

HB401 INTRODUCED



1 HB401
2 SLIN955-1
3 By Representative Datcher
4 RFD: Ways and Means General Fund
5 First Read: 05-Feb-26



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4 SYNOPSIS:

5 Under existing law, a fee is required to record
6 certain mortgages, deeds of trust, contracts of
7 conditional sale, or other similar instruments given to
8 secure the payment of any debt which conveys any real
9 or personal property.

10 This bill would increase the fee for recording
11 of certain mortgages, deeds of trust, contracts of
12 conditional sale, or similar instruments given to
13 secure the payment of any debt which conveys any real
14 or personal property.

15 This bill would modify the rate and distribution
16 of the mortgage record tax in order to provide a
17 dedicated revenue for the Alabama Housing Trust Fund.

18 This bill would also make nonsubstantive,
19 technical revisions to update the existing code
20 language to current style.

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22

23 A BILL
24 TO BE ENTITLED
25 AN ACT

26
27 To amend Section 40-22-2, Code of Alabama 1975; to
28 increase the fee for recording of certain mortgages, deeds of



29 trust, contracts of conditional sale, or other similar
30 instruments given to secure the payment of any debt which
31 conveys any real or personal property; and to modify the rate
32 and distribution of the mortgage record tax to provide a
33 dedicated revenue for the Alabama Housing Trust Fund.

34 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

37 "§40-22-2

38 No mortgage, deed of trust, contract of conditional
39 sale, or other similar instrument~~of like character which is~~
40 given to secure the payment of any debt which conveys any real
41 or personal property situated within this state~~or~~ any
42 interest~~therein or~~ in any real or personal property, any
43 security agreement or financing statement provided for by the
44 Uniform Commercial Code, except a security agreement or a
45 financing statement relating solely to security interests in
46 accounts, contract rights, or general intangibles~~as~~ such
47 these terms are defined in the Uniform Commercial Code, and
48 except for the re-recordation of corrected mortgages, deeds,
49 or instruments executed for the purpose of perfecting the
50 title to real or personal property, specifically, but not
51 limited to, corrections of maturity dates~~thereof~~, shall be
52 received for record or for filing in the office of any~~probate~~
53 judge of probate of this state unless the following privilege
54 or license taxes shall have been paid upon~~such the~~ instrument
55 before the same shall be received for record or for filing:
56 (1)a. Upon all~~such~~ instruments which are executed to



57 secure or to evidence the securing of an initial indebtedness
58 which shall not exceed ~~\$100~~ one hundred dollars (\$100), there
59 shall be paid the sum of ~~\$.15~~ thirty cents (\$0.30), and upon
60 all instruments which shall be executed to secure or to
61 evidence the securing of an initial indebtedness of more than
62 ~~\$100~~ one hundred dollars (\$100), there shall be paid the sum
63 of ~~\$.15~~ thirty cents (\$0.30) for each ~~\$100~~ one hundred dollars
64 (\$100) of ~~such~~ the initial indebtedness or fraction ~~thereof~~ of
65 it.

66 b. Upon all ~~such~~ instruments which are executed to
67 secure or to evidence the securing of an open end or revolving
68 indebtedness with any interest in property, at the option of
69 the person offering the instrument for record or for filing ~~or~~:
70 (i) there shall be paid the sum of ~~\$.15~~ thirty cents (\$0.30)
71 for each ~~\$100~~ one hundred dollars (\$100) of ~~such~~ the initial
72 indebtedness or fraction ~~thereof~~ of it and the procedures set
73 forth in paragraphs ~~a, b, and c~~ (2) a., b., and c. ~~of~~
74 ~~subdivision (2) of this section~~ shall be applicable; or, in
75 lieu ~~thereof~~ of, (ii) there shall be paid the sum of ~~\$.15~~
76 thirty cents (\$0.30) for each ~~\$100~~ one hundred dollars (\$100)
77 of maximum principal indebtedness, or fraction ~~thereof~~ of it,
78 to be secured by ~~such~~ the instrument at any one time as stated
79 in the instrument or any amendment thereto. In any event, the
80 privilege or license tax to be paid upon such instruments
81 securing or evidencing the securing of open end or revolving
82 indebtedness with any interest in property shall not exceed
83 the amount of ~~\$.15~~ thirty cents (\$0.30) for each ~~\$100~~ one
84 hundred dollars (\$100) of maximum principal indebtedness, or



85 fraction ~~thereof~~ of it, to be secured by ~~such~~ the instrument
86 at any one time as stated in the instrument or any amendment
87 ~~thereto~~ of it, irrespective of the cumulative amount advanced
88 from time to time thereunder.

89 (2)a. If subdivision (1)b.(i) applies and any part of
90 the indebtedness which the mortgagor or debtor in any
91 instrument conveying any real property situated within this
92 state, or related any interest ~~therein~~, other than fixtures
93 under the Uniform Commercial Code, is authorized to incur
94 under the terms of the instrument has not been or will not be
95 presently incurred at the time ~~such~~ the instrument is offered
96 for record, the tax shall be paid on the amount of
97 indebtedness presently incurred, and the Department of
98 Revenue, upon the petition of the owner of any ~~such~~ the
99 instrument or upon the petition of the agent or attorney of
100 ~~such~~ the owner, shall ascertain to its own satisfaction the
101 amount then taxable and the amount to be incurred thereafter
102 and determine the amount upon which the tax shall be paid at
103 the time ~~such~~ the instrument is offered and shall endorse its
104 findings on ~~such~~ the instrument. Upon the presentation of ~~such~~
105 the instrument with ~~such~~ the endorsement ~~thereon~~ on it, the
106 ~~probate~~ judge of probate of any county in which the instrument
107 is offered, upon the payment of the tax upon the amount so
108 ascertained by the Department of Revenue and the recording
109 fees of the ~~probate~~ judge of probate, shall accept the same
110 for record. The Department of Revenue shall also require the
111 owner of ~~such~~ the instrument to execute a bond in an amount
112 sufficient to secure to the state the privilege tax to become



113 due and payable under this section upon the amount of the
114 indebtedness to be incurred thereafter, such the bond to be
115 approved by the Department of Revenue and payable to the State
116 of Alabama and conditioned that the owner of ~~such the~~
117 instrument will promptly report to ~~said the~~ Department of
118 Revenue and to the ~~probate~~ judge of probate of the county
119 where ~~said the~~ instrument is first filed for record, whenever
120 such the owner or his or her successor in interest incurs any
121 additional indebtedness thereunder, and the amount ~~so~~
122 incurred; and that the ~~said~~ owner of such the instrument will
123 pay or cause to be paid to the ~~probate~~ judge of probate of the
124 county in which ~~said the~~ instrument is first filed the
125 privilege or license tax required under this section upon the
126 accrual of any additional indebtedness, and the ~~said~~ owner of
127 such the instrument will report to the said ~~probate~~ judge of
128 probate and the Department of Revenue during the month of
129 September of each year the amount of all indebtedness and all
130 bonds, debentures, notes, or other forms of indebtedness
131 incurred or certified and delivered under ~~said the~~ instrument
132 to such the date, and the amount ~~so~~ certified and delivered
133 during the preceding 12 months, and the aggregate of all ~~such~~
134 evidence of indebtedness certified and delivered under ~~such~~
135 the instrument prior to such year. The bond executed to secure
136 payment of the tax herein required shall cover a term of five
137 years; and, after the expiration of said the term of five
138 years, the owner of the instrument offered for record shall
139 execute ~~such the~~ further bond as may be required by the
140 Department of Revenue covering the succeeding term of five



141 years, and thereafter every term of five years, in the same
142 manner so long as any of the indebtedness authorized to be
143 incurred by ~~such the~~ instrument has not been incurred with
144 like condition and in ~~such the~~ sum as the ~~said~~ department may
145 prescribe.

146 b. Notwithstanding ~~the provisions of~~ paragraph a. ~~of~~
147 ~~this subdivision~~, any bank, savings and loan association,
148 insurance company, or other financial institution organized
149 and established under the laws of the State of Alabama or the
150 United States which is the owner of ~~such the~~ instrument, in
151 lieu of the foregoing procedures, may certify the amount of
152 indebtedness presently incurred, and the ~~probate~~ judge of
153 probate of any county in which the instrument is offered, upon
154 payment of the tax upon the amount ~~so~~ certified and the
155 recording fees of the ~~probate~~ judge of probate, shall accept
156 the instrument for record. During the month of September of
157 each year, any ~~such~~ bank, savings and loan association,
158 insurance company, or other financial institution which has
159 recorded ~~such the~~ instruments as described hereinabove shall
160 report to the appropriate ~~probate~~ judge of probate the amount
161 of additional indebtedness incurred under the instrument and
162 pay any tax required upon the additional indebtedness.

163 c. Each ~~probate~~ judge of probate will forward to the
164 State Banking Department by the end of October a statement
165 showing the amounts certified to him or her by each forenamed
166 organization. The State Banking Department will then have the
167 authority to make unannounced audits on any organization
168 electing to use this system of reporting indebtedness. Any



169 organization which is found to have willfully certified less
170 than the true amount it should have certified shall be
171 required to pay a fine equal to three times the amount of tax
172 due on the amount of indebtedness not certified to the ~~probate~~
173 judge of probate. This fine shall be paid into the State
174 General Fund ~~of Alabama~~. In addition, any organization ~~so~~
175 fined must pay an auditing fee in accordance with established
176 State Banking Department audit fees into the funds of the
177 State Banking Department.

178 (3) When any deed is filed for record which recites
179 that part of the purchase money is unpaid, such deed to the
180 extent of such unpaid balance shall be held and treated as a
181 mortgage, and the mortgage tax shall be collected by the
182 ~~probate~~ judge of probate in addition to the tax for recording
183 the instrument as a deed before recording ~~the same~~ it, unless
184 the balance of purchase money shall be secured by mortgage or
185 deed of trust which has already been filed for record, and the
186 tax ~~thereon~~ paid, and the fact of such prior payment shall be
187 endorsed on the deed. When any such deed is recorded and the
188 tax ~~thereon~~ is paid, and thereafter a mortgage securing the
189 debt is filed for record, the same shall be admitted to record
190 without the payment of the mortgage tax and the fact of ~~such~~
191 the prior payment shall be endorsed on the deed.

192 (4) The privilege taxes herein imposed shall not be
193 required on or for the filing of any ~~such~~ instrument,
194 providing additional or substitute security for any
195 indebtedness secured by, or the securing of which is evidenced
196 by, an instrument previously filed, upon the filing of which



197 the taxes provided by law have been paid or which ~~was~~ were
198 filed at a time when no such privilege taxes were required by
199 law~~s~~ provided~~s~~ that the secured indebtedness remains
200 unchanged in amount and in time of maturity.

201 (5) Upon the filing for record of ~~such the~~ instrument
202 and upon the payment of the tax thereon, the ~~probate~~ judge of
203 probate or his or her clerk shall certify on the instrument
204 the fact that the ~~said~~ tax has been paid, and when ~~so~~
205 certified by the ~~probate~~ judge of probate or his or her clerk,
206 ~~such the~~ instrument shall be admitted to record in any county
207 wherein any of the property mentioned in the instrument is
208 situated without the payment of any further tax ~~thereon~~,
209 except the fee to the ~~probate~~ judge of probate for recording
210 ~~such the~~ instrument, and ~~such the~~ certificate of the ~~probate~~
211 judge of probate shall be recorded by such ~~probate~~ judge of
212 probate when ~~such the~~ instrument is recorded. Upon the filing
213 for record of any instrument which has been exempted by law
214 from the payment of the tax provided for in this section, the
215 ~~probate~~ judge of probate shall certify ~~thereon~~ that no tax has
216 been paid and shall stamp in bold letters on the face of ~~said~~
217 the instrument "No Tax Collected," and the certificate shall
218 be recorded with and as a part of ~~such the~~ instrument, and
219 thereafter ~~such the~~ instrument shall be received for record in
220 any county in this state without the payment of any further
221 tax ~~thereon~~, when submitted by a tax-exempt institution, but
222 if submitted by or transferred to an institution or person not
223 exempt from the payment of the tax levied under this section,
224 the ~~probate~~ judge of probate shall collect the tax levied by



225 this section upon the then unpaid balance of the secured debt
226 together with the fee of the ~~probate~~ judge of probate for
227 recording ~~such~~ the instrument before it will be admitted to
228 record. The tax ~~herein~~ provided for shall be paid upon all
229 contracts for the sale of real or personal property, whether
230 the same are in the nature of a conditional sale or a bond for
231 title, and no ~~such~~ contract shall be received for record until
232 ~~such~~ the tax shall have been paid.

233 (6) When the time for the payment of the indebtedness
234 secured by, or the securing of which is evidenced by, any ~~such~~
235 instrument is extended or renewed, and the extension or
236 renewal contract is offered for filing or for record, the tax
237 required in this section shall be paid on the amount of
238 indebtedness ~~so~~ extended or renewed; and the same shall be
239 governed in all respects by ~~the provisions of~~ this article. No
240 state, county, or municipal ad valorem tax shall be payable on
241 any ~~such~~ instrument upon which the tax prescribed by this
242 section shall have been paid, on the debt secured or evidenced
243 thereby or on the security agreement evidenced thereby.

244 (7) ~~Of the taxes collected by the probate judge under~~
245 ~~this section there shall be paid to the county treasurer of~~
246 ~~the county in which such taxes are collected one-third of the~~
247 ~~amount collected, to be accounted for by the judge of probate,~~
248 ~~and the remaining two-thirds of the amount collected to the~~
249 ~~State Treasury. The probate judge shall receive five percent~~
250 ~~of the amount collected as compensation for services in~~
251 ~~collecting the money and certifying the instrument, the five~~
252 ~~percent to be retained by the judge of probate out of the~~



253 ~~money collected under this section; but when the property~~
254 ~~described in the instrument is situated within different~~
255 ~~counties within this state, then the probate judge who~~
256 ~~collects the taxes shall pay over to the county treasurer of~~
257 ~~each of the different counties in which the property is~~
258 ~~situated an amount of the taxes that would be in proportion to~~
259 ~~the value of the property therein as compared to the whole~~
260 ~~property within this state described in the instrument.~~

261 Revenues from the mortgage record tax shall be divided between
262 four recipients: The judges of probate, the Alabama Housing
263 Trust Fund, county treasuries, and the State Treasury. Five
264 percent of all mortgage record taxes collected shall be
265 distributed to the judge of probate, 25 percent of all
266 mortgage record taxes collected shall be distributed to the
267 Alabama Housing Trust Fund, 33 percent of all mortgage record
268 taxes collected shall be distributed to the county treasurer
269 in the county in which the tax is collected, and 37 percent of
270 all mortgage record taxes collected shall be distributed to
271 the State Treasury. If the property described in the
272 instrument is situated within different counties within this
273 state, then the judge of probate who collects the taxes shall
274 pay over to the county treasurer of each of the different
275 counties in which the property is situated an amount of the
276 taxes that would be in proportion to the value of the property
277 therein as compared to the whole property within this state
278 described in the instrument.

279 (8) If any part of the property embraced or described
280 in any instrument which is required under this section to pay



281 a record privilege tax is located ~~without~~ outside of this
282 state, the indebtedness upon which the tax shall be paid for
283 the privilege of recording ~~such~~ the instrument shall be that
284 proportion of the indebtedness secured by the instrument which
285 the value of the property located in this state bears to the
286 whole property described in the instrument. The Department of
287 Revenue may ascertain the value of the whole property and of
288 that part of it which is located within this state for the
289 purpose of ascertaining the amount of the indebtedness upon
290 which the tax shall be paid, and the value of that part of the
291 property located within this state and the amount of the
292 indebtedness upon which ~~such~~ the tax shall be paid shall be
293 ascertained in the following manner: ~~First, the (i) The~~ owner
294 of any such instrument or his or her agent or attorney may
295 petition the Department of Revenue to ascertain the value of
296 the whole property and of that part of which is located within
297 this state and the amount of the indebtedness upon which ~~such~~
298 the tax shall be paid, and the Department of Revenue, after
299 hearing such evidence as may be offered or as may be before
300 it, shall fix and determine the value of that part of the
301 property located within this state and the amount of the
302 indebtedness upon which the tax shall be paid and shall
303 endorse its findings on such instrument, and upon the
304 presentation of the instrument, with such endorsements to the
305 ~~probate~~ judge of probate of the county in which any part of
306 the property is located, such instrument shall be accepted for
307 record upon the payment of the tax upon the amount of such
308 indebtedness as so ascertained by the Department of Revenue



309 and of the recording fees of the ~~probate~~ judge of probate; or
310 ~~second, the~~ (ii) The owner of any ~~such~~ instrument or his or
311 her agent or attorney may have ~~such the~~ instrument recorded by
312 paying to the ~~probate~~ judge of probate of the county in which
313 the instrument is offered for record the privilege tax on the
314 entire amount of the indebtedness secured by ~~such the~~
315 instrument, and may thereupon present a petition to the
316 Department of Revenue within 30 days after ~~such the~~ instrument
317 is recorded, and it shall be the duty of the Department of
318 Revenue to ascertain the value of the whole property and of
319 that part of it located within this state, and to fix and
320 determine the amount of the indebtedness upon which the tax
321 shall be paid, and the department shall thereupon ascertain
322 ~~such the~~ valuation and fix and determine ~~such the~~ indebtedness
323 and shall order the ~~probate~~ judge of probate to refund the
324 excess of privilege tax collected, and the ~~probate~~ judge of
325 probate shall comply with ~~such the~~ order; and the tax paid
326 upon the entire amount of ~~such the~~ indebtedness shall be held
327 by the ~~probate~~ judge of probate until the Department of
328 Revenue determines the amount of the indebtedness upon which
329 ~~such the~~ tax shall be paid.

330 (9) Any ~~probate~~ judge of probate who shall file for
331 record or shall receive any such instrument for record or for
332 filing, without collecting the recording or registration tax
333 provided for the filing, recording, or registration of ~~such~~
334 the instrument, or who shall fail to certify the fact that
335 ~~such the~~ tax has been paid before filing ~~such the~~ instrument
336 shall be guilty of a misdemeanor and, upon conviction, shall



337 be fined not less than ~~\$10~~ ten dollars (\$10) nor more than
338 ~~\$1,000~~ one thousand dollars (\$1,000).

339 (10) Every petition filed with the Department of
340 Revenue to ascertain the amount of the mortgage tax due to be
341 paid under this section shall, when the property conveyed in
342 the instrument offered for record is located in more than one
343 county of the state, show the value of the property conveyed
344 in each county in which the instrument is to be recorded.

345 (11) Any ~~probate~~ judge of probate who fails to keep the
346 abstract of mortgages or other instruments intended to secure
347 the payment of ~~moneys~~ monies which are filed in his or her
348 office for filing or for record, as he or she is required by
349 law to keep, shall be guilty of a misdemeanor and, upon
350 conviction, shall be fined not less than ~~\$10~~ ten dollars (\$10)
351 nor more than ~~\$500~~ five hundred dollars (\$500)."

352 Section 2. This act shall become effective on October
353 1, 2026.