partnership, or a limited liability company, instrument,
15 or other obligation;

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

18 (a) Any person specified as a determining person; or

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

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

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

24 (iii) Notify other persons of the occurrence of a LIBOR
25 discontinuance event, a LIBOR replacement date, or a benchmark
26 replacement;

27 (7) Fallback provisions means terms in a contract, security, or
28 instrument that set forth a methodology or procedure for determining a
29 benchmark replacement, including any terms relating to the date on which
30 the benchmark replacement becomes effective, without regard to whether a
31 benchmark replacement can be determined in accordance with such

1 methodology or procedure;

2 (8) LIBOR means, for purposes of the application of the LIBOR
3 Transition Act to any particular contract, security, or instrument,
4 United States dollar LIBOR, formerly known as the London interbank
5 offered rate, as administered by ICE Benchmark Administration Limited, or
6 any predecessor or successor thereof, or any tenor thereof, as
7 applicable, that is used in making any calculation or determination
8 thereunder;

9 (9)(a) LIBOR discontinuance event means the earliest to occur of any
10 of the following:

11 (i) A public statement or publication of information by or on behalf
12 of the administrator of LIBOR announcing that such administrator has
13 ceased or will cease to provide LIBOR, permanently or indefinitely,
14 provided that, at the time of the statement or publication, there is no
15 successor administrator that will continue to provide LIBOR;

16 (ii) A public statement or publication of information by the
17 regulatory supervisor for the administrator of LIBOR, the United States
18 Federal Reserve System, an insolvency official with jurisdiction over the
19 administrator for LIBOR, a resolution authority with jurisdiction over
20 the administrator for LIBOR, or a court or an entity with similar
21 insolvency or resolution authority over the administrator for LIBOR,
22 which states that the administrator of LIBOR has ceased or will cease to
23 provide LIBOR permanently or indefinitely, provided that, at the time of
24 the statement or publication, there is no successor administrator that
25 will continue to provide LIBOR; or

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

29 (b) For purposes of this subdivision (9), a public statement or
30 publication of information that affects one or more tenors of LIBOR shall
31 not constitute a LIBOR discontinuance event with respect to any contract,

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

8 (10)(a) LIBOR replacement date means:

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

14 (ii) In the case of a LIBOR discontinuance event described in
15 subdivision (9)(a)(iii) of this section, the date of the public statement
16 or publication of information referenced therein.

17 (b) For purposes of this subdivision (10), a date that affects one
18 or more tenors of LIBOR shall not constitute a LIBOR replacement date
19 with respect to any contract, security, or instrument that (i) provides
20 for only one tenor of LIBOR, if such contract, security, or instrument
21 requires interpolation and such tenor can be interpolated from LIBOR
22 tenors that are not so affected, or (ii) permits a party to choose from
23 more than one tenor of LIBOR and any of such tenors (A) is not so
24 affected or (B) if such contract, security, or instrument requires
25 interpolation, can be interpolated from LIBOR tenors that are not so
26 affected;

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

1 to such type of contract, security, or instrument;

2 (12) Recommended spread adjustment means a spread adjustment, or
3 method for calculating or determining such spread adjustment, which may
4 be a positive or negative value or zero, that has been selected or
5 recommended by a relevant recommending body for a recommended benchmark
6 replacement for a particular type of contract, security, or instrument
7 and for a particular term to account for the effects of the transition or
8 change from LIBOR to a recommended benchmark replacement;

9 (13) Relevant recommending body means the Federal Reserve Board, the
10 Federal Reserve Bank of New York, or the Alternative Reference Rates
11 Committee, or any successor to any of them; and

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

16 Sec. 3. (1) On the LIBOR replacement date, the recommended
17 benchmark replacement shall, by operation of law, be the benchmark
18 replacement for any contract, security, or instrument that uses LIBOR as
19 a benchmark and:

20 (a) Contains no fallback provisions; or

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

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

1 (3)(a) This subsection shall apply to any contract, security, or
2 instrument that uses LIBOR as a benchmark and contains fallback
3 provisions that permit or require the selection of a benchmark
4 replacement that is:

5 (i) Based in any way on any LIBOR value; or

6 (ii) The substantive equivalent of subdivision (1)(a), (b), or (c)
7 of section 4 of this act.

8 (b) A determining person shall have the authority under the LIBOR
9 Transition Act, but shall not be required, to select on or after the
10 occurrence of a LIBOR discontinuance event the recommended benchmark
11 replacement as the benchmark replacement. Such selection of the
12 recommended benchmark replacement shall be:

13 (i) Irrevocable;

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

17 (iii) Used in any determinations of the benchmark under or with
18 respect to such contract, security, or instrument occurring on or after
19 the LIBOR replacement date.

20 (4) If a recommended benchmark replacement becomes the benchmark
21 replacement for any contract, security, or instrument pursuant to
22 subsection (1) or (3) of this section, then all benchmark replacement
23 conforming changes that are applicable to such recommended benchmark
24 replacement shall become an integral part of such contract, security, or
25 instrument by operation of law.

26 (5) The LIBOR Transition Act shall not alter or impair:

27 (a) Any written agreement by all requisite parties that,
28 retrospectively or prospectively, provides that the contract, security,
29 or instrument shall not be subject to the LIBOR Transition Act without
30 necessarily referring specifically to the act. For purposes of this
31 subdivision, requisite parties means all parties required to amend the

1 terms and provisions of a contract, security, or instrument that would
2 otherwise be altered or affected by the act;

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

8 (c) Any contract, security, or instrument subject to subsection (3)
9 of this section as to which a determining person does not elect to use a
10 recommended benchmark replacement pursuant to subsection (3) of this
11 section or as to which a determining person elects to use a recommended
12 benchmark replacement prior to the occurrence of a LIBOR discontinuance
13 event, except that such contract, security, or instrument shall be
14 subject to subsection (2) of this section; or

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

18 (6) Notwithstanding the Uniform Commercial Code or any other law of
19 this state, the LIBOR Transition Act shall apply to all contracts,
20 securities, and instruments, including contracts, with respect to
21 commercial transactions and shall not be deemed to be displaced by any
22 other law of this state.

23 Sec. 4. (1) The selection or use of a recommended benchmark
24 replacement as a benchmark replacement under or in respect of a contract,
25 security, or instrument by operation of section 3 of this act shall
26 constitute:

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

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

31 (c) A replacement that is based on a methodology or information that

1 is similar or comparable to LIBOR; and

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

5 (2) Any LIBOR discontinuance event or LIBOR replacement date,
6 selection or use of a recommended benchmark replacement as a benchmark
7 replacement, or determination, implementation, or performance of
8 benchmark replacement conforming changes that occurs by operation of
9 section 3 of this act shall not:

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

13 (b) Have the effect of (i) discharging or excusing performance under
14 any contract, security, or instrument for any reason, claim, or defense,
15 including, but not limited to, any force majeure or other provision in
16 any contract, security, or instrument, (ii) giving any person the right
17 to unilaterally terminate or suspend performance under any contract,
18 security, or instrument, (iii) constituting a breach of a contract,
19 security, or instrument, or (iv) voiding or nullifying any contract,
20 security, or instrument.

21 (3) No person shall have any liability for damages to any person or
22 be subject to any claim or request for equitable relief arising out of or
23 related to the selection or use of a recommended benchmark replacement or
24 the determination, implementation, or performance of benchmark
25 replacement conforming changes, in each case, by operation of section 3
26 of this act, and such selection or use of the recommended benchmark
27 replacement or such determination, implementation, or performance of
28 benchmark replacement conforming changes shall not give rise to any claim
29 or cause of action by any person in law or in equity.

30 (4) The selection or use of a recommended benchmark replacement or
31 the determination, implementation, or performance of benchmark

1 replacement conforming changes, by operation of section 3 of this act,
2 shall be deemed to:

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

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

8 (5) Except as provided in either subsection (1) or (3) of section 3
9 of this act, the LIBOR Transition Act shall not be interpreted as
10 creating any negative inference or negative presumption regarding the
11 validity or enforceability of:

12 (a) Any benchmark replacement that is not a recommended benchmark
13 replacement;

14 (b) Any spread adjustment, or method for calculating or determining
15 a spread adjustment, that is not a recommended spread adjustment; or

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

19 Sec. 5. If any section in this act or any part of any section is
20 declared invalid or unconstitutional, the declaration shall not affect
21 the validity or constitutionality of the remaining portions.

22 Sec. 6. Since an emergency exists, this act takes effect when
23 passed and approved according to law.