

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, 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.