

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 712  
SPONSOR: Commerce and Economic Opportunities Committee and Senators Dyer and Futch  
SUBJECT: Chambers of Commerce  
DATE: March 8, 2002 REVISED: 03/12/02 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute defines the term “chamber of commerce” as a not-for-profit corporation that is qualified for tax exempt status under section 501(c)(6) of the Internal Revenue Code; 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. The committee substitute further prohibits a business entity from using the term “chamber of commerce” in its name or to describe itself unless it meets the proposed definition, except for certain bi-national chambers of commerce and chambers of commerce in existence on or before October 1, 1992. The committee substitute provides that unauthorized use of the term “chamber of commerce” is a first-degree misdemeanor. The committee substitute authorizes chambers of commerce to sue to have any business entity that is not a chamber of commerce enjoined from using the term “chamber of commerce” in its name or to describe itself.

This committee substitute creates section 501.97, Florida Statutes.

## II. Present Situation:

### Chambers of Commerce

*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 goals. *See, e.g.*, s. 445.013(2), F.S., (directing 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) (authorizing the Secretary of Agriculture to cooperate with chambers of commerce with respect to the production, transportation, storing, processing marketing, and distribution of agricultural products). Nevertheless, there is no Florida or federal law that defines the term “chamber of commerce” or limits its usage.

Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, provides tax exemptions for not-for-profit chambers of commerce. The Florida Department of State indicates that 1,084 corporations presently use the term “chamber of commerce” in their name and an additional 60 fictitious name registrants use the term in their name. There is no breakdown of the 1,084 for-profit and not-for-profit corporations that use the term “chamber of commerce.”

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

Like the term “chamber of commerce,” there is no statutory definition of the term “bi-national chamber of commerce.” However, the common thread between organizations that have been labeled as bi-national chambers of commerce by the Department of State in the *2001 Florida Bi-National Chambers of Commerce & Trade Associations Directory* is a mission to promote trade between the United States and another country or continent. (This directory is available at [http://oir.dos.state.fl.us/pdf/bi\\_national.pdf](http://oir.dos.state.fl.us/pdf/bi_national.pdf).) No formal process exists in the Florida Statutes or the Florida Administrative Code to recognize an organization as a bi-national chamber of commerce.

### **Prohibited Names**

Statutes have been enacted limiting the use of certain terms in the name of a business entity. *See, e.g.*, ss. 636.033 and 641.33, F.S., (limiting the use of the following words in the name of a business: “insurance,” “casualty,” “surety,” and “mutual”); former s. 665.02, F.S., (repealed in 1969) (limiting the use of the term “savings” in the name of a business). 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); *Greater Miami Fin. Corp. v. Dickinson*, 214 So. 2d 874 (Fla. 1968).

### **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 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. According to s. 495.151, F.S.:

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.

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 of *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 the actor 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 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. *Great Southern*, 625 So.2d at 469; see also *Tortoise Island Homeowners Association, Inc. v. Tortoise Island Realty, Inc.*, 790 So.2d 525, 534-535 (Fla. 5<sup>th</sup> DCA 2001).

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

#### **Chamber of Commerce Defined**

The committee substitute creates s. 501.97, F.S. Subsection (1)(a) defines the term "business entity" to mean 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.

Subsection (1)(b) defines the term "chamber of commerce" as: a not-for-profit corporation that is qualified for tax exempt status under section 501(c)(6) of the Internal Revenue Code; 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 (IRS); and is governed by a volunteer board of directors of at least seven members.

Required filings by chambers of commerce that are tax exempt organizations pursuant to s. 501(c)(6) of the Internal Revenue Code are generally open to public inspection. See IRS Publication 557, *Tax-Exempt Status for Your Organization* (Rev. July 2001). This disclosure includes the disclosure of IRS Form 990, *Return of Organization Exempt From Income Tax*, and

IRS Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, which contain financial and operational data.

### **Prohibition and Exceptions**

Subsection (2) 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, Office of International Affairs or was a chamber of commerce in existence on or before October 1, 1992.

### **Criminal Penalties**

Subsection (2) also provides that unauthorized use of the term “chamber of commerce” is a first-degree misdemeanor, for which the maximum penalty is a fine not to exceed \$1,000 and imprisonment for a term not to exceed 1 year.

### **Department of State Responsibility**

To clarify that no duties are imposed on the Department of State, the language of the committee substitute is inserted in ch. 501, F.S., (a chapter under which the Department of State bears no responsibility), and the committee substitute 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.

### **Civil Enforcement**

Subsection (4) 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. The term “subject to” as used in the committee substitute appears to imply that s. 495.151, F.S., (authorizing injunctions against dilution of a trade name or label) limits a chamber of commerce from seeking an injunction for unauthorized use of the term “chamber of commerce.” If it is the Legislature’s intent that a chamber of commerce is always authorized to seek an injunction for unauthorized use of the term “chamber of commerce” or that unauthorized use of the term is a dilution, it may wish to amend the committee substitute on page 2, line 24, by deleting the words “Subject to” and inserting Under.

### **Effective Date**

The committee substitute takes effect on October 1, 2002.

## **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, 2002, 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, 1992. There is no available information that indicates how many currently existing chambers of commerce were in existence prior to October 1, 1992.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The committee substitute creates s. 501.97, F.S. However, that section is already in use in the Florida Statutes and it pertains to “deceptive trade practices; print advertisement; penalties.” Therefore, the committee substitute needs to be amended to redesignate the newly created section.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Judiciary

Makes a technical correction by changing the designation of the newly created statute to s. 501.972, F.S.