HOUSE BILL REPORT
SSB 5946

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to protecting consumers from the discontinuance of the London interbank offered rate.

Brief Description: Protecting consumers from the discontinuance of the London interbank offered rate.

Sponsors: Senate Committee on Business, Financial Services & Trade (originally sponsored by Senators Mullet and Nguyen).

Brief History:
Committee Activity:
Consumer Protection & Business: 2/21/22, 2/23/22 [DP].

Brief Summary of Substitute Bill

- Provides that, upon the London Interbank Offered Rate (LIBOR) replacement date, references to the LIBOR as the benchmark in certain contracts, securities, and instruments without applicable fallback provisions will be replaced by the Secured Overnight Financing Rate.
- Establishes events that constitute the LIBOR replacement date in certain contracts, securities, and instruments.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass. Signed by 6 members: Representatives Kirby, Chair; Walen, Vice Chair; Vick, Ranking Minority Member; Corry, Ryu and Santos.

Minority Report: Do not pass. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Corey Patton (786-7388).

Background:

The London Interbank Offered Rate (LIBOR) is a benchmark interest rate that indicates borrowing costs between international banks. Historically, the LIBOR has been determined using data contributed by a panel of banks and is designed to produce an average rate that is representative of the rates at which internationally active banks with access to the wholesale, unsecured funding market could fund themselves in that market in particular currencies for certain tenors.

As of January 1, 2022, certain United States dollar (USD) LIBOR tenors, as well as all non-USD LIBOR tenors, are no longer published. By July 1, 2023, remaining USD LIBOR tenors will no longer be published. In anticipation of the benchmark's cessation, various regulators have encouraged entities and other market participants that engage in loans, floating-rate notes, securitizations, supplier contracts, or other financial instruments to transition away from referencing the LIBOR. There are existing contracts, securities, and instruments that reference the LIBOR and do not contemplate the cessation of its publication or contain fallback provisions for the sunset of the LIBOR.

The Secured Overnight Financing Rate (SOFR) has been recommended by some authorities and adopted in select product areas to replace the LIBOR. The Federal Reserve Bank of New York and the Office of Financial Research produce the SOFR based on a broad measure of the cost of borrowing cash overnight collateralized by United States Treasury securities in the repurchase agreement market.

Summary of Bill:

On the London Interbank Offered Rate (LIBOR) replacement date, a benchmark based on the Secured Overnight Financing Rate (SOFR) will replace the LIBOR in any contract, security, or instrument that uses the LIBOR as a benchmark, provided that such contract, security or instrument:

- does not contain fallback provisions; or
- contains fallback provisions that result in a benchmark replacement, other than the SOFR, that is based in any way on any LIBOR value.

Any fallback provisions in a contract, security, or instrument that provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiries for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on the LIBOR must be disregarded and deemed null and void. A determining person for a contract, security, or instrument containing fallback provisions that permit or require the selection of a benchmark replacement for the LIBOR is authorized to select the SOFR as the benchmark replacement, subject to certain conditions.

The LIBOR replacement date is defined as:

- the later of: (1) the date of a public statement or publication of information by the administrator of the LIBOR, or another specified authority, announcing that such administrator has ceased or will cease to provide the LIBOR permanently or indefinitely, provided that there is no successor that will continue to provide the LIBOR; and (2) the date on which the administrator of the LIBOR permanently or indefinitely ceases to provide the LIBOR; or
- the date of a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR announcing that the LIBOR is no longer representative, subject to certain exceptions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The discontinuation of the London Interbank Offered Rate (LIBOR) creates a lot of legal uncertainty that may lead to disputes, market disruption, and litigation. A variety of loans, mortgage securities, and other financial contracts rely on the LIBOR as a benchmark rate. In many cases, the transition away from the LIBOR was contemplated in these contracts. However, the transition may not be addressed in some contracts. It is in the best interest of Washington citizens and businesses to address this ambiguity. The goal is for the federal government to address this problem with possible legislation, but this bill is a backstop in case the United States Senate does not take up this issue. This bill was modeled on similar legislation from other states and developed with input from a variety of stakeholders. The recommendations that form the basis of this bill were developed by the Federal Reserve Board through the Alternative Reference Rate Committee and are designed to avoid conferring any economic or contractual advantage to a particular party. This bill is tailored to only address the subset of contracts that lack a fallback clause. It does not affect contracts where the parties have already reached a mutual agreement about the transition process.

(Opposed) None.

Persons Testifying: Senator Mark Mullet, prime sponsor; and Glen Simecek, Washington Bankers Association.

Persons Signed In To Testify But Not Testifying: None.