

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input 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:

The bill creates a new statutory prohibition and a criminal penalty for violating the prohibition. Business entities that do not meet the new definition under this statutory provision will be prohibited from using the term “chamber of commerce.”

B. EFFECT OF PROPOSED CHANGES:

This bill creates Section 501.972, Florida Statutes, to define a “chamber of commerce” as a “voluntary-membership, dues-paying organization of business and professional persons dedicated, as stated in the articles of incorporation or bylaws of the organization, to improving the economic climate and business development of the community, area, or region in which the organization is located and which:

1. Operates as an approved not-for-profit corporation under chapter 617, Florida Statutes, and as a corporation or association qualified for tax exempt status under s. 501(c)(6) of the Internal Revenue Code of 1986, as amended.
2. Files any required corporation annual reports with the Secretary of State, and if applicable, required annual information returns with the United States Internal Revenue Service.
3. Is governed by a volunteer board of directors of at least 7 members who are elected from among the membership of the organization and who serve without compensation.”

The bill defines a “business entity” as “any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.”

The bill prohibits a business entity that does not qualify as a chamber of commerce under the newly created definition from using the term in its business name or to describe itself. This provision does not apply, however, to binational chambers of commerce recognized by the Office of International Affairs, Department of State, or to chambers of commerce in existence on or before October 1, 1992.

The bill does not place oversight responsibility with any state agency but provides standing, pursuant to s. 495.151, Florida Statutes, for any chamber of commerce to petition the court to enjoin a business entity from using the term in its name or to describe itself.

The bill provides that any violation of this prohibition is a first-degree misdemeanor. A first-degree misdemeanor is punishable by up to 60 days imprisonment under s. 775.082(4)(b), F.S., and a fine of up to \$500 under s. 775.083(1)(e), F.S.

Black's Law Dictionary, Seventh Edition, defines the term "chamber of commerce" as:

"An association of merchants and other business leaders who organize to promote the commercial interests in a given area and whose group is generally affiliated with the national organization of the same name."

The idea of a national institution to represent the unified interests of U.S. business first took shape when President Howard Taft, in a speech before Congress on December 7, 1911, addressed the need for a "central organization in touch with associations and chambers of commerce throughout the country and able to keep purely American interests in a closer touch with different phases of commercial affairs."

Four months later, on April 12, 1912, President Taft's vision became a reality when a group of 700 delegates from various commercial and trade organizations came together to create a unified body of business interest that today is the U.S. Chamber of Commerce.

In 1925, construction on the Chamber headquarters was completed on property that had belonged to Daniel Webster and the U.S. business community made it a rallying point for promoting and defending free enterprise and individual opportunity.

More than 90 years later, the Chamber has grown from an initial membership of 878 to more than 3 million businesses, nearly 3,000 state and local chambers, 830 associations, and over 90 American Chambers of Commerce abroad.

According to the U. S. Chamber of Commerce website (www.uschamber.com), there are 80 local Florida chambers of commerce which are members of the U.S. Chamber of Commerce along with the Florida Chamber of Commerce.

There also exist other chambers of commerce at the national, state, and local level. For Example, the National Black Chamber of Commerce (NBCC) was incorporated in Washington, DC in March 1993. This business association represents 64,000 Black owned businesses and provides an advocacy that reaches all Black owned businesses.

The NBCC is a nonprofit, nonpartisan, nonsectarian organization dedicated to the economic empowerment of African American communities. 190 affiliated chapters are locally based throughout the nation as well as international affiliate chapters based in Bahamas, Brazil, Colombia, Ghana, and Jamaica as well as individuals who have chosen to be direct members with the national office.

There are currently eight (8) organizations in Florida that are members of the NBCC (Daytona Beach, Eatonville, Jacksonville, Pensacola, Pompano Beach, Riviera Beach, St. Petersburg, and Tallahassee).

The purpose of the NBCC is to teach capitalism and expand access to capitalization, technical support, procurement opportunities, effective networking, and sharing of information for Black owned businesses and other minority owned businesses. The main vehicle of disseminating information concerning this purpose is through the Black chambers located throughout the United States. NBCC activities are driven by a strategic plan and the NBCC is nonprofit, nonpartisan and nonsectarian and abides by the rules set forth in an IRS 501(c) (3) classification.

The mission of the NBCC is to economically empower and sustain African American communities through entrepreneurship and capitalistic activity within the United States and has the following goals:

- To increase business development and growth via procurement, capital access and international trade.
- To provide entities to fund and guide NBCC programs.
- To educate and train on the development of Black businesses.
- Provide technical support to affiliated chapters.

In addition to the U.S. Chamber of Commerce and the National Black Chamber of Commerce (as well as other specialized chambers of commerce, such as the U.S. Hispanic Chamber of Commerce established in 1979, see www.usfcc.com), there is a national entity called the Federal Chamber of Commerce (FCC) which is located in Washington D.C.

Based upon committee staff's review of the Federal Chamber of Commerce's website (www.federalchamber.net) and contact with the General Counsel for the U.S. Chamber of Commerce, the FCC is neither affiliated with nor endorsed or sponsored by the U.S. Chamber of Commerce or any local or state chambers of commerce. Recently, the U.S. Chamber of Commerce issued a public announcement and notified all its members that the FCC is contacting businesses claiming to be affiliated with local chambers, verifying the businesses' address, and mailing them an invoice for \$395 for services and products.

Persons who join the Federal Chamber of Commerce (usually the first-year membership subscription is free), receive a wide range of products, services and discounts (referred to as "affinity" programs) including medical and dental savings plans, discount prescriptions, travel discounts, medical information center, roadside assistance, business and website services, legal and financial services, telephone services, and free credit union membership. Nothing on the FCC website addresses issues common to a chamber of commerce such as workforce and economic development.

In addition to becoming a member of the Federal Chamber of Commerce, persons can become FCC "brokers" who make contacts with business and sell FCC memberships to individuals and, in turn, the FCC "broker" receives commissions from each sale.

It should be noted that the Florida Chamber of Commerce and local chambers of commerce also provide "affinity" programs (similar to the FCC) for their members, in addition to having a mission of promoting workforce and economic development in the state and local areas.

State and federal laws often encourage cooperation between government and chambers of commerce to advance government goals¹. Section 501(c) (6) of the Internal Revenue Code of 1986, as amended, provides tax exemptions for:

"Business leagues, **chambers of commerce**, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual." [Emphasis added.]

No federal or state law requires chambers of commerce to be nonprofit organizations. A cursory review of state and federal statutes found no law which defines the term or which limits its use in

¹ See, e.g., Section 445.013(2), F.S., which directs Workforce Florida, Inc., to solicit participation from **chambers of commerce** to maximize the use of welfare-to-work funds, and 7 U.S.C. s. 1624(a) which authorizes the Secretary of Agriculture to cooperate with **chambers of commerce** with respect to the production, transportation, storing, processing, marketing, and distribution of agricultural products.

any way. The Florida Department of State indicates that as of March 2003, there were 454 active corporate filing (431 non-profit corporate filings) using the term “chamber of commerce” in their name and an additional 53 registrations of fictitious names using the phrase. Since October 1, 1992, there have been 163 corporate filings using the name “chamber of commerce” in their name (144 non-profit corporate filings).

The Florida Legislature has enacted statutes limiting the use of certain terms in the name of a regulated business entity. For example, ss. 636.033 and 641.33, F.S., limit the use of the words “insurance,” “casualty,” “surety,” “mutual”, and “HMO” in the name of a business.

Chapter 495, F.S., entitled Registration of Trademarks and Service Marks, establishes procedures for the registration of trademarks with the Department of State. Section 495.011(6), F.S., defines a trade name as:

“...any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify her or his business, vocation or occupation and to distinguish it from the business, vocation or occupation of others.”

Section 495.151, F.S., authorizes affected parties to seek an injunction to enjoin another from the continued use of the same or similar trade name if it appears that there exists the likelihood of injury to the business reputation or of dilution of the distinctive quality of the name.

495.151 Injury to business reputation; dilution.—Every person, association, or union of workers adopting and using a mark, trade name, label or form of advertisement may proceed by suit, and all courts having jurisdiction thereof shall grant injunctions to enjoin subsequent use by another of the same or any similar mark, trade name, label or form of advertisement if it appears to the court that there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of the mark, trade name, label or form of advertisement of the prior user, notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services.

C. SECTION DIRECTORY:

Section 1. Creates s. 501.972, Florida Statutes, regarding chambers of commerce.

Subsection (1) creates a statutory definition for “business entity” and “chamber of commerce.”

Subsection (2) creates a first-degree misdemeanor penalty for a business entity to use the term chamber of commerce in its name or to describe itself and provides exemptions.

Subsection (3) specifies that the section imposes no requirement for oversight or regulation of a business name, trademark, trade name, or other requirement for filing or registration.

Subsection (4) authorizes a chamber of commerce to bring suit to enjoin a business entity from using the term.

Section 2. Provides that the act will take effect October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses using the term “chamber of commerce” in their names that do not meet the statutory definition created in this legislation will be subject to criminal prosecution or civil actions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

No.

2. Other:

Statutes limiting the use of certain terms in the name of a business have been upheld against attack under the First Amendment of the United States Constitution and under the Equal Protection Clause of the United States Constitution when the purpose of the statute is to prevent consumers from being misled.²

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 1995, Congress added to the existing federal trademark law, the Lanham Act (15 U.S.C.A – 1994), the Federal Trademark Dilution Act (FTDA). The concept of trademark “dilution” is distinct from the more common concept of trademark “infringement.”

² See Friedman v. Rogers, 440 U.S. 1 (1979); Baker v. Registered Dentists of Okla., 543 F. supp 1177 (W.D. Oklahoma 1982); Greater Miami Fin. Corp. v. Dickinson, 214 So. 2d 874 (Fla. 1968).

A trademark infringement claim requires a plaintiff to show that the use of the junior mark is likely to cause confusion between its product or service and the product or service of the infringing mark. Infringement law protects consumers from being misled by the use of infringing marks and also protects producers from unfair practices by an imitating competitor.

A trademark dilution claim focuses on the “whittling away” of the “uniqueness” of a trademark and the resulting loss of economic power caused by other uses of the mark, regardless of whether such use is likely to actually cause confusion (not merely to likely cause dilution).

Unlike most state statutes, including Florida at s. 4965.151, F.S., which allow a dilution claim if a junior mark is “likely to cause dilution,” the language of the FTDA is limited to use of a trademark that “causes dilution.” It is likely that should this bill become law, litigation may result which will address distinctions between state and federal law in terms of trademark dilution.

Another issue to consider in this bill is that the definition of “chamber of commerce” requires that a chamber must be an approved not-for-profit corporation under chapter 617 or an association qualified for tax exempt status under s. 501(c) (6) of the Internal Revenue Code.

The National Black Chamber of Congress is a 501(c) (3) as is most, if not all, of its affiliate members. The President and CEO of the NBCC is on the Board of the U.S. Chamber of Commerce. According to the Florida Chamber of Commerce, the Tallahassee affiliate with the NBCC is a member of the Florida Chamber of Commerce.

Staff at the Florida Chamber of Commerce indicates that it would support amending the definition of chamber of commerce to include a reference to s. 501(c) (3) of the Internal Revenue Code, or as otherwise necessary, so as to include all affiliated chambers of commerce.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 10, 2003, the subcommittee adopted and recommended to the Commerce Committee an amendment to the bill that added s. 501(c) (3) of the Internal Revenue Code to the definition of “chamber of commerce.”