

STORAGE NAME: h1657.brc

DATE: March 23, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 1657

RELATING TO: Deceptive Trade Practices in Print Advertisement

SPONSOR(S): Representative Lynn

COMPANION BILL(S): SB 672 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill prohibits a person from using a fictitious name in any type of print advertisement with the intent of misrepresenting the geographic origin or location of a business. A violation would constitute a deceptive and unfair trade practice.

There is no anticipated fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 501, F.S., Consumer Protection, consists of five parts which address various consumer protection laws, such as, home solicitation sales, telemarketing, and health studios, among others. The thrust of these statutes is to require information disclosure and remedies for violations. Part II of the chapter is the Florida Deceptive and Unfair Trade Practices Act, also referred to as the "little FTC act." The act is enforced by the state attorneys and the Department of Legal Affairs (department), but consumers also may bring action under the act if they have suffered damages as a result of unfair and deceptive practices.

The act is designed after the Federal Trade Commission Act which provides that unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce are unlawful. The Federal Trade Commission (FTC) has established standards to test whether a practice is unfair or deceptive and has adopted numerous rules designed to specifically prohibit certain activities. Enforcement of Florida's little FTC act relies heavily on these rules and associated interpretations by the FTC and the courts.

The Fictitious Name Act, s. 865.09, F.S., requires statewide public notice of the true identity of a business owner intending to transact business in this state under a name other than its legal name. Before beginning operations under the assumed name, the business owner must register with the Division of Corporations of the Department of State, and provide the legal name, mailing address of the business, Florida incorporation or registration number, and certification that the registered name has been advertised in the county where the business owner's principal place of business is located. Registration ensures that the public can tie the business activity to the legal entity. The act is for notice only, and imposes no additional regulation on the business by virtue of the registration.

B. EFFECT OF PROPOSED CHANGES:

The bill would create s. 501.97, F.S., to provide that a person may not misrepresent the geographic location of a supplier of a service or product by listing a fictitious name or assumed business name in any print advertisement. A supplier could not advertise if the advertisement includes a name that misrepresents the "geographic location" of the supplier and includes a telephone number which when called "routinely" forwards or transfers the calls to a business location that is outside the state.

The bill provides exemptions from liability for publishing, without knowledge of the advertisement being false or misleading, a fictitious name or assumed business name unless the publisher is the supplier committing the offense.

A person violating the prohibition would commit a deceptive and unfair trade practice and would be subject to a civil penalty of up to \$10,000 per violation. The bill provides that the provisions supplement state or federal criminal or civil law which prohibit, or provide penalties, sanctions, or remedies against the same conduct and do not bar any cause of action which would otherwise be available. The bill provides that the provisions do not authorize duplicate enforcement of penalties, sanctions, and remedies already provided for under part II of ch. 501, F.S. and the provisions of this section may not be construed to prevent other provisions of other laws from applying

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Currently, there are numerous remedies provided in law for fraudulent, deceptive and unfair business practices. This bill creates another category of activity which would be subject to the penalty provisions outlined in the deceptive and unfair trade practices act.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 501.97, F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill is designed to create an additional category of activity which would be considered a deceptive and unfair trade practice. Violations of the provisions would subject the person to the penalties of chapter 501, F.S.

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D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON Business Regulation And Consumer Affairs:

Prepared by:

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