

1 SB216
2 135871-1
3 By Senators Irons, Orr, Fielding, Brooks and Beasley
4 RFD: Judiciary
5 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, a person who presents a
9 deed, bill of sale, or other instrument conveying
10 any real or personal property within this state or
11 any interest in any such property to the judge of
12 probate for recording must pay a privilege or
13 license tax based upon the value of the property;
14 however, there is no requirement to submit proof of
15 the purchase price or value of the property at the
16 time the instrument is presented for recording.

17 This bill would provide that a person
18 presenting a real property or personal property
19 instrument to the judge of probate for recording
20 shall present proof of the actual purchase price of
21 property or actual value of the property, and that
22 if proof is not presented, the privilege or license
23 tax will be based upon the assessed value of the
24 property and the person failing to submit the
25 required proof shall be subject to monetary
26 penalties for failure to comply with the law.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

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

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§40-22-1.

20 "No (a) Except as set out in subsection (b), no
21 deed, bill of sale, or other instrument of like character
22 which conveys any real or personal property within this state
23 or which conveys any interest in any such property, ~~except~~
24 shall be received for record unless the privilege or license
25 tax is paid prior to the instrument being offered for record
26 as provided in subsection (c).

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

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

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

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

17 "(c) Except as provided in subsection (b), the
18 privilege or license tax on all such instruments which are
19 executed to convey real or personal property situated in this
20 state of the value of \$500 or less ~~there shall be paid the sum~~
21 ~~of~~ \$.50, and upon all such instruments executed to convey real
22 or personal property situated in this state of more than \$500
23 in value there shall be paid the sum of \$.50 for each \$500 or
24 fraction thereof in value of property conveyed by such
25 instrument; provided, that only the value in excess of any
26 mortgages or vendor's lien upon any property within this state
27 on which the mortgage tax has been paid shall be taxable under

1 this section; and provided further, that where several deeds
2 or instruments are executed by tenants in common for the same
3 consideration, only one of such instruments shall be taxable
4 under this section. Any instrument presented for record
5 pursuant to this section shall be accompanied by proof of the
6 actual purchase price paid for the property or if the property
7 has not been sold, proof of the actual value of the real or
8 personal property which is the subject of the instrument being
9 recorded. The Department of Revenue shall develop rules
10 establishing what constitutes adequate proof required to
11 accompany any instrument presented for record. Failure to
12 provide proof as required herein shall result in the
13 assessment of penalties as set out in subsection (h).

14 "(d) Upon the presentation of any ~~such~~ instrument
15 for record, the judge of probate shall ~~determine~~ calculate the
16 amount of tax due ~~thereon; and,~~ based upon the actual purchase
17 price paid or the actual value of the property as required in
18 subsection (c). If no proof is provided at the time the
19 instrument is presented for recording, the amount of the tax
20 due shall be based upon the value of the property as
21 determined by the most recent assessment of property conducted
22 pursuant to Title 40, Chapter 7, and the judge of probate
23 shall assess penalties as set out in subsection (h) to be paid
24 in addition to the tax due.

25 "(e) The instrument shall be recorded upon the
26 payment to him of the amount of such tax and recording fee of
27 the judge of probate, he shall accept the same for record, and

1 where assessed, any penalties as set out in subsection (h);
2 provided, that upon the presentation for record of any
3 instrument which conveys property situated in two or more
4 counties of this state, the judge of probate shall so certify
5 ~~the facts of the case~~ together with a description of the
6 property conveyed by ~~such~~ the instrument to the Department of
7 Revenue, which after hearing ~~such~~ evidence as may be offered
8 or as it may secure, shall fix and determine the value of ~~such~~
9 the property as located in each county and shall certify its
10 determination thereof to the judge of probate, showing the
11 value of ~~such~~ the property in each county separately; and,
12 upon the payment to the judge of probate of the tax due on the
13 value of all property in this state conveyed by ~~such~~ the
14 instrument as so determined, the judge of probate shall accept
15 ~~such~~ the instrument for record. The person presenting any ~~such~~
16 instrument conveying property in two or more counties of this
17 state may secure immediate filing of ~~such~~ the instrument for
18 record by depositing with the judge of probate, ~~to be held by~~
19 ~~him until the amount of the tax due thereon is determined,~~ an
20 amount which in the judgment of the judge of probate will
21 cover the tax herein provided for, and after the value of the
22 property conveyed thereby is determined by the Department of
23 Revenue, as provided herein, any excess of ~~such~~ the deposit
24 over the amount of tax found to be due on ~~such~~ the instrument
25 shall be refunded to the person offering ~~such~~ the instrument
26 for record. The determination by the judge of probate and of
27 the Department of Revenue of the amount of tax due on any ~~such~~

1 instrument is hereby declared to be a ministerial act and
2 shall not preclude the subsequent collection of the correct
3 amount of tax if the value of the property thereby conveyed is
4 not fully disclosed to the judge of probate or the Department
5 of Revenue when ~~such~~ the instrument is offered for record.
6 Upon the filing for record of any instrument coming within the
7 terms of this section, the judge of probate shall certify
8 thereon the fact that the tax ~~thereon~~ has been paid, showing
9 the amount of ~~such~~ the tax, and thereafter ~~such~~ the instrument
10 shall be received for record in any county of this state
11 without the payment of any further tax ~~thereon~~, except the fee
12 of the judge of probate for recording such instrument, which
13 certificate shall be recorded with and as part of ~~such~~ the
14 instrument.

15 "(f) Upon the filing for record of any instrument
16 which has been exempted by law from the payment of the tax
17 provided for in this section, the judge of probate shall
18 certify thereon that no tax has been paid and shall stamp in
19 bold letters on the face of said instruments the words "No Tax
20 Collected," and said certificate shall be recorded with and as
21 a part of ~~such~~ the 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 the same tax exempt institution or another tax exempt
25 institution, but if submitted by or transferred to an
26 institution or person not exempt from the payment of the tax
27 levied under this section, the judge of probate shall collect

1 the tax levied by this section, together with the fee of the
2 judge of probate for recording such instrument, before it will
3 be admitted to record.

4 "(g) Of the tax collected by the judge of probate
5 under the provisions of this section, there shall be paid into
6 the State Treasury two thirds of the amount so collected, and
7 the remaining one third shall be paid into the county
8 treasury; provided, that the counties' share of the tax
9 collected on any instrument conveying property in more than
10 one county shall be paid into the county treasuries of the
11 counties in which such property is situated in proportion to
12 the value of such property as determined by the Department of
13 Revenue as herein provided. ~~The~~ If the judge of probate is
14 paid on fees and commissions, he or she shall receive two and
15 one-half percent of the amount collected ~~by him~~ under the
16 provisions of this section as his or her commission for
17 collecting ~~said~~ the money, which shall be deducted from the
18 total amount collected and retained by him or her when making
19 settlement of his or her collections as required by law;
20 provided, that this section shall not be so construed or
21 enforced as to require the payment of privilege tax herein
22 provided on mortgages, deeds of trust, or other instruments in
23 the nature of a mortgage or deeds or other instruments with a
24 vendor's lien except as to that part of the purchase price
25 which is paid in cash or other articles of value and which pay
26 no other privilege tax for recording; ~~provided, that in.~~ In
27 counties where the probate judges are paid salaries, the fee

1 or commission collected or retained ~~by the probate judges~~ for
2 collecting the tax herein provided for shall be paid ~~by them~~
3 into the treasuries of their respective counties.

4 "(h) Any person who submits an instrument for
5 recording pursuant to this section without presenting proof of
6 the value of the property or the actual purchase price paid
7 for the property as required in subsection (c) or who presents
8 false proof of same, in addition to payment of the tax due as
9 calculated on the actual value of the property, shall pay a
10 penalty of one hundred dollars (\$100) or 25 percent of the
11 privilege or license tax actually due, whichever is greater."

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