

1 SB103
2 204275-1
3 By Senators Coleman-Madison, Albritton, Smitherman and
4 Waggoner
5 RFD: Governmental Affairs
6 First Read: 04-FEB-20

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

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

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

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

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To amend Section 40-22-2, Code of Alabama 1975; to
6 increase the fee for recording of certain mortgages, deeds of
7 trust, contracts of conditional sale, or other instruments of
8 like character which is given to secure the payment of any
9 debt which conveys any real or personal property; to modify
10 the rate and further provide for the distribution of the
11 mortgage record tax in order to provide a dedicated revenue
12 for the Alabama Housing Trust Fund; and to make
13 nonsubstantive, technical revisions to update the existing
14 code language to current style.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§40-22-2.

19 "No mortgage, deed of trust, contract of conditional
20 sale, or other instrument of like character which is given to
21 secure the payment of any debt which conveys any real or
22 personal property situated within this state or any interest
23 therein or any security agreement or financing statement
24 provided for by the Uniform Commercial Code, except a security
25 agreement or a financing statement relating solely to security
26 interests in accounts, contract rights, or general
27 intangibles, as ~~such~~ those terms are defined in the Uniform

1 Commercial Code, and except for the re-recording of
2 corrected mortgages, deeds, or instruments executed for the
3 purpose of perfecting the title to real or personal property,
4 ~~specifically including~~, but not limited to, corrections of
5 maturity dates ~~thereof~~, shall be received for record or for
6 filing in the office of any ~~probate~~ judge of probate of this
7 state unless the following privilege or license taxes shall
8 have been paid upon ~~such the~~ instrument before the same shall
9 be received for record or for filing:

10 "(1)a. Upon ~~all such instruments~~ every instrument
11 under this section which ~~are~~ is executed to secure or to
12 evidence the securing of an initial indebtedness which ~~shall~~
13 does not exceed one hundred dollars (\$100), there shall be
14 paid the sum of ~~\$.15~~ twenty cents (\$.20), and upon all
15 instruments which shall be executed to secure or to evidence
16 the securing of an initial indebtedness of more than one
17 hundred dollars (\$100), there shall be paid the sum of ~~\$.15~~
18 twenty cents (\$.20) for each one hundred dollars (\$100) of
19 ~~such the~~ initial indebtedness or fraction thereof.

20 "b. Upon ~~all such instruments~~ every instrument under
21 this section which ~~are~~ is executed to secure or to evidence
22 the securing of an open end or revolving indebtedness with any
23 interest in property, at the option of the person offering the
24 instrument for record or for filing, (i) there shall be paid
25 the sum of ~~\$.15~~ twenty cents (\$.20) for each one hundred
26 dollars (\$100) of ~~such the~~ initial indebtedness, or fraction
27 thereof, and the procedures set forth in paragraphs a., b.,

1 and c. of subdivision (2) ~~of this section~~ shall be applicable;
2 or, in lieu thereof, (ii) there shall be paid the sum of ~~\$.15~~
3 twenty cents (\$.20) for each one hundred dollars (\$100) of
4 maximum principal indebtedness, or fraction thereof, to be
5 secured by ~~such~~ the instrument at any one time as stated in
6 the instrument or any amendment thereto. In any event, the
7 privilege or license tax to be paid upon ~~such~~ the instruments
8 securing or evidencing the securing of open end or revolving
9 indebtedness with any interest in property ~~shall~~ may not
10 exceed the amount of ~~\$.15~~ twenty cents (\$.20) for each one
11 hundred dollars (\$100) of maximum principal indebtedness, or
12 fraction thereof, to be secured by ~~such~~ the instrument at any
13 one time as stated in the instrument or any amendment thereto,
14 irrespective of the cumulative amount advanced from time to
15 time thereunder.

16 "(2)a. If ~~subdivision (1)b.(i)~~ item (i) of paragraph
17 b. of subdivision (1) applies and any part of the indebtedness
18 which the mortgagor or debtor in any instrument conveying any
19 real property situated within this state, or any interest
20 therein, other than fixtures under the Uniform Commercial
21 Code, is authorized to incur under the terms of the instrument
22 has not been or will not be presently incurred at the time
23 ~~such~~ the instrument is offered for record, the tax shall be
24 paid on the amount of indebtedness presently incurred, and the
25 Department of Revenue, upon the petition of the owner of ~~any~~
26 ~~such~~ the instrument or upon the petition of the agent or
27 attorney of ~~such~~ the owner, shall ascertain to its own

1 satisfaction the amount then taxable and the amount to be
2 incurred thereafter and determine the amount upon which the
3 tax shall be paid at the time ~~such~~ the instrument is offered
4 and shall endorse its findings on ~~such~~ the instrument. Upon
5 the presentation of ~~such~~ the instrument with ~~such~~ the
6 endorsement ~~thereon~~, the ~~probate~~ judge of probate of any
7 county in which the instrument is offered, upon the payment of
8 the tax upon the amount so ascertained by the Department of
9 Revenue and the recording fees of the ~~probate~~ judge of
10 probate, shall accept the same for record. The Department of
11 Revenue shall also require the owner of ~~such~~ the instrument to
12 execute a bond in an amount sufficient to secure to the state
13 the privilege tax to become due and payable under this section
14 upon the amount of the indebtedness to be incurred thereafter,
15 ~~such~~ the bond to be approved by the Department of Revenue and
16 payable to the State of Alabama and conditioned that the owner
17 of ~~such~~ the instrument ~~will~~ shall promptly report to ~~said~~ the
18 Department of Revenue and to the ~~probate~~ judge of probate of
19 the county where ~~said~~ the instrument is first filed for
20 record, whenever ~~such~~ the owner or his successor in interest
21 incurs any additional indebtedness thereunder, and the amount
22 so incurred; and that the ~~said~~ owner of ~~such~~ the instrument
23 ~~will~~ shall pay or cause to be paid to the ~~probate~~ judge of
24 probate of the county in which ~~said~~ the instrument is first
25 filed the privilege or license tax required under this section
26 upon the accrual of any additional indebtedness, and the ~~said~~
27 owner of ~~such~~ the instrument ~~will~~ shall report to the ~~said~~

1 ~~probate~~ judge of probate and the Department of Revenue during
2 the month of September of each year the amount of all
3 indebtedness and all bonds, debentures, notes, or other forms
4 of indebtedness incurred or certified and delivered under ~~said~~
5 the instrument to ~~such~~ that date, and the amount so certified
6 and delivered during the preceding 12 months, and the
7 aggregate of all ~~such~~ the evidence of indebtedness certified
8 and delivered under ~~such~~ the instrument prior to ~~such~~ the
9 year. The bond executed to secure payment of the tax ~~herein~~
10 required under this section shall cover a term of five years;
11 and, after the expiration of ~~said~~ the term of five years, the
12 owner of the instrument offered for record shall execute ~~such~~
13 any further bond as may be required by the Department of
14 Revenue covering the succeeding term of five years, and
15 thereafter every term of five years, in the same manner so
16 long as any of the indebtedness authorized to be incurred by
17 ~~such~~ the instrument has not been incurred with like condition
18 and in ~~such~~ any sum as the ~~said~~ department may ~~prescribe~~
19 require.

20 "b. Notwithstanding ~~the provisions of~~ paragraph a.
21 ~~of this subdivision~~, any bank, savings and loan association,
22 insurance company, or other financial institution organized
23 and established under the laws of the State of Alabama or the
24 United States which is the owner of ~~such~~ an instrument under
25 this section, in lieu of the foregoing procedures, may certify
26 the amount of indebtedness presently incurred, and the ~~probate~~
27 judge of probate of any county in which the instrument is

1 offered, upon payment of the tax upon the amount so certified
2 and the recording fees of the ~~probate~~ judge of probate, shall
3 accept the instrument for record. During the month of
4 September of each year, any such bank, savings and loan
5 association, insurance company, or other financial institution
6 which has recorded ~~such the~~ instruments as described
7 ~~hereinabove~~ in this paragraph shall report to the appropriate
8 ~~probate~~ judge of probate the amount of additional indebtedness
9 incurred under the instrument and pay any tax required upon
10 the additional indebtedness.

11 "c. Each ~~probate~~ judge of probate ~~will~~ shall forward
12 to the State Banking Department by the end of October a
13 statement showing the amounts certified to him or her by each
14 forenamed organization. The State Banking Department ~~will then~~
15 ~~have the authority to~~ may make unannounced audits on any
16 organization electing to use this system of reporting
17 indebtedness. Any organization which is found to have
18 willfully certified less than the true amount ~~it the~~
19 organization should have certified shall be required to pay a
20 fine equal to three times the amount of tax due on the amount
21 of indebtedness not certified to the ~~probate~~ judge of probate.
22 This fine shall be paid into the General Fund of Alabama. In
23 addition, any organization so fined ~~must~~ shall pay an auditing
24 fee in accordance with established Banking Department audit
25 fees into the funds of the State Banking Department.

26 "(3) When any deed is filed for record which recites
27 that part of the purchase money is unpaid, ~~such the~~ deed, to

1 the extent of ~~such~~ the unpaid balance, shall be held and
2 treated as a mortgage, and the mortgage tax shall be collected
3 by the ~~probate~~ judge of probate in addition to the tax for
4 recording the instrument as a deed before recording the same,
5 unless the balance of purchase money ~~shall be~~ is secured by
6 mortgage or deed of trust which has already been filed for
7 record, and the tax thereon paid, and the fact of ~~such~~ the
8 prior payment shall be endorsed on the deed. When ~~any such~~ a
9 deed is recorded under this subdivision and the tax ~~thereon on~~
10 the deed is paid, and ~~thereafter~~ a mortgage securing the debt
11 is filed for record, the same shall be admitted to record
12 without the payment of the mortgage tax and the fact of ~~such~~
13 the prior payment shall be endorsed on the deed.

14 "(4) The privilege taxes ~~herein~~ imposed by this
15 section ~~shall~~ may not be required on or for the filing of any
16 ~~such~~ instrument, providing additional or substitute security
17 for any indebtedness secured by, or the securing of which is
18 evidenced by, an instrument previously filed, upon the filing
19 of which the taxes provided by law have been paid or which was
20 filed at a time when ~~no such~~ the privilege taxes were not
21 required by law; provided, that the secured indebtedness
22 remains unchanged in amount and in time of maturity.

23 "(5) Upon the filing for record of ~~such~~ an
24 instrument and upon the payment of the tax ~~thereon on the~~
25 instrument, the ~~probate~~ judge of probate or his or her clerk
26 shall certify on the instrument the fact that the ~~said~~ tax has
27 been paid, and when so certified by the ~~probate~~ judge of

1 probate or his or her clerk, ~~such the~~ instrument shall be
2 admitted to record in any county ~~wherein~~ where any of the
3 property mentioned in the instrument is situated without the
4 payment of any further tax ~~thereon~~, except the fee to the
5 ~~probate~~ judge of probate for recording ~~such the~~ instrument,
6 and ~~such the~~ certificate of the ~~probate~~ judge of probate shall
7 be recorded by ~~such the~~ ~~probate~~ judge of probate when ~~such the~~
8 instrument is recorded. Upon the filing for record of any
9 instrument which has been exempted by law from the payment of
10 the tax provided for in this section, the ~~probate~~ judge of
11 probate shall certify ~~thereon~~ on the instrument that no tax
12 has been paid and shall stamp in bold letters on the face of
13 ~~said the~~ instrument "No Tax Collected~~7.~~" ~~and the~~ The
14 certificate shall be recorded with and as a part of ~~such the~~
15 instrument~~7~~, and ~~thereafter~~ ~~such the~~ instrument shall be
16 received for record in any county in this state without the
17 payment of any further tax ~~thereon~~, when submitted by a
18 tax-exempt institution, but if submitted by or transferred to
19 an institution or person not exempt from the payment of the
20 tax levied under this section, the ~~probate~~ judge of probate
21 shall collect the tax levied by this section upon the then
22 unpaid balance of the secured debt together with the fee of
23 the ~~probate~~ judge of probate for recording ~~such the~~ instrument
24 before it will be admitted to record. The tax ~~herein~~ provided
25 for in this section shall be paid upon all contracts for the
26 sale of real or personal property, whether ~~the same are~~ in the
27 nature of a conditional sale or a bond for title, and ~~no such~~

1 the contract ~~shall~~ may not be received for record until ~~such~~
2 the tax ~~shall have~~ has been paid.

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

15 "(7) ~~Of~~ a. Fifteen cents (\$.15) of the taxes
16 collected on every instrument by the ~~probate~~ judge of probate
17 under this section ~~there~~ shall be paid as follows: to ~~to~~ To the
18 county treasurer of the county in which ~~such~~ the taxes are
19 collected, one-third of the amount collected, to be accounted
20 for by the judge of probate, and the remaining two-thirds of
21 the amount collected to the State Treasury. The ~~probate~~ judge
22 of probate shall receive five percent of the amount collected
23 as compensation for services in collecting the money and
24 certifying the instrument, the five percent to be retained by
25 the judge of probate out of the money collected under this
26 section; but when the property described in the instrument is
27 situated within different counties within this state, then the

1 ~~probate~~ judge of probate who collects the taxes shall pay over
2 to the county treasurer of each of the different counties in
3 which the property is situated an amount of the taxes that
4 would be in proportion to the value of the property therein as
5 compared to the whole property within this state described in
6 the instrument.

7 "b. Five cents (\$.05) of the taxes collected on
8 every instrument under this section shall be divided between
9 the following four recipients: To the judges of probate,
10 one-half cent (\$.005); to the Alabama Housing Trust Fund, two
11 cents (\$.02); to the county treasuries, one-half cent (\$.005);
12 and to the State General Fund, two cents (\$.02). If the
13 property described in the instrument is situated within
14 different counties within this state, then the judge of
15 probate who collects the taxes shall pay over to the county
16 treasurer of each of the different counties in which the
17 property is situated an amount of the taxes that would be in
18 proportion to the value of the property therein as compared to
19 the whole property within this state described in the
20 instrument.

21 "(8) If any part of the property embraced or
22 described in any instrument which is required under this
23 section to pay a record privilege tax is located without this
24 state, the indebtedness upon which the tax shall be paid for
25 the privilege of recording ~~such~~ the instrument shall be that
26 proportion of the indebtedness secured by the instrument which
27 the value of the property located in this state bears to the

1 whole property described in the instrument. The Department of
2 Revenue may ascertain the value of the whole property and of
3 that part of it which is located within this state for the
4 purpose of ascertaining the amount of the indebtedness upon
5 which the tax shall be paid, and the value of that part of the
6 property located within this state and the amount of the
7 indebtedness upon which ~~such~~ the tax shall be paid shall be
8 ascertained in the following manner: First, the owner of ~~any~~
9 ~~such~~ the instrument or his or her agent or attorney may
10 petition the Department of Revenue to ascertain the value of
11 the whole property and of that part of which is located within
12 this state and the amount of the indebtedness upon which ~~such~~
13 the tax shall be paid, and the Department of Revenue, after
14 hearing ~~such~~ the evidence as may be offered or as may be
15 before it, shall fix and determine the value of that part of
16 the property located within this state and the amount of the
17 indebtedness upon which the tax shall be paid and shall
18 endorse its findings on ~~such~~ the instrument, ~~and, upon~~ Upon
19 the presentation of the instrument, with ~~such~~ the endorsements
20 to the ~~probate~~ judge of probate of the county in which any
21 part of the property is located, ~~such~~ the instrument shall be
22 accepted for record upon the payment of the tax upon the
23 amount of ~~such~~ the indebtedness ~~as so~~ ascertained by the
24 Department of Revenue and of the recording fees of the ~~probate~~
25 judge of probate; or, second, the owner of ~~any~~ ~~such~~ the
26 instrument or his or her agent or attorney may have ~~such~~ the
27 instrument recorded by paying to the ~~probate~~ judge of probate

1 of the county in which the instrument is offered for record
2 the privilege tax on the entire amount of the indebtedness
3 secured by ~~such the~~ instrument, and may ~~thereupon~~ present a
4 petition to the Department of Revenue within 30 days after
5 ~~such the~~ instrument is recorded, and ~~it shall be the duty of~~
6 the Department of Revenue ~~to~~ shall ascertain the value of the
7 whole property and of that part of it located within this
8 state, ~~and to~~ fix and determine the amount of the indebtedness
9 upon which the tax shall be paid, and ~~the department shall~~
10 ~~thereupon~~ ascertain ~~such the~~ valuation and fix and determine
11 ~~such the~~ indebtedness and ~~shall~~ order the ~~probate~~ judge of
12 probate to refund the excess of privilege tax collected, and
13 the ~~probate~~ judge of probate shall comply with ~~such the~~ order,
14 ~~and the~~. The tax paid upon the entire amount of ~~such the~~
15 indebtedness shall be held by the ~~probate~~ judge of probate
16 until the Department of Revenue determines the amount of the
17 indebtedness upon which ~~such the~~ tax shall be paid.

18 "(9) Any ~~probate~~ judge of probate who ~~shall file~~
19 files for record or ~~shall receive~~ receives any ~~such~~ instrument
20 for record or for filing, without collecting the recording or
21 registration tax provided for the filing, recording, or
22 registration of ~~such the~~ instrument, or who ~~shall fail~~ fails
23 to certify the fact that ~~such the~~ tax has been paid before
24 filing ~~such the~~ instrument, shall be guilty of a misdemeanor
25 and, upon conviction, shall be fined not less than ten dollars
26 (\$10) nor more than one thousand dollars (\$1,000).

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

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

15 Section 2. This act shall become effective on
16 October 1, 2021, following its passage and approval by the
17 Governor, or its otherwise becoming law.