

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 Use of the Term "Chamber of Commerce"
SPONSOR(S): Gardiner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1862

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	<u></u>	<u>West</u>	<u>Croom</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</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>

SUMMARY ANALYSIS

House Bill 979 creates 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 the ability for any chamber of commerce to petition a court to limit or restrain a business entity from unlawful use of the term.

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

The bill provides that the act will take effect October 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill creates new statutes that provide criminal penalties for violating the prohibition set out in this bill.

Safeguard Individual Liberty: This bill prevents business entities or organizations that do not meet the requirements set out in this bill from using the term “chamber of commerce.”

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

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.¹

According to the U.S. Chamber of Commerce website (www.uschamber.com), there are 97 registered local Chambers of Commerce in Florida.²

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.”

Limiting the Use of Certain Terms

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:

¹ Information from this section can be found at <http://www.uschamber.com/about/history/default.htm?n=tb> (visited 3/15/07).

² Information online at <http://www.uschamber.com/chambers/directory/default.htm?st=f1> (visited 3/15/07).

“...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, F.S. 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.

Abuses

In 2005, a company using the name “Florida Regional Chamber of Commerce” was soliciting membership dues throughout the state of Florida. By phoning future clients and asking where they should mail the \$389 membership renewal bill, they gave the appearance of being a not-for-profit Chamber of Commerce associated with the state and local governments.

In reality, the Florida Regional Chamber of Commerce didn’t exist, and the Florida Department of State Division of Corporations had no record of such a company. Unlike most chambers of commerce whose main goals are to advance general working conditions through social and political representation, the Regional Chamber of Commerce was intimidating prospective members into paying dues without rightful justification. Several companies reported being charged \$1,000 in membership dues after only agreeing to pay \$49 for a three month membership.

Effect of Proposed Changes:

HB 979 creates Section 501.973, F.S., 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, F.S., and as a corporation or association qualified for tax exempt status under s. 501(c)(6) or s. 501 (c)(3) 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.

An example of a binational chamber is the Association of Bi-National Chambers of Commerce in Florida (ABiCC).

The ABiCC serves as the cooperative chamber representing bi-national chambers throughout the state of Florida. ABiCC represents almost 40 member organizations throughout the state of Florida, whose total membership equates to 8,000 international memberships within the state of Florida. This makes up a large part of the international community within Florida.

ABiCC has seen a tremendous increase in bi-national chambers located in the state of Florida, which directly relates to the growing diversification of our economy.³

The bill does not place oversight responsibility with any state agency but provides standing, pursuant to s. 495.151, F. S., 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.

C. SECTION DIRECTORY:

Section 1: Creates s. 501.973, 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, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³ Information online at <http://www.abicc.org/about.htm> (visited 3/15/07).

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:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

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.⁴

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.” 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

⁴ 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).

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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES