

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.)

Prepared By: Judiciary Committee

BILL: SB 1862

INTRODUCER: Senator Bennett and others

SUBJECT: "Chamber of Commerce"/Use of the Term

DATE: April 16, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	Fav/1 amendment
2.	Maclure	Maclure	JU	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill prohibits a business entity from using the term "chamber of commerce" in its business name or to describe itself unless it satisfies the bill's definition of a chamber of commerce. Use of term in violation of the provisions is a first-degree misdemeanor and subjects the entity to a civil action to enjoin its use. The bill's prohibition does not apply to bi-national chambers of commerce recognized by the U.S. government or to chambers of commerce in existence on or before October 1, 1996.

This bill creates section 501.973, Florida Statutes.

II. Present Situation:

Chambers of Commerce/Bi-National Chambers of Commerce

According to a directory on the website of the U.S. Chamber of Commerce, there are 89 local Florida chambers of commerce that are members of the U.S. Chamber of Commerce, including the state chamber, which is the Florida Chamber of Commerce.¹ However, neither the U.S.

¹ U.S. Chamber of Commerce, <http://www.uschamber.com/chambers/directory/default.htm?st=fl> (last visited April 14, 2007).

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:

[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.²

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.”³ Shortly thereafter, “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.”⁴

State and federal laws have often encouraged cooperation between government and chambers of commerce to advance government goals. For example, s. 1003.493, F.S., provides that one of the goals of career and professional academies offered by public schools is to provide instruction in high-demand careers identified by “the chamber of commerce.” Former s. 445.013(2), F.S., directed Workforce Florida, Inc., to solicit participation from chambers of commerce to maximize the use of welfare-to-work funds. On the federal level, 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. In addition, the Internal Revenue Code specifically includes chambers of commerce in its list of entities to which tax exemptions are extended.⁵

Although the term “bi-national chamber of commerce” is undefined in the Florida Statutes, it is used extensively 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 fostering, promoting, and developing “commercial relations and exchanges between the United States and...overseas countries.”⁶ The Governor’s Office of Tourism, Trade, and Economic Development also utilizes the term in its 2006 compilation titled “Florida Bi-National Chamber of Commerce & International Organizations,”⁷ 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.

² BLACK’S LAW DICTIONARY (8th ed. 2004).

³ U.S. Chamber of Commerce, *The U.S. Chamber’s History*, <http://www.uschamber.com/about/history/default.htm?n=tb> (last visited April 14, 2007).

⁴ *Id.*

⁵ Under I.R.C. s. 501(c)(6), “chambers of commerce” are among the types of organizations specifically identified as being exempt from income taxes.

⁶ Association of Bi-National Chambers of Commerce in Florida, *About ABiCC*, <http://www.abicc.org/about.htm> (last visited April 14, 2007).

⁷ Office of Tourism, Trade, and Economic Development, *2006 Florida Bi-National Chambers of Commerce & International Organizations*, available at <http://internationalaffairs.flgov.com/pdf/2006internationalorgsdirectory.pdf>.

Limiting Use of Business 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, e.g., Baker v. Registered Dentists of Oklahoma*, 543 F. Supp 1177 (W.D. Oklahoma 1982) (holding a 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 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).

Trademarks and Service Marks/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 action 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 of *Great Southern Bank v. First Southern Bank*, 625 So. 2d 463 (Fla. 1993), is a 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 he or she 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.⁸

III. Effect of Proposed Changes:

This bill prohibits a business entity from using the term “chamber of commerce” in its business name or to describe itself unless it meets the bill’s definition of that term. Under the bill, a “chamber of commerce” is 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;
- Maintains a voluntary, dues-paying membership of business and professional persons;
- Is 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; and
- Is governed by a volunteer board of directors of at least seven members.

Using the term “chamber of commerce” in violation of the proposed statute, s. 501.973, F.S., constitutes a misdemeanor of the first degree.⁹ Additionally, a chamber of commerce may sue a business entity to enjoin its use of the term, subject to the provisions s. 495.151, F.S., which is the statute governing dilution of service marks and trademarks. It is not immediately whether – by referencing the provisions of the service mark and trademark dilution statute – the bill contemplates that the ability to enjoin an entity from using the term “chamber of commerce” would be available solely if that term qualifies as a mark, or whether it contemplates that the procedures and standards of the dilution statute would apply in “chamber of commerce” context as well.

Despite the prohibition, a business entity that may not qualify under the bill’s definition of “chamber of commerce” may use the term if it is a bi-national chamber of commerce recognized by the Department of State’s Office of International Affairs or is a chamber of commerce in existence on or before October 1, 1996.

The bill specifies that it does not impose a requirement for overseeing or regulating business entity names, trademarks, or trade names, or a requirement for filing or registration.¹⁰

The bill provides an effective date of October 1, 2007.

⁸ *Great Southern Bank v. First Southern Bank*, 625 So. 2d 463, 470 (Fla. 1993).

⁹ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not exceeding \$1,000.

¹⁰ The bill does not identify a particular state agency that is relieved from the regulatory responsibility. It appears the bill may be suggesting that the Department of State, which oversees business incorporations and filings, does not have a duty to police use of the term “chamber of commerce” in the course of carrying out those duties.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. 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 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.¹¹

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 which does not meet the statutory definition of “chamber of commerce” will be subject to criminal prosecution or civil injunctive 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.

¹¹ See *Baker v. Registered Dentists of Oklahoma*, 543 F. Supp 1177 (W.D. Oklahoma 1982) (holding a 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 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).

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

Barcode 522532 by Commerce:

Narrows the exception to the bill's prohibition on use of the term "chamber of commerce," by providing that the prohibition does not apply to chambers of commerce in existence on or before October 1, 1992, rather than October 1, 1996.

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