

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 122

SPONSOR: Criminal Justice Committee and Senator Saunders

SUBJECT: Homestead Exemption/Fraudulent Act

DATE: January 13, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|---------------|
| 1. | <u>Cellon</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Committee Substitute for Senate Bill 122 creates felony criminal offenses where a person knowingly and willfully gives false information for the purpose of claiming homestead exemption on a home which has been paid for, in whole or in part, with funds derived through an unlawful fraudulent act.

This bill substantially amends section 196.131, Florida Statutes.

II. Present Situation:

Homestead Exemption

Section 196.001, F.S., provides that, unless expressly exempted from taxation, all real property in the state shall be subject to taxation.

Section 6, Article VII of the Constitution of Florida provides for homestead exemptions from taxation within certain parameters. It states in part:

“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, ... up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. ...Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. ...By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate...”

There are numerous special exemptions provided for in general law (*see* ss. 196.031 – 196.101, F.S), but the general exemption is \$5,000 of the assessed value. (s. 196.031(1), F.S.)

The taxpayer is required to furnish certain information to the local property appraiser in order to claim the homestead exemption. Section 196.131(2), F.S., provides that any person who knowingly and willfully gives false information for the purpose of claiming homestead exemption is guilty of a first degree misdemeanor and subject to up to one year incarceration and a \$5,000 fine.

Fraud

Fraudulent acts, in the more general criminal sense, are proscribed by ch. 817, F.S., which includes statutes addressing false pretenses and frauds, credit card crimes, and credit service organizations. Fraudulent acts may include other acts such as financial transactions done in a fraudulent manner, corporate fraud, or fraudulent securities transactions.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 122 creates felony criminal offenses where a person knowingly and willfully gives false information for the purpose of claiming homestead exemption on a home which has been paid for, in whole or in part, with funds derived through an unlawful fraudulent act.

The term “gives false information,” as it exists in subsection (2) of s. 196.131, F.S., is expanded by the provisions of the bill to include the prohibited conduct.

The degree of felony and potential punishment is based on the assessed value of the homestead, as follows:

- a homestead with an assessed value of \$200,000 to \$499,999 – third degree felony
- \$550,000 to \$1,499,999 – second degree felony
- \$1.5 million or more – first degree felony

The criminal offenses created by the bill are not ranked in the Criminal Punishment Code. If a person who has no previous criminal record and no other pending charges is convicted of one of the enumerated offenses he or she would be subject to the following penalties:

- third degree felony: from no state prison time up to 5 years in prison and a fine of up to \$5,000
- second degree felony: from no state prison time up to 15 years in prison and a fine of up to \$10,000
- first degree felony: from 21 months to 30 years in prison and a fine of up to \$10,000

The term “fraudulent acts” as used in the bill does not specify that the act must be punishable as a violation of the criminal code; therefore, the provisions in the bill may take in acts that are fraudulent and unlawful, but not criminal.

The Department of Revenue has the authority to prescribe the content of the exemption application forms by rule. s. 196.121, F.S. The Department is directed to amend the forms to the extent necessary to implement this legislation no later than October 1, 2005. It is contemplated that the application could require the claimant to answer whether the home was paid for, in whole or in part, with funds that were “unlawfully obtained through the performance of a fraudulent act.” An applicant’s answer of “no,” when the facts show the contrary, would thereby constitute giving “false information.”

The bill also makes a technical, grammatical change in s. 196.131, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has not been analyzed by the Criminal Justice Estimating Conference at the time of the writing of this Bill Analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
