

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Article VII, Section 6 of the Florida Constitution provides the following:

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law

Section 196.021(3), F.S. provides a resident homeowner with a \$25,000 exemption from real estate tax assessment. Section 196.011, F.S. sets forth the process for applying for homestead exemption. Section 196.015, F.S. contains a list of factors that can be considered by the property appraiser in determining whether a person has established a permanent residence.

Article X, Section 10 provides the following:

SECTION 4. Homestead; exemptions.—

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

- (1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

In Tramel v. Stewart, 697 So.2d 821 (Fla. 1997), the state filed a forfeiture proceeding under the Florida Contraband Forfeiture Act against a defendant who had purchased homestead property with proceeds obtained by selling marijuana. The Court held that the homestead guarantee of the Florida Constitution prohibited the forfeiture of homestead property that was purchased with proceeds of illegal activity. The

court noted that the three exception to the prohibition against forced sale of a homestead contained in the constitution did not include an exception for criminal activity. The court concluded its opinion as follows:

[W]e find that article X, section 4, does not provide an exception for the forfeiture of homestead property for a violation of the Forfeiture Act. The homestead guarantee uses broad language protecting the homestead from involuntary divestiture by the courts. The constitutional protection of homesteads has not changed since [an earlier decision of the court] to include forfeiture as one of the enumerated exceptions. In the absence of such a provision, this court cannot judicially create one.

Certainly, there are compelling reasons to support the forfeiture of homestead property "acquired or improved" with funds obtained through felonious criminal activity or homestead property used in the commission of felonious criminal activity. As well, the homestead protection should not be used to shield fraud or reprehensible conduct. However, to permit the State to forfeit a homestead based upon this criminal activity in Florida requires a constitutional revision. We call this to the attention of the Constitutional Revision Commission.

Id. at 824 (citations omitted).

HB 39 provides that any person who knowingly and willfully claims homestead exemption on a home which has been paid for, in part or in whole, with funds which are derived "from a fraudulent source such as corporate fraud" commits a first degree misdemeanor, punishable by imprisonment for up to one year, and by a fine not to exceed \$5,000.¹

C. SECTION DIRECTORY:

Section 1: Amending s. 196.131; providing a penalty for claiming homestead exemption if the source of the funds for the home came from fraudulent sources.

Section 2: Providing effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill, which creates a first degree misdemeanor, will not have a prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹ Ordinarily, a first degree misdemeanor is punishable by imprisonment for up to one year and a \$1,000 fine. s. 775.082 and s. 775.083.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits claiming homestead exemption on a home that has been paid for "in whole or in part" with funds which are "derived from a fraudulent source such as corporate fraud." It is not clear if the term "in whole or in part" is meant to indicate that the offense applies if the home is paid off or if the offender is still making payments - or if it is meant to indicate that that the offense applies to a home that has been paid for in part by funds that have a fraudulent source and in part by funds that do not have a fraudulent source.

The terms "fraudulent source" and "corporate fraud" are not defined by the bill or elsewhere in Florida statutes. It is not clear what type of funds would be considered as "derived from a fraudulent source" or what activity constitutes "corporate fraud". Note: The Subcommittee on Criminal Justice recommended a strike-all amendment which alters this language and prohibits claiming homestead exemption on a home that has been paid for with funds which are unlawfully obtained through the performance of a *fraudulent act*.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Criminal Justice recommended an amendment which makes it unlawful for any person to knowingly and willfully claim a homestead exemption on a home which has been paid for, in part or in whole, with funds which are *unlawfully obtained through the performance of a fraudulent act*. The amendment makes it a third degree felony if the assessed value of the homestead is at least \$200,000 but less than \$500,000; a second degree felony if the assessed value of the homestead is at least \$500,000 but less than \$1.5 million and a first degree felony if the assessed value of the homestead is at least \$1.5 million.