

**SB107 INTRODUCED**



1 U8R9XD-1  
2 By Senator Coleman-Madison  
3 RFD: Finance and Taxation General Fund  
4 First Read: 21-Mar-23  
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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.

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 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; and to



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29 modify the rate and distribution of the mortgage record tax in  
30 order to provide a dedicated revenue for the Alabama Housing  
31 Trust Fund.

32 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

35 "§40-22-2

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

54 (1)a. Upon all such instruments which are executed to  
55 secure or to evidence the securing of an initial indebtedness  
56 which shall not exceed one hundred dollars (\$100), there shall



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57 be paid the sum of ~~\$.15~~thirty cents (\$.30), and upon all  
58 instruments which shall be executed to secure or to evidence  
59 the securing of an initial indebtedness of more than one  
60 hundred dollars (\$100), there shall be paid the sum of  
61 ~~\$.15~~thirty cents (\$.30) for each one hundred dollars (\$100) of  
62 such initial indebtedness or fraction thereof.

63 b. Upon all such instruments which are executed to  
64 secure or to evidence the securing of an open end or revolving  
65 indebtedness with any interest in property, at the option of  
66 the person offering the instrument for record or for filing,  
67 (i) there shall be paid the sum of ~~\$.15~~thirty cents (\$.30) for  
68 each one hundred dollars (\$100) of such initial indebtedness  
69 or fraction thereof and the procedures set forth in paragraphs  
70 a, b, and c of subdivision (2) of this section shall be  
71 applicable; or, in lieu thereof, (ii) there shall be paid the  
72 sum of ~~\$.15~~thirty cents (\$.30) for each one hundred dollars  
73 (\$100) of maximum principal indebtedness, or fraction thereof,  
74 to be secured by such instrument at any one time as stated in  
75 the instrument or any amendment thereto. In any event, the  
76 privilege or license tax to be paid upon such instruments  
77 securing or evidencing the securing of open end or revolving  
78 indebtedness with any interest in property shall not exceed  
79 the amount of ~~\$.15~~thirty cents (\$.30) for each one hundred  
80 dollars (\$100) of maximum principal indebtedness, or fraction  
81 thereof, to be secured by such instrument at any one time as  
82 stated in the instrument or any amendment thereto,  
83 irrespective of the cumulative amount advanced from time to  
84 time thereunder.



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



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

139 b. Notwithstanding ~~the provisions of~~ paragraph a. ~~of~~  
140 ~~this subdivision~~, any bank, savings and loan association,



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

156 c. Each probate judge will forward to the State Banking  
157 Department by the end of October a statement showing the  
158 amounts certified to him or her by each forenamed  
159 organization. The State Banking Department will then have the  
160 authority to make unannounced audits on any organization  
161 electing to use this system of reporting indebtedness. Any  
162 organization which is found to have willfully certified less  
163 than the true amount it should have certified shall be  
164 required to pay a fine equal to three times the amount of tax  
165 due on the amount of indebtedness not certified to the probate  
166 judge. This fine shall be paid into the General Fund of  
167 Alabama. In addition, any organization so fined must pay an  
168 auditing fee in accordance with established Banking Department



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169 audit fees into the funds of the State Banking Department.

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

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

193 (5) Upon the filing for record of such instrument and  
194 upon the payment of the tax thereon, the probate judge or his  
195 or her clerk shall certify on the instrument the fact that the  
196 said tax has been paid, and when so certified by the probate





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

223 (6) When the time for the payment of the indebtedness  
224 secured by, or the securing of which is evidenced by, any such



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

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

251 Revenues from the mortgage record tax shall be divided  
252 between four recipients: The judges of probate, the Alabama



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

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



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281 property located within this state and the amount of the  
282 indebtedness upon which such tax shall be paid shall be  
283 ascertained in the following manner: First, the owner of any  
284 such instrument or his or her agent or attorney may petition  
285 the Department of Revenue to ascertain the value of the whole  
286 property and of that part of which is located within this  
287 state and the amount of the indebtedness upon which such tax  
288 shall be paid, and the Department of Revenue, after hearing  
289 such evidence as may be offered or as may be before it, shall  
290 fix and determine the value of that part of the property  
291 located within this state and the amount of the indebtedness  
292 upon which the tax shall be paid and shall endorse its  
293 findings on such instrument, and upon the presentation of the  
294 instrument, with such endorsements to the probate judge of the  
295 county in which any part of the property is located, such  
296 instrument shall be accepted for record upon the payment of  
297 the tax upon the amount of such indebtedness as so ascertained  
298 by the Department of Revenue and of the recording fees of the  
299 probate judge; or, second, the owner of any such instrument or  
300 his or her agent or attorney may have such instrument recorded  
301 by paying to the probate judge of the county in which the  
302 instrument is offered for record the privilege tax on the  
303 entire amount of the indebtedness secured by such instrument,  
304 and may thereupon present a petition to the Department of  
305 Revenue within 30 days after such instrument is recorded, and  
306 it shall be the duty of the Department of Revenue to ascertain  
307 the value of the whole property and of that part of it located  
308 within this state, and to fix and determine the amount of the



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309 indebtedness upon which the tax shall be paid, and the  
310 department shall thereupon ascertain such valuation and fix  
311 and determine such indebtedness and shall order the probate  
312 judge to refund the excess of privilege tax collected , and  
313 the probate judge shall comply with such order; and the tax  
314 paid upon the entire amount of such indebtedness shall be held  
315 by the probate judge until the Department of Revenue  
316 determines the amount of the indebtedness upon which such tax  
317 shall be paid.

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

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

332 (11) Any probate judge who fails to keep the abstract  
333 of mortgages or other instruments intended to secure the  
334 payment of moneys which are filed in his or her office for  
335 filing or for record, as he or she is required by law to keep,  
336 shall be guilty of a misdemeanor and, upon conviction, shall



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337 be fined not less than ten dollars (\$10) nor more than five  
338 hundred dollars (\$500)."

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