

1 HB184  
2 125928-6  
3 By Representative Greeson  
4 RFD: Commerce and Small Business  
5 First Read: 08-MAR-11

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ENROLLED, An Act,

Relating to private transfer fees; prohibiting the creation of private transfer fee obligations; and requiring certain procedures for notice and disclosure relative to private transfer fee obligations imposed prior to the effective date of this act in order for the obligations to be valid.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Article 18 is added to Chapter 4 of Title 35 of the Code of Alabama 1975, to read as follows:

Article 18.

§35-4-431. Intent.

The Legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. Thus, the Legislature finds and declares that a

1 private transfer fee obligation should not run with the title  
2 to property or otherwise bind subsequent owners of property  
3 under any common law or equitable principle.

4 §35-4-432. Definitions.

5 (a) As used in this act, the following words have  
6 the following meanings:

7 (1) ASSOCIATION. A association or unit owners'  
8 association, as defined in Section 35-8A-103 of the Alabama  
9 Uniform Condominium Act of 1991; an association as defined in  
10 Section 35-8-2 of the Condominium Ownership Act; or a  
11 nonprofit or cooperative membership organization composed  
12 exclusively of owners of mobile homes, manufactured housing,  
13 time-shares, camping resort interests, or other interests in  
14 real property that is responsible for the maintenance,  
15 improvements, services, or expenses related to real property  
16 that is owned, used, or enjoyed in common by the members.

17 (2) PAYEE. The person or entity who claims the right  
18 to receive or collect a private transfer fee payable under a  
19 private transfer obligation. A payee may or may not have a  
20 pecuniary interest in the private transfer fee obligation.

21 (3) PRIVATE TRANSFER FEE. A fee or charge payable  
22 upon the transfer of an interest in real property, or payable  
23 for the right to make or accept such transfer, regardless of  
24 whether the fee or charge is a fixed amount or is determined  
25 as a percentage of the value of the property, the purchase

1 price, or other consideration given for the transfer. The  
2 following are not private transfer fees for purposes of this  
3 article:

4 a. Any consideration payable by the grantee to the  
5 grantor for the interest in real property being transferred,  
6 including any subsequent additional consideration for the  
7 property payable by the grantee based upon any subsequent  
8 appreciation, development, or sale of the property, if such  
9 additional consideration is payable on a one-time basis only  
10 and the obligation to make such payment does not bind  
11 successors in title to the property. For the purposes of this  
12 paragraph, an interest in real property may include a separate  
13 mineral estate and its appurtenant surface access rights.

14 b. Any commission payable to a licensed real estate  
15 broker for the transfer of real property pursuant to an  
16 agreement between the broker and the grantor or the grantee,  
17 including, but not limited to, any subsequent additional  
18 commission for that transfer payable by the grantor or the  
19 grantee based upon any subsequent appreciation, development,  
20 or sale of the property.

21 c. Any interest, charges, fees, or other amounts  
22 payable by a borrower to a lender pursuant to a loan secured  
23 by a mortgage against real property, including, but not  
24 limited to, any fee payable to the lender for consenting to an  
25 assumption of the loan or a transfer of the real property

1 subject to the mortgage, any fees or charges payable to the  
2 lender for estoppel letters or certificates, and any shared  
3 appreciation interest or profit participation or other  
4 consideration and payable to the lender in connection with the  
5 loan.

6 d. Any rent, reimbursement, charge, fee, or other  
7 amount payable by a lessee to a lessor under a lease,  
8 including, but not limited to, any fee payable to the lessor  
9 for consenting to an assignment, subletting, encumbrance, or  
10 transfer of the lease.

11 e. Any consideration payable to the holder of an  
12 option to purchase an interest in real property or the holder  
13 of a right of first refusal or first offer to purchase an  
14 interest in real property for waiving, releasing, or not  
15 exercising the option or right upon the transfer of the real  
16 property to another person.

17 f. Any tax, fee, charge, assessment, fine, or other  
18 amount payable to or imposed by a governmental authority.

19 g. Any fee, charge, assessment, dues, fine,  
20 contribution, or other amount payable to a homeowners',  
21 condominium, cooperative, mobile home, or property owners'  
22 association pursuant to a declaration or covenant or law  
23 applicable to such association, including, but not limited to,  
24 fees or charges payable for estoppel letters or certificates  
25 issued by the association or its authorized agent.

1           h. Any fee, charge, assessment, dues, fine,  
2           contribution, or other amount imposed by a declaration or  
3           covenant encumbering real property, and payable solely to a  
4           nonprofit or charitable organization for the purpose of  
5           supporting cultural, educational, charitable, recreational,  
6           environmental, conservation, or other similar activities  
7           benefitting the real property subject to the declaration or  
8           covenant or the community in which such real property is  
9           located.

10           i. Any fee, charge, assessment, dues, fine,  
11           contribution, or other amount pertaining solely to the  
12           purchase or transfer of a club membership relating to real  
13           property owned by the member, including, but not limited to,  
14           any amount determined by reference to the value, purchase  
15           price, or other consideration given for the transfer of the  
16           real property.

17           (4) PRIVATE TRANSFER FEE OBLIGATION. An obligation  
18           arising under a declaration or covenant recorded against the  
19           title to real property, or under any other contractual  
20           agreement or promise, whether or not recorded, that requires  
21           or purports to require the payment of a private transfer fee  
22           upon a subsequent transfer of an interest in the real  
23           property.

1           (5) TRANSFER. The sale, gift, conveyance,  
2 assignment, inheritance, or other transfer of an ownership  
3 interest in real property located in this state.

4           §35-4-433. Prohibition.

5           A private transfer fee obligation recorded or  
6 entered into in this state on or after the effective date of  
7 this act does not run with the title to real property and is  
8 not binding on or enforceable at law or in equity against any  
9 subsequent owner, purchaser, or mortgagee of any interest in  
10 real property as an equitable servitude or otherwise. Any  
11 private transfer fee obligation that is recorded or entered  
12 into in this state on or after the effective date of this act  
13 is void and unenforceable. This section does not create a  
14 presumption that a private transfer fee obligation recorded or  
15 entered into in this state before the effective date of this  
16 act is valid and enforceable.

17           §35-4-434. Liability for Violations.

18           (a) Any person who records or enters into an  
19 agreement imposing a private transfer fee obligation in his or  
20 her favor after the effective date of this act shall be liable  
21 for:

22           (1) Any and all damages resulting from the  
23 imposition of the private transfer fee obligation on the  
24 transfer of an interest in the real property, including, but

1 not limited to, the amount of any transfer fee paid by a party  
2 to the transfer.

3 (2) All attorney fees, expenses, and costs incurred  
4 by a party to the transfer or mortgagee of the real property  
5 to recover any private transfer fee paid or in connection with  
6 an action to quiet title.

7 (b) Where an agent acts on behalf of a principal to  
8 record or secure a private transfer fee obligation, liability  
9 shall be assessed to the principal, rather than the agent.

10 §35-4-435. Disclosure.

11 (a) Any contract for the sale of real property  
12 subject to a private transfer fee obligation shall include a  
13 provision disclosing the existence of that obligation, a  
14 description of the obligation, and a statement that private  
15 transfer fee obligations are subject to certain prohibitions  
16 under this article. A contract for sale of real property which  
17 does not conform to the requirements of this section is not  
18 enforceable by the seller against the buyer, nor is the buyer  
19 liable to the seller for damages under such a contract, and  
20 the buyer under the contract is entitled to the return of all  
21 deposits made in connection with the sale of the real  
22 property.

23 (b) Where a private transfer fee obligation is not  
24 disclosed under subsection (a) and a buyer subsequently  
25 discovers the existence of the private transfer fee obligation



1 after title to the property has passed to the buyer, the buyer  
2 has the right to recover both:

3 (1) Any and all damages resulting from the failure  
4 to disclose the private transfer fee obligation, including,  
5 but not limited to, the amount of any private transfer fee  
6 paid by the buyer, or the difference between:

7 a. The market value of the real property if it were  
8 not subject to a private transfer fee obligation.

9 b. The market value of the real property as subject  
10 to a private transfer fee obligation.

11 (2) All attorney fees, expenses, and costs incurred  
12 by the buyer in seeking the buyer's remedies under this  
13 subsection.

14 (c) Any provision in a contract for sale of real  
15 property that purports to waive the rights of a buyer under  
16 this section is void.

17 (d) A real estate licensee shall have no duty to  
18 discover the existence of any private transfer fee obligation.

19 §35-4-436. Notice Requirements for Existing Private  
20 Transfer Fee Obligations.

21 (a) The payee of a private transfer fee obligation  
22 imposed prior to the effective date of this act shall record,  
23 prior to December 31, 2011, against the real property subject  
24 to the private transfer fee obligation, a separate document in  
25 the office of the judge of probate for each county in which

1 the real property is located which complies with all of the  
2 following requirements:

3 (1) The title of the document shall be "Notice of  
4 Private Transfer Fee Obligation" in at least 14-point boldface  
5 type.

6 (2) The amount, if the private transfer fee is a  
7 flat amount, or the percentage of the sales price constituting  
8 the cost of the private transfer fee, or such other basis by  
9 which the private transfer fee is to be calculated.

10 (3) If the real property is residential property,  
11 actual dollar-cost examples of the private transfer fee for a  
12 home priced at two hundred fifty thousand dollars (\$250,000),  
13 five hundred thousand dollars (\$500,000), and seven hundred  
14 fifty thousand dollars (\$750,000).

15 (4) The date or circumstances under which the  
16 private transfer fee obligation expires, if any.

17 (5) The purpose for which the funds from the private  
18 transfer fee obligation will be used.

19 (6) The name of the payee and specific contact  
20 information regarding where the funds are to be sent.

21 (7) The acknowledged signature of the payee, or a  
22 representative of the payee.

23 (8) The legal description of the real property  
24 purportedly burdened by the private transfer fee obligation.

1           (9) Where there is more than one person or entity  
2 who claims the right to receive or collect a private transfer  
3 fee under a private transfer fee obligation, those persons or  
4 entities shall designate a single person or entity as the  
5 payee for purposes of that private transfer fee obligation.

6           (b) The payee may file an amendment to the notice of  
7 private transfer fee containing new contact information, but  
8 such amendment must contain the recording information of the  
9 notice of private transfer fee which it amends and the legal  
10 description of the real property burdened by the private  
11 transfer fee obligation.

12           (c) If a payee fails to file the notice required  
13 under subsection (a)(1) prior to December 31, 2011, the  
14 grantor or any real property burdened by the private transfer  
15 fee obligation may proceed with the conveyance of an interest  
16 in the real property to any grantee and in so doing shall be  
17 conclusively deemed to have acted in good faith and shall not  
18 be subject to any obligations under the private transfer fee  
19 obligation. In that event, the private transfer fee obligation  
20 is void and the real property thereafter shall be conveyed  
21 free and clear of the private transfer fee and private  
22 transfer fee obligation.

23           (d) If a payee fails to fully comply with subsection  
24 (a) in filing the notice required thereunder, then the  
25 grantor, on recording of an affidavit under subsection (e),

1 may convey an interest in the real property to any grantee  
2 without payment of the private transfer fee and is not subject  
3 to any further obligations under the private transfer fee  
4 obligation. In that event, the private transfer fee obligation  
5 is void and the real property thereafter shall be conveyed  
6 free and clear of the private transfer fee and private  
7 transfer fee obligation.

8 (e) If the payee fails to provide a written  
9 statement of the private transfer fee payable within 30 days  
10 of the date of a written request for the same sent to the  
11 address shown in the notice of private transfer fee, then the  
12 grantor, on recording of an affidavit under subsection (f),  
13 may convey an interest in the real property to any grantee  
14 without payment of the private transfer fee and is not subject  
15 to any further obligations under the private transfer fee  
16 obligation. In that event, the private transfer fee obligation  
17 shall become null and void and the real property thereafter  
18 shall be conveyed free and clear of the private transfer fee  
19 and private transfer fee obligation.

20 (f) An affidavit stating the facts enumerated in  
21 subsection (g) shall be recorded in the office of the judge of  
22 probate for each county in which the real property is situated  
23 prior to or simultaneously with a conveyance pursuant to  
24 subsection (d) or (e) of real property unburdened by a private  
25 transfer fee obligation. An affidavit filed under this

1 subsection shall state that the affiant has actual knowledge  
2 of, and is competent to testify to, the facts in the affidavit  
3 and shall include the legal description of the real property  
4 burdened by the private transfer fee obligation, the name of  
5 the person appearing by the record to be the owner of the real  
6 property at the time of the signing of the affidavit, a  
7 reference, by recording information, to the instrument of  
8 record containing the private transfer fee obligation and an  
9 acknowledgment that the affiant is testifying under penalty of  
10 perjury.

11 (g) When recorded, an affidavit filed under  
12 subsection (f) is prima facie evidence that either of the  
13 following:

14 (1) The payee has failed to fully comply with  
15 subsection (a) in the respects stated in the affidavit.

16 (2) A request for the written statement of the  
17 private transfer fee was sent to the payee at the address  
18 shown on the notice of private transfer fee, and the payee  
19 failed to provide the written statement of the private  
20 transfer fee payable within 30 days of the date of the notice  
21 sent to the address shown in the notification.

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 07-APR-11, as amended.

Greg Pappas  
Clerk

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Senate 05-MAY-11 Passed