

**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~~<sup>such</sup> 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 ~~the~~such 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 ~~the~~such 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.