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HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 473
RELATING TO: Use of "Chamber of Commerce" Term
SPONSOR(S): Council for Smarter Government, Representative Gardiner and others

TIED BILL(S):

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

- (1) BUSINESS REGULATION YEAS 10 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill creates statutory definitions for the terms "chamber of commerce" and "business entity" and prohibits a business entity, which 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 prohibition does not apply, however, to binational chambers of commerce or chambers of commerce in existence on or before October 1, 1992.

The bill provides that any violation of this prohibition is a first-degree misdemeanor. Further, the bill provides standing for any chamber of commerce to petition a court to enjoin a business entity from unlawful use of the term.

The bill will have no significant economic impact on state revenue collections or expenditures.

The bill provides that the act will take effect October 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | 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 creates a criminal penalty for violations of the prohibition.

Business entities that do not meet the new definition under this statutory provision will be prohibited from using the term.

B. PRESENT SITUATION:

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.

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 any way. The Department of State indicates that 1,084 corporations presently use the term "chamber of commerce" in their name and an additional 60 registrations of fictitious names include the term. At the time of publication of this analysis, no data was available that would indicate the percentage registered as "for profit" or "not-for-profit" corporations.

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.

This Legislature has previously enacted statutes limiting the use of certain terms in the name of a regulated business entity. See, e.g., ss. 636.033 and 641.33, F.S., which limits the use of the words "insurance," "casualty," "surety," and "mutual" in the name of a business.

Chapter 495, 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. EFFECT OF PROPOSED CHANGES:

This bill creates a new s. 501.97, 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 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.

According to proponents of this legislation, these new statutory prohibitions will not affect chambers that have a subsidiary for-profit corporation.

D. **SECTION-BY-SECTION ANALYSIS:**

The bill creates an unnumbered section of the Florida Statutes.

Section 1. Creates s. 501.97, Florida Statutes, dealing with 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 impose 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, 2002.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

Insignificant.

2. **Expenditures:**

Insignificant.

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. **Revenues:**

Insignificant.

2. Expenditures:

Insignificant.

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.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

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. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Business Regulation

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 strike-everything amendment was adopted by the Committee on Business Regulation on February 7, 2002. As amended, the bill will not require any additional funding to a state agency for oversight of the prohibitions. That amendment addresses five areas of the bill, as follows:

One, the amendment provides an exemption for binational chambers of commerce that are recognized by the Office of International Affairs, Department of State, and chambers of commerce in existence on or before October 1, 1992;

Two, the amendment places the prohibition created by the bill in newly created s. 501.97, Florida Statutes;

Three, the amendment clarifies that the new language does not impose a requirement for oversight or regulation. This amendment will eliminate the need for any additional funding to the Department of State.

Four, the amendment gives standing to chambers of commerce, pursuant to s. 495.151, to sue to have an entity that does not qualify as a chamber of commerce under the newly created definition enjoined from using the term "chamber of commerce"; and

Five, the amendment changes the effective date from "upon becoming law" to October 1, 2002.

Smarter Government Council

The Smarter Government Council met on February 26, 2002, adopted the strike-everything amendment traveling with the bill and voted, 12 Yeas and 0 Nays, to report the bill favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Janet Clark Morris

Staff Director:

M. Paul Liepshutz

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Chasity H. Frey

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AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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Don Rubottom