

Insights

Indiana's Newly Passed LIBOR Legislation Immediately Preempted by Federal Counterpart

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The world's most popular contractual benchmark rate, the London Interbank Offered Rate or "LIBOR," is being discontinued. Many LIBOR-based contracts contain inadequate provisions, or none at all, to deal with the discontinuation of LIBOR ("Vulnerable Contracts"). Lenders and industry leaders have been justifiably concerned that LIBOR discontinuation will lead to market instability leading up to the LIBOR discontinuation date, and a court-clogging number of lawsuits dealing with Vulnerable Contracts following discontinuation.

Responding to industry leader's concerns, the Indiana legislature took matters into its own hands to fix the problem for Indiana-based contracts. Indiana Senators Andy Zay and Kyle Walker authored Senate Bill 371 ("S.B. 371"), which is modeled after similar legislation enacted in New York and which provides a statutory mechanism by which Vulnerable Contracts will "fallback" to other benchmark rates when LIBOR is discontinued once and for all. As discussed in a **recent client alert**, the primary fallback benchmark rate contemplated under S.B. 371 is the Secured Overnight Financing Rate (commonly referred to as "SOFR") published by the Federal Reserve Bank of New York.

Indiana's House of Representatives and Senate unanimously passed S.B. 371, whereupon Governor Eric Holcomb signed the bill into law on March 10, 2022.¹ This was cause for celebration as Indiana banks were among the few to enjoy protection from the prospect of litigation on issue – for about five days.

On March 15, 2022, just days after Governor Holcomb signed S.B. 371 into law, President Biden signed the \$1.5 Trillion omnibus spending bill. Buried in the 2,700-page legislation, the Adjustable Interest Rate (LIBOR) Act (the "LIBOR Act")² quietly created a federal mechanism to address LIBOR discontinuation and fix Vulnerable Contracts.³ The LIBOR Act operates nearly identically to S.B. 371, i.e. causing Vulnerable Contracts to fallback to SOFR upon LIBOR discontinuation. Of note, the LIBOR Act also provides lenders with a safe harbor from disputes arising out of replacement of LIBOR.

What does this mean for S.B. 371? When federal law and state law address the same topic, as here, federal law takes priority. Therefore, the LIBOR Act renders S.B. 371 moot.

Indiana can be proud that for a few short days the Hoosier state stood on the forefront of financial policy; and while Indiana's "competitive edge" may be no more, the global financial market will be much better served by the

LIBOR Act. Unlike S.B. 371 or equivalent statutes enacted in other states, the LIBOR Act provides clarity for borrowers and lenders of Vulnerable Contracts uniformly throughout the country. The anticipated effect is a more stable financial market leading up to LIBOR discontinuance as well as fewer court cases in its wake.

If you have any questions regarding the information in this article, contact Kyle P. Chambers, Brett J. Ashton or Ann Marie Woolwine.

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[1] <http://iga.in.gov/legislative/2022/bills/senate/371#document-06576492>;
accessed 25 March 2022

[2] <https://www.congress.gov/bill/117th-congress/house-bill/4616/text>; accessed 19
March 2022

[3] Federal LIBOR legislation: five things financial market participants need to know | Reuters; accessed 25 March 2022