

# 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.)

BILL: SB 2198

SPONSOR: Senator Saunders

SUBJECT: Homestead Exemption

DATE: March 31, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 2198 creates felony criminal offenses where a person knowingly and willfully claims homestead exemption on a home which has been paid for, in whole or in part, with funds derived through a fraudulent act.

This bill substantially amends the following section of the Florida Statutes: 196.131, F.S.

## 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 \$25,000 of the assessed value.

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.

#### *Protection of Homestead Property from Creditors*

Section 4, Article X of the Florida Constitution protects a homestead from forced sale under process of any court and allows liens on homesteads only for taxes and assessments and obligations contracted for the purchase or improvement of the homestead property. Sections 222.01 and 222.02, F.S., provide for the designation of homestead by a person residing in this state who wishes to avail himself or herself of the benefits of the constitutional protection of homestead property and laws exemption such property from forced sale. Section 222.30, F.S., provides protection for creditors against the fraudulent conversion of assets to make them immune or exempt from the claims of creditors.

#### *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:**

Senate Bill 2198 creates felony criminal offenses where a person knowingly and willfully claims homestead exemption on a home which has been paid for, in whole or in part, with funds unlawfully obtained through the performance of a fraudulent act. 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 in a broad sense of the word.

The bill also makes a technical, grammatical change in s. 196.131(2), 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. Amendments:**

None.