

1 HB273
2 189378-1
3 By Representative Todd
4 RFD: Ways and Means General Fund
5 First Read: 23-JAN-18

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8 SYNOPSIS: Under existing law, a fee is required to
9 record certain mortgages, deeds of trust, contracts
10 of conditional sale, or other instruments of like
11 character which is given to secure the payment of
12 any debt which conveys any real or personal
13 property.

14 This bill would increase the fee for
15 recording of certain mortgages, deeds of trust,
16 contracts of conditional sale, or other instruments
17 of like character which is given to secure the
18 payment of any debt which conveys any real or
19 personal property.

20 This bill would modify the rate and
21 distribution of the Mortgage Record Tax in order to
22 provide a dedicated revenue for the Alabama Housing
23 Trust Fund.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Section 40-22-2, Code of Alabama 1975; to
3 increase the fee for recording of certain mortgages, deeds of
4 trust, contracts of conditional sale, or other instruments of
5 like character which is given to secure the payment of any
6 debt which conveys any real or personal property; and modify
7 the rate and distribution of the Mortgage Record Tax in order
8 to provide a dedicated revenue for the Alabama Housing Trust
9 Fund.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 40-22-2, Code of Alabama 1975, is
12 amended to read as follows:

13 "§40-22-2.

14 "No mortgage, deed of trust, contract of conditional
15 sale, or other instrument of like character which is given to
16 secure the payment of any debt which conveys any real or
17 personal property situated within this state or any interest
18 therein or any security agreement or financing statement
19 provided for by the Uniform Commercial Code, except a security
20 agreement or a financing statement relating solely to security
21 interests in accounts, contract rights, or general
22 intangibles, as such terms are defined in the Uniform
23 Commercial Code, and except for the re-recording of
24 corrected mortgages, deeds, or instruments executed for the
25 purpose of perfecting the title to real or personal property,
26 specifically, but not limited to, corrections of maturity
27 dates thereof, shall be received for record or for filing in

1 the office of any probate judge of this state unless the
2 following privilege or license taxes shall have been paid upon
3 such instrument before the same shall be received for record
4 or for filing:

5 "(1)a. Upon all such instruments which are executed
6 to secure or to evidence the securing of an initial
7 indebtedness which shall not exceed \$100, there shall be paid
8 the sum of ~~\$.15~~ \$.30, and upon all instruments which shall be
9 executed to secure or to evidence the securing of an initial
10 indebtedness of more than \$100, there shall be paid the sum of
11 ~~\$.15~~ \$.30 for each \$100 of such initial indebtedness or
12 fraction thereof.

13 "b. Upon all such instruments which are executed to
14 secure or to evidence the securing of an open end or revolving
15 indebtedness with any interest in property, at the option of
16 the person offering the instrument for record or for filing,
17 (i) there shall be paid the sum of ~~\$.15~~ \$.30 for each \$100 of
18 such initial indebtedness or fraction thereof and the
19 procedures set forth in paragraphs a, b, and c of subdivision
20 (2) of this section shall be applicable; or, in lieu thereof,
21 (ii) there shall be paid the sum of ~~\$.15~~ \$.30 for each \$100 of
22 maximum principal indebtedness, or fraction thereof, to be
23 secured by such instrument at any one time as stated in the
24 instrument or any amendment thereto. In any event, the
25 privilege or license tax to be paid upon such instruments
26 securing or evidencing the securing of open end or revolving
27 indebtedness with any interest in property shall not exceed

1 the amount of ~~\$.15~~ \$.30 for each \$100 of maximum principal
2 indebtedness, or fraction thereof, to be secured by such
3 instrument at any one time as stated in the instrument or any
4 amendment thereto, irrespective of the cumulative amount
5 advanced from time to time thereunder.

6 "(2)a. If subdivision (1)b.(i) applies and any part
7 of the indebtedness which the mortgagor or debtor in any
8 instrument conveying any real property situated within this
9 state, or any interest therein, other than fixtures under the
10 Uniform Commercial Code, is authorized to incur under the
11 terms of the instrument has not been or will not be presently
12 incurred at the time such instrument is offered for record,
13 the tax shall be paid on the amount of indebtedness presently
14 incurred, and the Department of Revenue, upon the petition of
15 the owner of any such instrument or upon the petition of the
16 agent or attorney of such owner, shall ascertain to its own
17 satisfaction the amount then taxable and the amount to be
18 incurred thereafter and determine the amount upon which the
19 tax shall be paid at the time such instrument is offered and
20 shall endorse its findings on such instrument. Upon the
21 presentation of such instrument with such endorsement thereon,
22 the probate judge of any county in which the instrument is
23 offered, upon the payment of the tax upon the amount so
24 ascertained by the Department of Revenue and the recording
25 fees of the probate judge, shall accept the same for record.
26 The Department of Revenue shall also require the owner of such
27 instrument to execute a bond in an amount sufficient to secure

1 to the state the privilege tax to become due and payable under
2 this section upon the amount of the indebtedness to be
3 incurred thereafter, such bond to be approved by the
4 Department of Revenue and payable to the State of Alabama and
5 conditioned that the owner of such instrument will promptly
6 report to said Department of Revenue and to the probate judge
7 of the county where said instrument is first filed for record,
8 whenever such owner or his successor in interest incurs any
9 additional indebtedness thereunder, and the amount so
10 incurred; and that the said owner of such instrument will pay
11 or cause to be paid to the probate judge of the county in
12 which said instrument is first filed the privilege or license
13 tax required under this section upon the accrual of any
14 additional indebtedness, and the said owner of such instrument
15 will report to the said probate judge and the Department of
16 Revenue during the month of September of each year the amount
17 of all indebtedness and all bonds, debentures, notes or other
18 forms of indebtedness incurred or certified and delivered
19 under said instrument to such date, and the amount so
20 certified and delivered during the preceding 12 months, and
21 the aggregate of all such evidence of indebtedness certified
22 and delivered under such instrument prior to such year. The
23 bond executed to secure payment of the tax herein required
24 shall cover a term of five years; and, after the expiration of
25 said term of five years, the owner of the instrument offered
26 for record shall execute such further bond as may be required
27 by the Department of Revenue covering the succeeding term of

1 five years, and thereafter every term of five years, in the
2 same manner so long as any of the indebtedness authorized to
3 be incurred by such instrument has not been incurred with like
4 condition and in such sum as the said department may
5 prescribe.

6 "b. Notwithstanding the provisions of paragraph a.
7 of this subdivision, any bank, savings and loan association,
8 insurance company, or other financial institution organized
9 and established under the laws of the State of Alabama or the
10 United States which is the owner of such instrument, in lieu
11 of the foregoing procedures, may certify the amount of
12 indebtedness presently incurred, and the probate judge of any
13 county in which the instrument is offered, upon payment of the
14 tax upon the amount so certified and the recording fees of the
15 probate judge, shall accept the instrument for record. During
16 the month of September of each year, any such bank, savings
17 and loan association, insurance company, or other financial
18 institution which has recorded such instruments as described
19 hereinabove shall report to the appropriate probate judge the
20 amount of additional indebtedness incurred under the
21 instrument and pay any tax required upon the additional
22 indebtedness.

23 "c. Each probate judge will forward to the State
24 Banking Department by the end of October a statement showing
25 the amounts certified to him or her by each forenamed
26 organization. The State Banking Department will then have the
27 authority to make unannounced audits on any organization

1 electing to use this system of reporting indebtedness. Any
2 organization which is found to have willfully certified less
3 than the true amount it should have certified shall be
4 required to pay a fine equal to three times the amount of tax
5 due on the amount of indebtedness not certified to the probate
6 judge. This fine shall be paid into the General Fund of
7 Alabama. In addition, any organization so fined must pay an
8 auditing fee in accordance with established Banking Department
9 audit fees into the funds of the State Banking Department.

10 "(3) When any deed is filed for record which recites
11 that part of the purchase money is unpaid, such deed to the
12 extent of such unpaid balance shall be held and treated as a
13 mortgage, and the mortgage tax shall be collected by the
14 probate judge in addition to the tax for recording the
15 instrument as a deed before recording the same, unless the
16 balance of purchase money shall be secured by mortgage or deed
17 of trust which has already been filed for record, and the tax
18 thereon paid, and the fact of such prior payment shall be
19 endorsed on the deed. When any such deed is recorded and the
20 tax thereon is paid, and thereafter a mortgage securing the
21 debt is filed for record, the same shall be admitted to record
22 without the payment of the mortgage tax and the fact of such
23 prior payment shall be endorsed on the deed.

24 "(4) The privilege taxes herein imposed shall not be
25 required on or for the filing of any such instrument,
26 providing additional or substitute security for any
27 indebtedness secured by, or the securing of which is evidenced

1 by, an instrument previously filed, upon the filing of which
2 the taxes provided by law have been paid or which was filed at
3 a time when no such privilege taxes were required by law;
4 provided, that the secured indebtedness remains unchanged in
5 amount and in time of maturity.

6 "(5) Upon the filing for record of such instrument
7 and upon the payment of the tax thereon, the probate judge or
8 his or her clerk shall certify on the instrument the fact that
9 the said tax has been paid, and when so certified by the
10 probate judge or his or her clerk, such instrument shall be
11 admitted to record in any county wherein any of the property
12 mentioned in the instrument is situated without the payment of
13 any further tax thereon, except the fee to the probate judge
14 for recording such instrument, and such certificate of the
15 probate judge shall be recorded by such probate judge when
16 such instrument is recorded. Upon the filing for record of any
17 instrument which has been exempted by law from the payment of
18 the tax provided for in this section, the probate judge shall
19 certify thereon that no tax has been paid and shall stamp in
20 bold letters on the face of said instrument "No Tax
21 Collected," and the certificate shall be recorded with and as
22 a part of such instrument, and thereafter such instrument
23 shall be received for record in any county in this state
24 without the payment of any further tax thereon, when submitted
25 by a tax-exempt institution, but if submitted by or
26 transferred to an institution or person not exempt from the
27 payment of the tax levied under this section, the probate

1 judge shall collect the tax levied by this section upon the
2 then unpaid balance of the secured debt together with the fee
3 of the probate judge for recording such instrument before it
4 will be admitted to record. The tax herein provided for shall
5 be paid upon all contracts for the sale of real or personal
6 property, whether the same are in the nature of a conditional
7 sale or a bond for title, and no such contract shall be
8 received for record until such tax shall have been paid.

9 "(6) When the time for the payment of the
10 indebtedness secured by, or the securing of which is evidenced
11 by, any such instrument is extended or renewed, and the
12 extension or renewal contract is offered for filing or for
13 record, the tax required in this section shall be paid on the
14 amount of indebtedness so extended or renewed; and the same
15 shall be governed in all respects by the provisions of this
16 article. No state, county, or municipal ad valorem tax shall
17 be payable on any such instrument upon which the tax
18 prescribed by this section shall have been paid, on the debt
19 secured or evidenced thereby or on the security agreement
20 evidenced thereby.

21 ~~"(7) Of the taxes collected by the probate judge~~
22 ~~under this section there shall be paid to the county treasurer~~
23 ~~of the county in which such taxes are collected one-third of~~
24 ~~the amount collected, to be accounted for by the judge of~~
25 ~~probate, and the remaining two-thirds of the amount collected~~
26 ~~to the State Treasury. The probate judge shall receive five~~
27 ~~percent of the amount collected as compensation for services~~

1 ~~in collecting the money and certifying the instrument, the~~
2 ~~five percent to be retained by the judge of probate out of the~~
3 ~~money collected under this section; but when the property~~
4 ~~described in the instrument is situated within different~~
5 ~~counties within this state, then the probate judge who~~
6 ~~collects the taxes shall pay over to the county treasurer of~~
7 ~~each of the different counties in which the property is~~
8 ~~situated an amount of the taxes that would be in proportion to~~
9 ~~the value of the property therein as compared to the whole~~
10 ~~property within this state described in the instrument.~~

11 Revenues from the Mortgage Record Tax shall be divided between
12 four recipients: The judges of probate, The Alabama Housing
13 Trust Fund, county treasuries, and the State Treasury. Five
14 percent of all Mortgage Record Taxes collected shall be
15 distributed to the judges of probate, 25 percent of all
16 Mortgage Record Taxes collected shall be distributed to the
17 Alabama Housing Trust Fund, 33 percent of all Mortgage Record
18 Taxes collected shall be distributed to the county treasurer
19 in which the tax is collected, 37 percent of all Mortgage
20 Record Taxes collected shall be distributed to the State
21 Treasury. If the property described in the instrument is
22 situated within different counties within this state, then the
23 judge of probate who collects the taxes shall pay over to the
24 county treasurer of each of the different counties in which
25 the property is situated an amount of the taxes that would be
26 in proportion to the value of the property therein as compared

1 to the whole property within this state described in the
2 instrument.

3 "(8) If any part of the property embraced or
4 described in any instrument which is required under this
5 section to pay a record privilege tax is located without this
6 state, the indebtedness upon which the tax shall be paid for
7 the privilege of recording such instrument shall be that
8 proportion of the indebtedness secured by the instrument which
9 the value of the property located in this state bears to the
10 whole property described in the instrument. The Department of
11 Revenue may ascertain the value of the whole property and of
12 that part of it which is located within this state for the
13 purpose of ascertaining the amount of the indebtedness upon
14 which the tax shall be paid, and the value of that part of the
15 property located within this state and the amount of the
16 indebtedness upon which such tax shall be paid shall be
17 ascertained in the following manner: First, the owner of any
18 such instrument or his or her agent or attorney may petition
19 the Department of Revenue to ascertain the value of the whole
20 property and of that part of which is located within this
21 state and the amount of the indebtedness upon which such tax
22 shall be paid, and the Department of Revenue, after hearing
23 such evidence as may be offered or as may be before it, shall
24 fix and determine the value of that part of the property
25 located within this state and the amount of the indebtedness
26 upon which the tax shall be paid and shall endorse its
27 findings on such instrument, and upon the presentation of the

1 instrument, with such endorsements to the probate judge of the
2 county in which any part of the property is located, such
3 instrument shall be accepted for record upon the payment of
4 the tax upon the amount of such indebtedness as so ascertained
5 by the Department of Revenue and of the recording fees of the
6 probate judge; or, second, the owner of any such instrument or
7 his or her agent or attorney may have such instrument recorded
8 by paying to the probate judge of the county in which the
9 instrument is offered for record the privilege tax on the
10 entire amount of the indebtedness secured by such instrument,
11 and may thereupon present a petition to the Department of
12 Revenue within 30 days after such instrument is recorded, and
13 it shall be the duty of the Department of Revenue to ascertain
14 the value of the whole property and of that part of it located
15 within this state, and to fix and determine the amount of the
16 indebtedness upon which the tax shall be paid, and the
17 department shall thereupon ascertain such valuation and fix
18 and determine such indebtedness and shall order the probate
19 judge to refund the excess of privilege tax collected , and
20 the probate judge shall comply with such order; and the tax
21 paid upon the entire amount of such indebtedness shall be held
22 by the probate judge until the Department of Revenue
23 determines the amount of the indebtedness upon which such tax
24 shall be paid.

25 "(9) Any probate judge who shall file for record or
26 shall receive any such instrument for record or for filing,
27 without collecting the recording or registration tax provided

1 for the filing, recording, or registration of such instrument,
2 or who shall fail to certify the fact that such tax has been
3 paid before filing such instrument shall be guilty of a
4 misdemeanor and, upon conviction, shall be fined not less than
5 \$10 nor more than \$1,000.

6 "(10) Every petition filed with the Department of
7 Revenue to ascertain the amount of the mortgage tax due to be
8 paid under this section shall, when the property conveyed in
9 the instrument offered for record is located in more than one
10 county of the state, show the value of the property conveyed
11 in each county in which the instrument is to be recorded.

12 "(11) Any probate judge who fails to keep the
13 abstract of mortgages or other instruments intended to secure
14 the payment of moneys which are filed in his or her office for
15 filing or for record, as he or she is required by law to keep,
16 shall be guilty of a misdemeanor and, upon conviction, shall
17 be fined not less than \$10 nor more than \$500."

18 Section 2. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.