

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.

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.) 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following words in the name of a business: “insurance,” “casualty,” “surety,” and “mutual”); former s. 665.02, F.S., (repealed in 1969) (limiting the use of the term “savings” in the name of a business).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., authorizes the courts to enjoin the improper use of a mark, trade name, label or form of advertisement under certain circumstances. 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.

III. Effect of Proposed Changes:

Chamber of Commerce Defined

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 (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

The committee substitute 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, unless the entity is a bi-national chamber of commerce recognized by the Department of State, Office of International Affairs or a chamber of commerce in existence on or before October 1, 1992.

Criminal Penalties

The committee substitute 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.

Civil Enforcement

Subject to the provisions of s. 495.151, F.S., 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. 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.

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 that no requirement is created for oversight or regulation of a business entity name, trademark, trade name or other requirement for filing or registration.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
