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**SUBSTITUTE SENATE BILL 5946**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

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

READ FIRST TIME 02/02/22.

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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