

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

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Prepared By: Commerce Committee

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BILL: SB 1862

INTRODUCER: Senators Bennett and Gaetz

SUBJECT: Use of "Chamber of Commerce"

DATE: March 13, 2007

REVISED: 03/20/07

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

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**I. Summary:**

This bill provides a definition of the terms "business entity" and "chamber of commerce." It also prohibits a business entity that does not qualify as a chamber of commerce under the definition in this bill from using "chamber of commerce" in its business name or to describe itself.

The bill provides that the unauthorized use of the term "chamber of commerce" is a first-degree misdemeanor. In addition, the bill permits a chamber of commerce, as defined in the bill, to enjoin an entity improperly using the term from continuing to employ the term.

This bill creates the following sections of the Florida Statutes: 501.973.

**II. Present Situation:**

According to the U.S. Chamber of Commerce website, there are 95 local Florida chambers of commerce which are members of the U.S. Chamber of Commerce, including the Florida Chamber of Commerce.<sup>1</sup> However, neither the U.S. Chamber of Commerce nor the Florida Chamber of Commerce provides a definition of the term "chamber of commerce."

One definition of the term "chamber of commerce" describes it as:

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<sup>1</sup> U.S. Chamber of Commerce, <http://www.uschamber.com/default> (last visited 16 March 2007).

[a]n 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.<sup>2</sup>

The national organization to which this definition likely refers is the U.S. Chamber of Commerce, which was formally organized in 1912 at the urging of then-President William Taft. In an address to Congress, he expressed “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.”<sup>3</sup>

State and federal laws often encourage cooperation between government and chambers of commerce to advance government goals. For example, s. 445.013(2), F.S., which directs Workforce Florida, Inc., solicits participation from chambers of commerce to maximize the use of welfare-to-work funds, and 7 U.S.C. s. 1624(a) 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. The Internal Revenue Code includes chambers of commerce in its list of entities to which tax exemptions are extended.<sup>4</sup>

### ***Bi-National Chambers of Commerce***

While the term “bi-national chamber of commerce” is undefined in Florida statute, it enjoys extensive use in the business community in Florida. The Association of Bi-National Chambers of Commerce in Florida serves as an umbrella group for all bi-national chambers of commerce and lists as part of its mission, “foster[ing], promot[ing] and develop[ing] commercial relations and exchanges between the United States and...overseas countries.”<sup>5</sup> The Florida Governor’s Office of Tourism, Trade, and Economic Development also utilizes the term in its 2006 compilation entitled “Florida Bi-National Chamber of Commerce & International Organizations,”<sup>6</sup> which lists bi-national chambers of commerce in the state such as the Haitian-American Chamber of Commerce and the Argentina-Florida Chamber of Commerce.

### ***Prohibited Names***

Statutes have been enacted limiting the use of certain terms in the name of a business entity such as, for example, ss. 636.033 and 641.33, F.S., which limit the use of the following words in the name of a business: “insurance,” “casualty,” “surety,” and “mutual.” Statutes limiting the use of certain terms in the name of a business have been upheld against attack under the First Amendment of the U.S. Constitution and under the Equal Protection Clause of the U.S. Constitution when the purpose of the statute is to prevent consumers from being misled. *See, Baker v. Registered Dentists of Oklahoma*, 543 F. Supp 1177 (W.D. Oklahoma 1982)(holding

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<sup>2</sup> Black’s Law Dictionary, Seventh Edition.

<sup>3</sup> U.S. Chamber of Commerce, *History*, <http://www.uschamber.com/about/history/default.htm?n=tb> (Last visited 13 March 2007).

<sup>4</sup> I.R.C. s. 501(c)(6).

<sup>5</sup> Association of Bi-National Chambers of Commerce in Florida, *About Abicc*, <http://www.abicc.org/about.htm> (Last visited 13 March 2007).

<sup>6</sup> OTTED, <http://internationalaffairs.flgov.com/pdf/2006internationalorgsdirectory.pdf>. (Last visited 13 March 2007).

dentist's use of a trade name impermissible and not protected by the First Amendment right to free speech where consumers would likely be misled by the name); *Greater Miami Fin. Corp. v. Dickinson*, 214 So. 2d 874 (Fla. 1968)(holding that a corporation's use of the term "savings" in its fictitious name could not be protected under the First Amendment given its potential to mislead the public; and finding that prohibitions of the challenged name statute which restricted name usage by corporations, but not individuals, did not offend Equal Protection law since its association of the term "savings" with corporations was a reasonable classification).

### ***Civil Enforcement***

Chapter 495, F.S., relating to the registration of trademarks and service marks, authorizes the courts to enjoin the improper use of a mark, trade name, label or form of advertisement under certain circumstances. Section 495.011(6), F.S., defines the term "trade name" to mean any name used by a person to identify a business or vocation of such person. Under s. 495.151 (1), F.S.:

The owner of a mark that is famous in this state shall be entitled, subject to the principles of equity and upon such term as the court deems reasonable, to an injunction and to obtain such other relief against another person's commercial use of a mark or trade name if such use begins after the mark has become famous and is likely to cause dilution of the distinctive quality of the famous mark, as provided in this section. . . .

Section 495.151, F.S., provides a dilution action for injury to business reputation. This is different from a trademark infringement action under s. 495.131, F.S., or a common-law action for trademark infringement which is expressly preserved in s. 495.161, F.S.

The Florida Supreme Court case, *Great Southern Bank v. First Southern Bank*, 625 So. 2d 463 (Fla. 1993), is the seminal trade name case. In *Great Southern*, the court held that a dilution action differs from an infringement action in that the dilution action does not necessarily depend on the disputed names involving competing goods or creating the likelihood of confusion. A violation of s. 495.151, F.S., results from a likelihood of injury to business reputation or the dilution of the distinctive quality of the trademark name. A person can be enjoined from use under s. 495.151, F.S., if s/he uses a designation that resembles the distinctive mark or name of another, in a manner likely to cause a reduction in the distinctiveness of the other's mark or name, or if it tarnishes the images associated with the other's mark or name. Whether the mark or name has acquired sufficient distinctiveness to be protected from dilution involves consideration of many factors, such as the duration and extent of advertising that emphasize the mark or name and the degree of recognition by prospective purchasers. *Id.* at 469.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 501.973, F.S., to define the term "business entity," in paragraph (1)(a) 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.

Paragraph (1)(b) of this section also defines the term “chamber of commerce” as a not-for-profit corporation that is qualified for tax exempt status under s. 501(c)(3) or s. 501(c)(6) of the Internal Revenue Code, which maintains a voluntary, dues paying membership of business and professional persons. The chamber of commerce must be: dedicated to improving the economic climate and business development in the area in which the organization is located; makes appropriate filings with the Department of State and Internal Revenue Service (IRS); and is governed by a volunteer board of directors of at least seven members.

Paragraph (2) of this section prohibits a business entity that does not meet the proposed definition of “chamber of commerce” from using the term “chamber of commerce” in its name or to describe itself as a chamber of commerce, unless the entity is a bi-national chamber of commerce recognized by the Department of State’s, Office of International Affairs, or was a chamber of commerce in existence on or before October 1, 1996. Violation of this provision constitutes a misdemeanor of the first degree.

Paragraph (3) of this section clarifies that the bill does not impose any duties on the entity that oversees the registration of trademarks in the state, the Department of State. The language of the bill is inserted in ch. 501, F.S., (a chapter under which the Department of State bears no responsibility), and the bill expressly provides in subsection (3) that no requirement is created for oversight or regulation of a business entity name, trademark, trade name, or other requirement for filing or registration.

Paragraph (4) of this section authorizes chambers of commerce, subject to the provisions of s. 495.151, F.S., to sue any business entity that is not a chamber of commerce to enjoin it from using the term “chamber of commerce” in its name or to describe itself.

**Section 2** of the bill provides an effective date of October 1, 2007

#### **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:**

Beginning October 1, 2007, a business entity using the term “chamber of commerce” in its name that does not meet the statutory definition of “chamber of commerce” will be subject to criminal prosecution or civil actions, unless the business entity is a bi-national chamber of commerce or a chamber of commerce that was in existence on or before October 1, 1996.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## VIII. Summary of Amendments:

**Barcode 522532:** This amendment further restricts the number of organizations that may use the term “chamber of commerce” by changing the date by which the organization would have to be recognized as a bi-national chamber of commerce or a Department of State-registered entity from 1996 to 1992.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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