

1 HB159
2 174033-1
3 By Representative Todd
4 RFD: Ways and Means General Fund
5 First Read: 09-FEB-17

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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 given to secure the payment of any debt
12 which conveys any real or personal property.

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

19 This bill also would provide for the
20 distribution of the additional proceeds from the
21 increased fees to the Alabama Housing Trust Fund
22 and the Alabama Homebuyer's Initiative.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Section 40-22-2, Code of Alabama 1975; to
2 increase the fee for recording of certain mortgages, deeds of
3 trust, contracts of conditional sale, or other instruments of
4 like character which is given to secure the payment of any
5 debt which conveys any real or personal property; and to
6 provide for the distribution of the additional proceeds from
7 the increase in the fee to the Alabama Housing Trust Fund and
8 the Alabama Homebuyer's Initiative.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 "§40-22-2.

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

1 following privilege or license taxes shall have been paid upon
2 such instrument before the same shall be received for record
3 or for filing:

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

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

1 indebtedness, or fraction thereof, to be secured by such
2 instrument at any one time as stated in the instrument or any
3 amendment thereto, irrespective of the cumulative amount
4 advanced from time to time thereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Revenues from the Mortgage Record Tax shall be divided, as
11 follows:

12 "a. Three percent shall be allocated to the judge of
13 probate of the county who collects the tax as compensation for
14 services in collecting the money and certifying the
15 instrument.

16 "b. Thirty-five percent shall be allocated to the
17 State Treasury.

18 "c. Twenty-three percent shall be allocated to the
19 Alabama Housing Trust Fund.

20 "d. Twenty-three percent shall be allocated to the
21 Alabama Homebuyer's Initiative.

22 "e. Sixteen percent shall be allocated to the county
23 treasurer of the county in which such taxes are collected, to
24 be accounted for by the judge of probate. If the property
25 described in the instrument is situated within different
26 counties within this state, then the judge of probate who
27 collects the taxes shall pay over to the county treasurer of

1 each of the different counties in which the property is
2 situated an amount of the taxes that would be in proportion to
3 the value of the property therein as compared to the whole
4 property within this state described in the instrument.

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

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

1 "(9) Any probate judge who shall file for record or
2 shall receive any such instrument for record or for filing,
3 without collecting the recording or registration tax provided
4 for the filing, recording, or registration of such instrument,
5 or who shall fail to certify the fact that such tax has been
6 paid before filing such instrument shall be guilty of a
7 misdemeanor and, upon conviction, shall be fined not less than
8 \$10 nor more than \$1,000.

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

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

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