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

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-22-1.

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

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

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

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

"(3) The re-recording of corrected mortgages,
deeds, or instruments executed for the purpose of perfecting
the title to real or personal property, specifically, but not
limited to, corrections of maturity dates thereof, and deeds
and other instruments or conveyances, executed prior to
October 1, 1923.

"(c) Except as provided in subsection (b), the
privilege or license tax on all instruments which are executed
to convey real or personal property situated in this state of
the value of $500 or less shall be $.50, and upon all such
instruments executed to convey real or personal property
situated in this state of more than $500 in value there shall
be paid the sum of $.50 for each $500 or fraction thereof in
value of property conveyed by such instrument; provided, that
only the value in excess of any mortgages or vendor's lien
upon any property within this state on which the mortgage tax
has been paid shall be taxable under this section; and
provided further, that where several deeds or instruments are
executed by tenants in common for the same consideration, only
one of such instruments shall be taxable under this section.
Except for instruments which convey only leaseholds easements,
or licenses or the recoradation of copies of instruments
evidencing original transfers of title to land by the United
States or the State of Alabama, any instrument presented for
record pursuant to this section shall be accompanied by proof
of the actual purchase price paid for the property or if the
property has not been sold, proof of the actual value of the
real or personal property which is the subject of the
instrument being recorded. The Department of Revenue shall
develop a form which shall be used for attesting to the actual
value or actual purchase price of the property, which form
shall include only information related to the actual value or
actual purchase price of the property. Any person utilizing
the form developed by the department pursuant to this section
shall attest to the accuracy of the information being provided
on the form, but shall not be required to provide any further
documentation or proof of the actual purchase price or actual
value of the property.

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

"(e) The instrument shall be recorded upon the payment of the amount of such tax and recording fee, and where assessed, any penalties as set out in subsection (h); provided, however, that upon the presentation for record of any instrument which conveys property situated in two or more counties of this state, the judge of probate shall so certify receipt of the instrument together with a description of the property conveyed by the instrument to the Department of Revenue, which after hearing evidence as may be offered or as it may secure, shall fix and determine the value of the property as located in each county and shall certify its determination thereof to the judge of probate, showing the value of the property in each county separately; and, upon the payment to the judge of probate of the tax due on the value of all property in this state conveyed by the instrument as so determined, the judge of probate shall accept the instrument for record. The person presenting any instrument conveying
property in two or more counties of this state may secure immediate filing of the instrument for record by depositing with the judge of probate an amount which in the judgment of the judge of probate will cover the tax herein provided for, and after the value of the property conveyed thereby is determined by the Department of Revenue, as provided herein, any excess of the deposit over the amount of tax found to be due on the instrument shall be refunded to the person offering the instrument for record. The determination by the judge of probate and of the Department of Revenue of the amount of tax due on any instrument is hereby declared to be a ministerial act and shall not preclude the subsequent collection of the correct amount of tax if the value of the property thereby conveyed is not fully disclosed to the judge of probate or the Department of Revenue when the instrument is offered for record. Upon the filing for record of any instrument coming within the terms of this section, the judge of probate shall certify thereon the fact that the tax has been paid, showing the amount of the tax, and thereafter the instrument shall be received for record in any county of this state without the payment of any further tax, except the fee of the judge of probate for recording such instrument, which certificate shall be recorded with and as part of the instrument.

"(f) Upon the filing for record of any instrument which has been exempted by law from the payment of the tax
provided for in this section, the judge of probate shall
2 certify thereon that no tax has been paid and shall stamp in
3 bold letters on the face of said instruments the words "No Tax
4 Collected," and said certificate shall be recorded with and as
5 a part of the instrument, and thereafter such instrument shall
6 be received for record in any county in this state without the
7 payment of any further tax, when submitted by the same tax
8 exempt institution or another tax exempt institution, but if
9 submitted by or transferred to an institution or person not
10 exempt from the payment of the tax levied under this section,
11 the judge of probate shall collect the tax levied by this
12 section, together with the fee of the judge of probate for
13 recording such instrument, before it will be admitted to
14 record.
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16 "(g) Of the tax collected by the judge of probate
17 under the provisions of this section, there shall be paid into
18 the State Treasury two thirds of the amount so collected, and
19 the remaining one third shall be paid into the county
20 treasury; provided, that the counties' share of the tax
21 collected on any instrument conveying property in more than
22 one county shall be paid into the county treasuries of the
23 counties in which such property is situated in proportion to
24 the value of such property as determined by the Department of
25 Revenue as herein provided. If the judge of probate is paid on
26 fees and commissions, he or she shall receive two and one-half
percent of the amount collected under the provisions of this
section as his or her commission for collecting the money,
which shall be deducted from the total amount collected and
retained by him or her when making settlement of his or her
collections as required by law; provided, that this section
shall not be so construed or enforced as to require the
payment of privilege tax herein provided on mortgages, deeds
of trust, or other instruments in the nature of a mortgage or
deeds or other instruments with a vendor's lien except as to
that part of the purchase price which is paid in cash or other
articles of value and which pay no other privilege tax for
recording. In counties where the probate judges are paid
salaries, the fee or commission collected or retained for
collecting the tax herein provided for shall be paid into the
treasuries of their respective counties.

"(h) Any person who submits an instrument for
recording pursuant to this section and intentionally fails to
submit proof of the value of the property or the actual
purchase price paid for the property as required in subsection
(c) following a specific request for such proof from the
probate office or who presents false proof of same, in
addition to payment of the tax due as calculated on the actual
value of the property, shall pay a penalty of one hundred
dollars ($100) or 25 percent of the privilege or license tax
actually due, whichever is greater. No person submitting the
form required under subsection (c) above shall be deemed to
have presented false proof or be otherwise subject to
liability where such form was submitted and attested to in
good faith.

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

Section 2. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.
SB216

Kay Ivey
President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB216
Senate 12-APR-12
I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 16-MAY-12

By: Senator Irons

APPROVED May 22, 2012
7:35 a.m.

Robert Bentley
Governor

Alabama Secretary Of State
Act Num....: 2012-494
Bill Num....: S-216
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