- 1 HB182
- 2 197508-1
- 3 By Representative Blackshear
- 4 RFD: Financial Services
- 5 First Read: 19-MAR-19

1	197508-1:n	:03/05/2019:PMG*/bm LSA2019-695
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8	SYNOPSIS:	Under current law, a future advance
9		mortgage, which is created upon its execution, may
10		secure funds advanced at the time the mortgage is
11		executed as well as funds advanced in the future. A
12		recent Alabama Supreme Court opinion held that a
13		future advance mortgage, although recorded, is not
14		created until the lender advances funds under the
15		loan secured by the mortgage, thus potentially
16		eliminating the priority a future advance mortgage
17		has over subsequently recorded mortgages or liens.
18		This bill would create the Future Advance
19		Mortgage Protection Act.
20		This bill would clarify that a mortgage may
21		secure not only existing indebtedness but also
22		future advances to the same extent as if the future
23		advances were made at the same time the mortgage
24		was created.
25		This bill would also provide that this bill
26		would apply prospectively to mortgages created in

1	the future, as well as retrospectively to existing	
2	mortgages.	
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4	A BILL	
5	TO BE ENTITLED	
6	AN ACT	
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8	Relating to future advance mortgages; to add a new	
9	Article 6, commencing with Section 35-10-120, to Chapter 10 of	
10	Title 35 of the Code of Alabama 1975; to establish the Future	
11	Advance Mortgage Protection Act; to provide that future	
12	advance mortgages are valid and enforceable; and to provide	
13	that this article shall apply prospectively to mortgages	
14	created in the future and retrospectively to existing	
15	mortgages.	
16	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:	
17	Section 1. A new Article 6, commencing with Section	
18	35-10-120, is added to Chapter 10 of Title 35 of the Code of	
19	Alabama 1975, to read as follows:	
20	Article 6. The Future Advance Mortgage Protection	
21	Act.	
22	§35-10-120.	
23	This article shall be known and may be cited as The	
24	Future Advance Mortgage Protection Act.	
25	§35-10-121.	
26	The Legislature finds and declares the following:	

- (1) There is prevalent use in this state of future advance mortgages, which are mortgage loan arrangements in which the borrower takes either none, or only a portion, of the loan proceeds at the outset, but receives loan proceeds in the future, thereby saving interest charges on the unadvanced portion until it is needed.
 - (2) Future advance mortgage financing arrangements are beneficial to homeowners, developers, builders, suppliers, borrowers, and lenders. Mortgage instruments to secure future advances have been, and should be, validly created by execution under Article 2, commencing with Section 35-4-20, of Chapter 4.
- (3) A recent Alabama Supreme Court opinion contains language to the effect that a future advance mortgage, even though executed and recorded, is not created or valid until the lender makes an advance under the mortgage, and thus the mortgage does not have priority over other mortgages or liens created, arising, or recorded before the advance is made.
- (4) In order to protect those mortgages and facilitate their continued use, both the validity and enforceability of these mortgages are due to be and are herein clarified and established, and this article applies both prospectively and retrospectively.

§35-10-122.

As used in this article, the following terms shall have the following meanings:

- (1) FUTURE ADVANCE. An advance, extension of credit, indebtedness, or loan of any type or description whatsoever, whether obligatory or optional, or both, and whether made under loan agreements, notes, mortgages, or other agreements, or otherwise, that are made or come into existence after the creation of the future advance mortgage.
 - (2) FUTURE ADVANCE MORTGAGE. A mortgage in which future advances are among the secured indebtedness.

\$35-10-123.

2.0

- may secure existing indebtedness and advances made contemporaneously with the creation of the mortgage. A future advance mortgage is valid and enforceable for future advances to the same extent as if the future advances were made contemporaneously with the creation of the mortgage, without regard to whether any advance is made at the time of the creation of the mortgage, and without regard to whether any indebtedness is outstanding at the time any future advance is made. Nothing in this subsection is intended to limit or restrict the obligations, indebtedness, liabilities, covenants, disbursements, or advances that may be secured by any mortgage.
- (b) A future advance mortgage is created, and the estate of the mortgage is conveyed and the security afforded thereby attaches, at the time of its execution, without the requirement of any other consideration and without regard to whether any advance of loan proceeds has been made.

1 \$35-10-124.

(a) The provisions of Section 7-9A-334, which relate to the priority of security interests in fixtures and crops, and Section 7-9A-604, which relate to security agreements covering real property or fixtures, are not affected by this article.

(b) This article shall apply prospectively to mortgages created after the effective date of the act adding this article and retrospectively to mortgages in existence on the effective date of the act adding this article.

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