

1 HB219  
2 135871-1  
3 By Representative McCutcheon  
4 RFD: Commerce and Small Business  
5 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, a person who presents a  
9 deed, bill of sale, or other instrument conveying  
10 any real or personal property within this state or  
11 any interest in any such property to the judge of  
12 probate for recording must pay a privilege or  
13 license tax based upon the value of the property;  
14 however, there is no requirement to submit proof of  
15 the purchase price or value of the property at the  
16 time the instrument is presented for recording.

17 This bill would provide that a person  
18 presenting a real property or personal property  
19 instrument to the judge of probate for recording  
20 shall present proof of the actual purchase price of  
21 property or actual value of the property, and that  
22 if proof is not presented, the privilege or license  
23 tax will be based upon the assessed value of the  
24 property and the person failing to submit the  
25 required proof shall be subject to monetary  
26 penalties for failure to comply with the law.  
27

1 A BILL  
2 TO BE ENTITLED  
3 AN ACT  
4

5 To amend Section 40-22-1, Code of Alabama 1975, to  
6 require that a person presenting a deed, bill of sale, or  
7 other instrument conveying any real or personal property  
8 within this state or any interest in any such property to the  
9 judge of probate for recording shall present proof of the  
10 actual purchase price of property or actual value of the  
11 property, and that if such proof is not presented, the  
12 privilege or license tax will be based upon the assessed value  
13 of the property and the person failing to submit the required  
14 proof shall be subject to monetary penalties for failure to  
15 comply with the law.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 40-22-1, Code of Alabama 1975, is  
18 amended to read as follows:

19 "§40-22-1.

20 "No (a) Except as set out in subsection (b), no  
21 deed, bill of sale, or other instrument of like character  
22 which conveys any real or personal property within this state  
23 or which conveys any interest in any such property, ~~except~~  
24 shall be received for record unless the privilege or license  
25 tax is paid prior to the instrument being offered for record  
26 as provided in subsection (c).

1                   "(b) No privilege or license tax shall be required  
2 for any of the following:

3                   ~~"the~~ (1) The transfer of mortgages on real or  
4 personal property within this state upon which the mortgage  
5 tax has been paid~~7.~~

6                   ~~"deeds~~ (2) Deeds or instruments executed for a  
7 nominal consideration for the purpose of perfecting the title  
8 to real estate~~7.~~

9                   ~~"the~~ (3) The re-recording of corrected mortgages,  
10 deeds, or instruments executed for the purpose of perfecting  
11 the title to real or personal property, specifically, but not  
12 limited to, corrections of maturity dates thereof, and deeds  
13 and other instruments or conveyances, executed prior to  
14 October 1, 1923, ~~shall be received for record unless the~~  
15 ~~following privilege or license tax shall have been paid upon~~  
16 ~~such instrument before the same is offered for record: Upon.~~

17                   "(c) Except as provided in subsection (b), the  
18 privilege or license tax on all such instruments which are  
19 executed to convey real or personal property situated in this  
20 state of the value of \$500 or less ~~there shall be paid the sum~~  
21 ~~of~~ \$.50, and upon all such instruments executed to convey real  
22 or personal property situated in this state of more than \$500  
23 in value there shall be paid the sum of \$.50 for each \$500 or  
24 fraction thereof in value of property conveyed by such  
25 instrument; provided, that only the value in excess of any  
26 mortgages or vendor's lien upon any property within this state  
27 on which the mortgage tax has been paid shall be taxable under

1 this section; and provided further, that where several deeds  
2 or instruments are executed by tenants in common for the same  
3 consideration, only one of such instruments shall be taxable  
4 under this section. Any instrument presented for record  
5 pursuant to this section shall be accompanied by proof of the  
6 actual purchase price paid for the property or if the property  
7 has not been sold, proof of the actual value of the real or  
8 personal property which is the subject of the instrument being  
9 recorded. The Department of Revenue shall develop rules  
10 establishing what constitutes adequate proof required to  
11 accompany any instrument presented for record. Failure to  
12 provide proof as required herein shall result in the  
13 assessment of penalties as set out in subsection (h).

14 "(d) Upon the presentation of any ~~such~~ instrument  
15 for record, the judge of probate shall ~~determine~~ calculate the  
16 amount of tax due ~~thereon; and,~~ based upon the actual purchase  
17 price paid or the actual value of the property as required in  
18 subsection (c). If no proof is provided at the time the  
19 instrument is presented for recording, the amount of the tax  
20 due shall be based upon the value of the property as  
21 determined by the most recent assessment of property conducted  
22 pursuant to Title 40, Chapter 7, and the judge of probate  
23 shall assess penalties as set out in subsection (h) to be paid  
24 in addition to the tax due.

25 "(e) The instrument shall be recorded upon the  
26 payment to him of the amount of such tax and recording fee of  
27 the judge of probate, he shall accept the same for record, and

1 where assessed, any penalties as set out in subsection (h);  
2 provided, that upon the presentation for record of any  
3 instrument which conveys property situated in two or more  
4 counties of this state, the judge of probate shall so certify  
5 ~~the facts of the case~~ together with a description of the  
6 property conveyed by ~~such~~ the instrument to the Department of  
7 Revenue, which after hearing ~~such~~ evidence as may be offered  
8 or as it may secure, shall fix and determine the value of ~~such~~  
9 the property as located in each county and shall certify its  
10 determination thereof to the judge of probate, showing the  
11 value of ~~such~~ the property in each county separately; and,  
12 upon the payment to the judge of probate of the tax due on the  
13 value of all property in this state conveyed by ~~such~~ the  
14 instrument as so determined, the judge of probate shall accept  
15 ~~such~~ the instrument for record. The person presenting any ~~such~~  
16 instrument conveying property in two or more counties of this  
17 state may secure immediate filing of ~~such~~ the instrument for  
18 record by depositing with the judge of probate, ~~to be held by~~  
19 ~~him until the amount of the tax due thereon is determined,~~ an  
20 amount which in the judgment of the judge of probate will  
21 cover the tax herein provided for, and after the value of the  
22 property conveyed thereby is determined by the Department of  
23 Revenue, as provided herein, any excess of ~~such~~ the deposit  
24 over the amount of tax found to be due on ~~such~~ the instrument  
25 shall be refunded to the person offering ~~such~~ the instrument  
26 for record. The determination by the judge of probate and of  
27 the Department of Revenue of the amount of tax due on any ~~such~~

1 instrument is hereby declared to be a ministerial act and  
2 shall not preclude the subsequent collection of the correct  
3 amount of tax if the value of the property thereby conveyed is  
4 not fully disclosed to the judge of probate or the Department  
5 of Revenue when ~~such~~ the instrument is offered for record.  
6 Upon the filing for record of any instrument coming within the  
7 terms of this section, the judge of probate shall certify  
8 thereon the fact that the tax ~~thereon~~ has been paid, showing  
9 the amount of ~~such~~ the tax, and thereafter ~~such~~ the instrument  
10 shall be received for record in any county of this state  
11 without the payment of any further tax ~~thereon~~, except the fee  
12 of the judge of probate for recording such instrument, which  
13 certificate shall be recorded with and as part of ~~such~~ the  
14 instrument.

15 "(f) Upon the filing for record of any instrument  
16 which has been exempted by law from the payment of the tax  
17 provided for in this section, the judge of probate shall  
18 certify thereon that no tax has been paid and shall stamp in  
19 bold letters on the face of said instruments the words "No Tax  
20 Collected," and said certificate shall be recorded with and as  
21 a part of ~~such~~ the 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 the same tax exempt institution or another tax exempt  
25 institution, but if submitted by or transferred to an  
26 institution or person not exempt from the payment of the tax  
27 levied under this section, the judge of probate shall collect

1 the tax levied by this section, together with the fee of the  
2 judge of probate for recording such instrument, before it will  
3 be admitted to record.

4 "(g) Of the tax collected by the judge of probate  
5 under the provisions of this section, l there shall be paid into  
6 the State Treasury two thirds of the amount so collected, and  
7 the remaining one third shall be paid into the county  
8 treasury; provided, that the counties' share of the tax  
9 collected on any instrument conveying property in more than  
10 one county shall be paid into the county treasuries of the  
11 counties in which such property is situated in proportion to  
12 the value of such property as determined by the Department of  
13 Revenue as herein provided. ~~The~~ If the judge of probate is  
14 paid on fees and commissions, he or she shall receive two and  
15 one-half percent of the amount collected ~~by him~~ under the  
16 provisions of this section as his or her commission for  
17 collecting ~~said~~ the money, which shall be deducted from the  
18 total amount collected and retained by him or her when making  
19 settlement of his or her collections as required by law;  
20 provided, that this section shall not be so construed or  
21 enforced as to require the payment of privilege tax herein  
22 provided on mortgages, deeds of trust, or other instruments in  
23 the nature of a mortgage or deeds or other instruments with a  
24 vendor's lien except as to that part of the purchase price  
25 which is paid in cash or other articles of value and which pay  
26 no other privilege tax for recording; ~~provided, that in.~~ In  
27 counties where the probate judges are paid salaries, the fee



1 or commission collected or retained ~~by the probate judges~~ for  
2 collecting the tax herein provided for shall be paid ~~by them~~  
3 into the treasuries of their respective counties.

4 "(h) Any person who submits an instrument for  
5 recording pursuant to this section without presenting proof of  
6 the value of the property or the actual purchase price paid  
7 for the property as required in subsection (c) or who presents  
8 false proof of same, in addition to payment of the tax due as  
9 calculated on the actual value of the property, shall pay a  
10 penalty of one hundred dollars (\$100) or 25 percent of the  
11 privilege or license tax actually due, whichever is greater."

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