

SB233 INTRODUCED



1 SB233
2 ID716WZ-1
3 By Senators Coleman-Madison, Smitherman, Elliott
4 RFD: County and Municipal Government
5 First Read: 19-Mar-24



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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 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.

A BILL
TO BE ENTITLED
AN ACT

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



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

35 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

38 "§40-22-2

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



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57 (1)a. Upon all ~~such~~ instruments which are executed to
58 secure or to evidence the securing of an initial indebtedness
59 which shall not exceed one hundred dollars (\$100), there shall
60 be paid the sum of ~~\$.15~~thirty cents (\$.30), and upon all
61 instruments which shall be executed to secure or to evidence
62 the securing of an initial indebtedness of more than one
63 hundred dollars (\$100), there shall be paid the sum of
64 ~~\$.15~~thirty cents (\$.30) for each one hundred dollars (\$100) of
65 such initial indebtedness or fraction thereof.

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,
70 (i) there shall be paid the sum of ~~\$.15~~thirty cents (\$.30) for
71 each one hundred dollars (\$100) of such initial indebtedness
72 or fraction thereof and the procedures set forth in paragraphs
73 ~~a, b, and c.~~a., b., and c. of subdivision (2) of this section
74 shall be applicable; or, in lieu thereof, (ii) there shall be
75 paid the sum of ~~\$.15~~thirty cents (\$.30) for each one hundred
76 dollars (\$100) of maximum principal indebtedness, or fraction
77 thereof, to be secured by such instrument at any one time as
78 stated in the instrument or any amendment thereto. In any
79 event, the privilege or license tax to be paid upon such
80 instruments securing or evidencing the securing of open end or
81 revolving indebtedness with any interest in property shall not
82 exceed the amount of ~~\$.15~~thirty cents (\$.30) for each one
83 hundred dollars (\$100) of maximum principal indebtedness, or
84 fraction thereof, to be secured by such instrument at any one



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85 time as stated in the instrument or any amendment thereto,
86 irrespective of the cumulative amount advanced from time to
87 time thereunder.

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



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113 approved by the Department of Revenue and payable to the State
114 of Alabama and conditioned that the owner of thesuch
115 instrument will promptly report to thesaid Department of
116 Revenue and to the probate judge of the county where thesaid
117 instrument is first filed for record, whenever thesuch owner
118 or his successor in interest incurs any additional
119 indebtedness thereunder, and the amount so incurred; and that
120 the said owner of thesuch instrument will pay or cause to be
121 paid to the probate judge of the county in which said
122 instrument is first filed the privilege or license tax
123 required under this section upon the accrual of any additional
124 indebtedness, and the said owner of such instrument will
125 report to the said probate judge and the Department of Revenue
126 during the month of September of each year the amount of all
127 indebtedness and all bonds, debentures, notes or other forms
128 of indebtedness incurred or certified and delivered under said
129 instrument to such date, and the amount so certified and
130 delivered during the preceding 12 months, and the aggregate of
131 all such evidence of indebtedness certified and delivered
132 under such instrument prior to such year. The bond executed to
133 secure payment of the tax herein required shall cover a term
134 of five years; and, after the expiration of thesaid term of
135 five years, the owner of the instrument offered for record
136 shall execute such further bond as may be required by the
137 Department of Revenue covering the succeeding term of five
138 years, and thereafter every term of five years, in the same
139 manner so long as any of the indebtedness authorized to be
140 incurred by thesuch instrument has not been incurred with like



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141 condition and in ~~thesuch~~ sum as the ~~said~~ department may
142 prescribe.

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

160 c. Each probate judge will forward to the State Banking
161 Department by the end of October a statement showing the
162 amounts certified to him or her by each forenamed
163 organization. The State Banking Department will then have the
164 authority to make unannounced audits on any organization
165 electing to use this system of reporting indebtedness. Any
166 organization which is found to have willfully certified less
167 than the true amount it should have certified shall be
168 required to pay a fine equal to three times the amount of tax



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169 due on the amount of indebtedness not certified to the probate
170 judge. This fine shall be paid into the State General Fund ~~of~~
171 ~~Alabama~~. In addition, any organization so fined must pay an
172 auditing fee in accordance with established Banking Department
173 audit fees into the funds of the State Banking Department.

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

188 (4) The privilege taxes herein imposed shall not be
189 required on or for the filing of any such instrument,
190 providing additional or substitute security for any
191 indebtedness secured by, or the securing of which is evidenced
192 by, an instrument previously filed, upon the filing of which
193 the taxes provided by law have been paid or which was filed at
194 a time when no such privilege taxes were required by law;
195 provided, that the secured indebtedness remains unchanged in
196 amount and in time of maturity.



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



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225 sale or a bond for title, and no such contract shall be
226 received for record until such tax shall have been paid.

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

238 (7) ~~Of the taxes collected by the probate judge under~~
239 ~~this section there shall be paid to the county treasurer of~~
240 ~~the county in which such taxes are collected one-third of the~~
241 ~~amount collected, to be accounted for by the judge of probate,~~
242 ~~and the remaining two-thirds of the amount collected to the~~
243 ~~State Treasury. The probate judge shall receive five percent~~
244 ~~of the amount collected as compensation for services in~~
245 ~~collecting the money and certifying the instrument, the five~~
246 ~~percent to be retained by the judge of probate out of the~~
247 ~~money collected under this section; but when the property~~
248 ~~described in the instrument is situated within different~~
249 ~~counties within this state, then the probate judge who~~
250 ~~collects the taxes shall pay over to the county treasurer of~~
251 ~~each of the different counties in which the property is~~
252 ~~situated an amount of the taxes that would be in proportion to~~



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

273 (8) If any part of the property embraced or described
274 in any instrument which is required under this section to pay
275 a record privilege tax is located without this state, the
276 indebtedness upon which the tax shall be paid for the
277 privilege of recording such instrument shall be that
278 proportion of the indebtedness secured by the instrument which
279 the value of the property located in this state bears to the
280 whole property described in the instrument. The Department of



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281 Revenue may ascertain the value of the whole property and of
282 that part of it which is located within this state for the
283 purpose of ascertaining the amount of the indebtedness upon
284 which the tax shall be paid, and the value of that part of the
285 property located within this state and the amount of the
286 indebtedness upon which such tax shall be paid shall be
287 ascertained in the following manner: First, the owner of any
288 such instrument or his or her agent or attorney may petition
289 the Department of Revenue to ascertain the value of the whole
290 property and of that part of which is located within this
291 state and the amount of the indebtedness upon which such tax
292 shall be paid, and the Department of Revenue, after hearing
293 such evidence as may be offered or as may be before it, shall
294 fix and determine the value of that part of the property
295 located within this state and the amount of the indebtedness
296 upon which the tax shall be paid and shall endorse its
297 findings on such instrument, and upon the presentation of the
298 instrument, with such endorsements to the probate judge of the
299 county in which any part of the property is located, such
300 instrument shall be accepted for record upon the payment of
301 the tax upon the amount of such indebtedness as so ascertained
302 by the Department of Revenue and of the recording fees of the
303 probate judge; or, second, the owner of any such instrument or
304 his or her agent or attorney may have such instrument recorded
305 by paying to the probate judge of the county in which the
306 instrument is offered for record the privilege tax on the
307 entire amount of the indebtedness secured by such instrument,
308 and may thereupon present a petition to the Department of



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309 Revenue within 30 days after such instrument is recorded, and
310 it shall be the duty of the Department of Revenue to ascertain
311 the value of the whole property and of that part of it located
312 within this state, and to fix and determine the amount of the
313 indebtedness upon which the tax shall be paid, and the
314 department shall thereupon ascertain such valuation and fix
315 and determine such indebtedness and shall order the probate
316 judge to refund the excess of privilege tax collected-, and
317 the probate judge shall comply with such order; and the tax
318 paid upon the entire amount of such indebtedness shall be held
319 by the probate judge until the Department of Revenue
320 determines the amount of the indebtedness upon which such tax
321 shall be paid.

322 (9) Any probate judge who shall file for record or
323 shall receive any such instrument for record or for filing,
324 without collecting the recording or registration tax provided
325 for the filing, recording, or registration of such instrument,
326 or who shall fail to certify the fact that such tax has been
327 paid before filing such instrument shall be guilty of a
328 misdemeanor and, upon conviction, shall be fined not less than
329 ten dollars (\$10) nor more than one thousand dollars (\$1,000).

330 (10) Every petition filed with the Department of
331 Revenue to ascertain the amount of the mortgage tax due to be
332 paid under this section shall, when the property conveyed in
333 the instrument offered for record is located in more than one
334 county of the state, show the value of the property conveyed
335 in each county in which the instrument is to be recorded.

336 (11) Any probate judge who fails to keep the abstract



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337 of mortgages or other instruments intended to secure the
338 payment of ~~monies~~~~money~~s which are filed in his or her office
339 for filing or for record, as he or she is required by law to
340 keep, shall be guilty of a misdemeanor and, upon conviction,
341 shall be fined not less than ten dollars (\$10) nor more than
342 five hundred dollars (\$500)."

343 Section 2. This act shall become effective on October
344 1, 2024.