

1 SB216  
2 138395-4  
3 By Senators Irons, Orr, Fielding, Brooks, and Beasley  
4 RFD: Judiciary  
5 First Read: 07-FEB-12

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25 "§40-22-1.

26 "~~No~~ (a) Except as set out in subsection (b), no  
27 deed, bill of sale, or other instrument of like character

1 which conveys any real or personal property within this state  
2 or which conveys any interest in any such property, ~~except~~  
3 shall be received for record unless the privilege or license  
4 tax is paid prior to the instrument being offered for record  
5 as provided in subsection (c).

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

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

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

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

22 "(c) Except as provided in subsection (b), the  
23 privilege or license tax on all such instruments which are  
24 executed to convey real or personal property situated in this  
25 state of the value of \$500 or less ~~there shall be paid the sum~~  
26 ~~of~~ \$.50, and upon all such instruments executed to convey real  
27 or personal property situated in this state of more than \$500

1 in value there shall be paid the sum of \$.50 for each \$500 or  
2 fraction thereof in value of property conveyed by such  
3 instrument; provided, that only the value in excess of any  
4 mortgages or vendor's lien upon any property within this state  
5 on which the mortgage tax has been paid shall be taxable under  
6 this section; and provided further, that where several deeds  
7 or instruments are executed by tenants in common for the same  
8 consideration, only one of such instruments shall be taxable  
9 under this section. Except for instruments which convey only  
10 leaseholds easements, or licenses or the recordation of copies  
11 of instruments evidencing original transfers of title to land  
12 by the United States or the State of Alabama, any instrument  
13 presented for record pursuant to this section shall be  
14 accompanied by proof of the actual purchase price paid for the  
15 property or if the property has not been sold, proof of the  
16 actual value of the real or personal property which is the  
17 subject of the instrument being recorded. The Department of  
18 Revenue shall develop a form which shall be used for attesting  
19 to the actual value or actual purchase price of the property,  
20 which form shall include only information related to the  
21 actual value or actual purchase price of the property. Any  
22 person utilizing the form developed by the department pursuant  
23 to this section shall attest to the accuracy of the  
24 information being provided on the form, but shall not be  
25 required to provide any further documentation or proof of the  
26 actual purchase price or actual value of the property.

1           "(d) Upon the presentation of any ~~such~~ instrument  
2 for record, the judge of probate shall ~~determine~~ calculate the  
3 amount of tax due ~~thereon; and,~~ based upon the actual purchase  
4 price paid or the actual value of the property as required in  
5 subsection (c). If no proof is provided at the time the  
6 instrument is presented for recording, the amount of the tax  
7 due shall be based upon the value of the property as  
8 determined by the most recent assessment of property conducted  
9 pursuant to Title 40, Chapter 7, and the judge of probate  
10 shall assess penalties as set out in subsection (h) to be paid  
11 in addition to the tax due.

12           "(e) The instrument shall be recorded upon the  
13 payment ~~to him~~ of the amount of such tax and recording fee ~~of~~  
14 ~~the judge of probate, he shall accept the same for record, and~~  
15 where assessed, any penalties as set out in subsection (h);  
16 provided, however, that upon the presentation for record of  
17 any instrument which conveys property situated in two or more  
18 counties of this state, the judge of probate shall so certify  
19 receipt of the instrument ~~the facts of the case~~ together with  
20 a description of the property conveyed by ~~such~~ the instrument  
21 to the Department of Revenue, which after hearing ~~such~~  
22 evidence as may be offered or as it may secure, shall fix and  
23 determine the value of ~~such~~ the property as located in each  
24 county and shall certify its determination thereof to the  
25 judge of probate, showing the value of ~~such~~ the property in  
26 each county separately; and, upon the payment to the judge of  
27 probate of the tax due on the value of all property in this

1 state conveyed by ~~such~~ the instrument as so determined, the  
2 judge of probate shall accept ~~such~~ the instrument for record.  
3 The person presenting any ~~such~~ instrument conveying property  
4 in two or more counties of this state may secure immediate  
5 filing of ~~such~~ the instrument for record by depositing with  
6 the judge of probate, ~~to be held by him until the amount of~~  
7 ~~the tax due thereon is determined,~~ an amount which in the  
8 judgment of the judge of probate will cover the tax herein  
9 provided for, and after the value of the property conveyed  
10 thereby is determined by the Department of Revenue, as  
11 provided herein, any excess of ~~such~~ the deposit over the  
12 amount of tax found to be due on ~~such~~ the instrument shall be  
13 refunded to the person offering ~~such~~ the instrument for  
14 record. The determination by the judge of probate and of the  
15 Department of Revenue of the amount of tax due on any ~~such~~  
16 instrument is hereby declared to be a ministerial act and  
17 shall not preclude the subsequent collection of the correct  
18 amount of tax if the value of the property thereby conveyed is  
19 not fully disclosed to the judge of probate or the Department  
20 of Revenue when ~~such~~ the instrument is offered for record.  
21 Upon the filing for record of any instrument coming within the  
22 terms of this section, the judge of probate shall certify  
23 thereon the fact that the tax ~~thereon~~ has been paid, showing  
24 the amount of ~~such~~ the tax, and thereafter ~~such~~ the instrument  
25 shall be received for record in any county of this state  
26 without the payment of any further tax ~~thereon~~, except the fee  
27 of the judge of probate for recording such instrument, which

1 certificate shall be recorded with and as part of ~~such~~ the  
2 instrument.

3 "(f) Upon the filing for record of any instrument  
4 which has been exempted by law from the payment of the tax  
5 provided for in this section, the judge of probate shall  
6 certify thereon that no tax has been paid and shall stamp in  
7 bold letters on the face of said instruments the words "No Tax  
8 Collected," and said certificate shall be recorded with and as  
9 a part of ~~such~~ the instrument, and thereafter such instrument  
10 shall be received for record in any county in this state  
11 without the payment of any further tax ~~thereon~~, when submitted  
12 by the same tax exempt institution or another tax exempt  
13 institution, but if submitted by or transferred to an  
14 institution or person not exempt from the payment of the tax  
15 levied under this section, the judge of probate shall collect  
16 the tax levied by this section, together with the fee of the  
17 judge of probate for recording such instrument, before it will  
18 be admitted to record.

19 "(g) Of the tax collected by the judge of probate  
20 under the provisions of this section, l there shall be paid into  
21 the State Treasury two thirds of the amount so collected, and  
22 the remaining one third shall be paid into the county  
23 treasury; provided, that the counties' share of the tax  
24 collected on any instrument conveying property in more than  
25 one county shall be paid into the county treasuries of the  
26 counties in which such property is situated in proportion to  
27 the value of such property as determined by the Department of

1 Revenue as herein provided. ~~The~~ If the judge of probate is  
2 paid on fees and commissions, he or she shall receive two and  
3 one-half percent of the amount collected ~~by him~~ under the  
4 provisions of this section as his or her commission for  
5 collecting ~~said~~ the money, which shall be deducted from the  
6 total amount collected and retained by him or her when making  
7 settlement of his or her collections as required by law;  
8 provided, that this section shall not be so construed or  
9 enforced as to require the payment of privilege tax herein  
10 provided on mortgages, deeds of trust, or other instruments in  
11 the nature of a mortgage or deeds or other instruments with a  
12 vendor's lien except as to that part of the purchase price  
13 which is paid in cash or other articles of value and which pay  
14 no other privilege tax for recording; ~~provided, that in.~~ In  
15 counties where the probate judges are paid salaries, the fee  
16 or commission collected or retained ~~by the probate judges~~ for  
17 collecting the tax herein provided for shall be paid ~~by them~~  
18 into the treasuries of their respective counties.

19 "(h) Any person who submits an instrument for  
20 recording pursuant to this section and intentionally fails to  
21 submit proof of the value of the property or the actual  
22 purchase price paid for the property as required in subsection  
23 (c) following a specific request for such proof from the  
24 probate office or who presents false proof of same, in  
25 addition to payment of the tax due as calculated on the actual  
26 value of the property, shall pay a penalty of one hundred  
27 dollars (\$100) or 25 percent of the privilege or license tax



1 actually due, whichever is greater. No person submitting the  
2 form required under subsection (c) above shall be deemed to  
3 have presented false proof or be otherwise subject to  
4 liability where such form was submitted and attested to in  
5 good faith.

6 "(i) No failure or falsity of proof of the actual  
7 purchase price or value shall in any way affect the instrument  
8 recordation or the notice provided by such recorded."

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

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 07-FEB-12

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 08-MAR-12

Read for the third time and passed as amended .... 12-APR-12

Yeas 24  
Nays 6

Patrick Harris  
Secretary