

## ENROLLED

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2006 Legislature

1                                   A bill to be entitled  
2           An act relating to trademarks; creating s. 495.001, F.S.;  
3           providing a short title; amending s. 495.011, F.S.;  
4           providing definitions; amending s. 495.021, F.S.;  
5           precluding registration of certain marks; repealing s.  
6           495.027, F.S., relating to reservation of a mark; amending  
7           s. 495.031, F.S.; providing requirements for information  
8           to be contained in an application for registration of a  
9           mark; authorizing the Department of State to require  
10          certain information in an application; requiring that the  
11          application be signed and verified by any of certain  
12          persons; requiring that the application be accompanied by  
13          three specimens or facsimiles showing the mark; requiring  
14          that the application be accompanied by a fee; creating s.  
15          495.035, F.S.; providing filing guidelines for  
16          applications; providing for disclaimers of unregistrable  
17          components; providing for amendment and judicial review;  
18          providing for priority of registrations; amending s.  
19          495.041, F.S.; providing that first use shall inure to the  
20          benefit of the registrant or applicant under certain  
21          circumstances; amending s. 495.061, F.S.; providing for  
22          the issuance of a certificate of registration by the  
23          department; removing a provision relating to reservation  
24          of a mark; amending s. 495.071, F.S.; providing guidelines  
25          for the renewal of marks; revising duration of  
26          effectiveness of a registration; amending s. 495.081,  
27          F.S.; providing for the assignability of marks;

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28 | authorizing a photocopy of an assignment to be acceptable  
29 | for recording; providing for change of name certificates  
30 | for registrants; authorizing recordation of certain  
31 | instruments; providing acknowledgment of recording as  
32 | prima facie evidence of the execution of an assignment or  
33 | other instrument; specifying requirements for creation and  
34 | perfection of security interests in marks; amending s.  
35 | 495.091, F.S.; requiring the department to record all  
36 | marks registered with the state; amending s. 495.101,  
37 | F.S.; requiring the department to cancel certain marks;  
38 | amending s. 495.111, F.S., which establishes a  
39 | classification of goods and services; providing that a  
40 | single application for registration of a mark may include  
41 | any or all goods upon which, or services with which, the  
42 | mark is actually being used comprised in one or more of  
43 | the classes listed; amending s. 495.131, F.S.; revising  
44 | infringement provisions to include an element of lack of  
45 | consent by the registrant; conforming language; amending  
46 | s. 495.141, F.S.; providing additional remedies for the  
47 | unauthorized use of a mark; creating s. 495.145, F.S.;  
48 | providing a forum for actions regarding registration;  
49 | providing for service of process on nonresident  
50 | registrants; amending s. 495.151, F.S.; providing for an  
51 | injunction in cases of dilution of a famous mark;  
52 | providing factors to be considered in determining that a  
53 | mark is famous; providing damages in certain circumstances  
54 | of dilution; amending s. 495.161, F.S.; deleting language

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55 relating to the diminishing of certain common law rights;  
56 amending s. 495.171, F.S.; providing effective date of  
57 changes to ch. 495, F.S., as amended by the act; providing  
58 for repeal of conflicting acts; providing application to  
59 pending actions; amending s. 495.181, F.S.; providing  
60 construction and legislative intent; creating s. 495.191,  
61 F.S.; providing certain fees; repealing s. 506.06, F.S.,  
62 relating to unlawful to counterfeit trademark, to conform;  
63 repealing s. 506.07, F.S., relating to filing of trademark  
64 or other form of advertisement for record with Department  
65 of State, to conform; repealing s. 506.08, F.S., relating  
66 to fee for filing, to conform; repealing s. 506.09, F.S.,  
67 relating to civil remedies, to conform; repealing s.  
68 506.11, F.S., relating to unlawful use of trademark, to  
69 conform; repealing s. 506.12, F.S., relating to procuring  
70 the filing of trademark or other form of advertisement by  
71 fraudulent representations, to conform; repealing s.  
72 506.13, F.S., relating to using the name or seal of  
73 another, to conform; providing an effective date.  
74

75 Be It Enacted by the Legislature of the State of Florida:  
76

77 Section 1. Section 495.001, Florida Statutes, is created  
78 to read:

79 495.001 Short title.--This chapter may be cited as the  
80 "Registration and Protection of Trademarks Act."

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81 Section 2. Section 495.011, Florida Statutes, is amended  
82 to read:

83 (Substantial rewording of section. See  
84 s. 495.011, F.S., for present text.)

85 495.011 Definitions.--As used in this chapter:

86 (1) "Abandoned" applies to a mark when either of the  
87 following occurs:

88 (a) When its use has been discontinued with intent not to  
89 resume such use. Intent not to resume use may be inferred from  
90 circumstances. Nonuse for 3 consecutive years shall constitute  
91 prima facie evidence of abandonment.

92 (b) When any course of conduct of the owner, including  
93 acts of omission or commission, causes the mark to lose its  
94 significance as a mark.

95 (2) "Applicant" means the person filing an application for  
96 registration of a mark under this chapter and the legal  
97 representatives, successors, or assigns of such person.

98 (3) "Certification mark" means any word, name, symbol, or  
99 device, or any combination thereof, used by a person other than  
100 the owner of the mark to certify regional or other origin,  
101 material, mode of manufacture, quality, accuracy, or other  
102 characteristics of such person's goods or services or that the  
103 work or labor on the goods or services was performed by members  
104 of a union or other organization.

105 (4) "Collective mark" means a trademark or service mark  
106 used by the members of a cooperative, an association, or other  
107 collective group or organization, and includes marks used to

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108 | indicate membership in a union, an association, or other  
 109 | organization.

110 | (5) "Department" means the Florida Department of State or  
 111 | its designee charged with the administration of this chapter.

112 | (6) "Dilution" means the lessening of the capacity of a  
 113 | mark to identify and distinguish goods or services, regardless  
 114 | of the presence or absence of:

115 | (a) Competition between the owner of the mark and other  
 116 | parties.

117 | (b) Likelihood of confusion, mistake, or deception.

118 | (7) "Mark" includes any trademark, service mark,  
 119 | certification mark, or collective mark entitled to registration  
 120 | under this chapter, whether or not registered.

121 | (8) "Person," and any other word or term used to designate  
 122 | the applicant or other party entitled to a benefit or privilege  
 123 | or rendered liable under the provisions of this chapter, means a  
 124 | juristic person as well as a natural person. "Juristic person"  
 125 | includes a firm, partnership, corporation, union, association,  
 126 | or other organization capable of suing and being sued in a court  
 127 | of law.

128 | (9) "Registrant" means the person to whom the registration  
 129 | of a mark under this chapter is issued and the legal  
 130 | representatives, successors, or assigns of such person.

131 | (10) "Related company" means any person whose use of a  
 132 | mark is controlled by the owner of the mark with respect to the  
 133 | nature and quality of the goods or services on or in connection  
 134 | with which the mark is used.

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135       (11) "Service mark" means any word, name, symbol, or  
136 device, or any combination thereof, used by a person to identify  
137 and distinguish the services of such person, including a unique  
138 service, from the services of others, and to indicate the source  
139 of the services, even if that source is unknown. Titles,  
140 character names, and other distinctive features of radio or  
141 television programs may be registered as service marks  
142 notwithstanding that the person or the programs may advertise  
143 the goods of the sponsor.

144       (12) "Trade name" means any name used by a person to  
145 identify a business or vocation of such person.

146       (13) "Trademark" means any word, name, symbol, or device,  
147 or any combination thereof, used by a person to identify and  
148 distinguish the goods of such person, including a unique  
149 product, from those manufactured or sold by others, and to  
150 indicate the source of the goods, even if the source is unknown.

151       (14) "Use" means the bona fide use of a mark in the  
152 ordinary course of trade and not used merely for the purpose of  
153 reserving a right in a mark. For purposes of this chapter, a  
154 mark is deemed to be in use:

155       (a) On goods when:

156       1. The mark is placed in any manner on the goods, their  
157 containers or the displays associated therewith, or on the tags  
158 or labels affixed thereto, or, if the nature of the goods makes  
159 such placement impracticable, on documents associated with the  
160 goods or their sale; and

161       2. The goods are sold or transported in this state.

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162           (b) On services when the mark is used or displayed in the  
 163 sale or advertising of services and the services are rendered in  
 164 this state.

165           Section 3. Subsection (1) of section 495.021, Florida  
 166 Statutes, is amended to read:

167           495.021 Registrability.--

168           (1) A mark by which the goods or services of any applicant  
 169 for registration may be distinguished from the goods or services  
 170 of others shall not be registered if it:

171           (a) Consists of or, comprises ~~or includes~~ immoral,  
 172 deceptive, or scandalous matter; ~~or~~

173           (b) Consists of or, comprises ~~or includes~~ matter which may  
 174 disparage or falsely suggest a connection with persons, living  
 175 or dead, institutions, beliefs, or national symbols, or bring  
 176 them into contempt, or disrepute; ~~or~~

177           (c) Consists of or ~~or~~ comprises ~~or includes~~ the flag or  
 178 coat of arms or other insignia of the United States, or of any  
 179 state or municipality, or of any foreign nation, or any  
 180 simulation thereof; ~~or~~

181           (d) Consists of or ~~or~~ comprises a ~~or includes~~ the name,  
 182 signature, or portrait identifying a particular ~~of any~~ living  
 183 individual, except by ~~with~~ her or his written consent, or the  
 184 name, signature, or portrait of a deceased President of the  
 185 United States during the lifetime of his widow or her widower,  
 186 if any, except by the written consent of the widow or widower;  
 187 ~~or~~

188           (e) Consists of a mark which:

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189           1. When used on or in connection with ~~applied to~~ the goods  
 190 or services of the applicant, is merely descriptive or  
 191 deceptively misdescriptive of them;;

192           2. When used on or in connection with ~~applied to~~ the goods  
 193 or services of the applicant, is primarily geographically  
 194 descriptive ~~or deceptively misdescriptive~~ of them; ~~or their~~  
 195 ~~source or origin, or~~

196           3. When used on or in connection with the goods or  
 197 services of the applicant, is primarily geographically  
 198 deceptively misdescriptive of them;

199           ~~4.3.~~ Is primarily merely a surname; or;

200           5. Comprises any matter that, as a whole, is functional.

201  
 202 Except as expressly excluded in subparagraphs 3. and 5.,  
 203 ~~provided, however, that~~ nothing in this paragraph shall prevent  
 204 the registration of a mark used ~~in this state~~ by the applicant  
 205 which has become distinctive of the applicant's goods or  
 206 services ~~in this state or elsewhere~~. The department ~~of State~~ may  
 207 accept as prima facie evidence that the mark has become  
 208 distinctive, as used on or in connection with ~~applied to~~ the  
 209 applicant's goods or services, proof of substantially exclusive  
 210 and continuous use thereof as a mark by the applicant in this  
 211 state or elsewhere for the 5 years before ~~next preceding~~ the  
 212 date on which the claim of distinctiveness is made; or

213           (f) Consists of or comprises a mark which so resembles a  
 214 mark registered in this state or a mark or trade name previously  
 215 used in this state by another and not abandoned, as to be



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216 likely, when applied to the goods or services of the applicant,  
 217 to cause confusion or mistake or to deceive. Registration shall  
 218 not be denied solely on the basis of reservation or registration  
 219 by another of a corporate name or fictitious name that is the  
 220 same or similar to the mark for which registration is sought.

221 Section 4. Section 495.027, Florida Statutes, is repealed.

222 Section 5. Section 495.031, Florida Statutes, is amended  
 223 to read:

224 495.031 Application for registration.--

225 (1) Subject to the limitations set forth in this chapter,  
 226 any person who ~~adopts and~~ uses a trademark or service mark in  
 227 this state may file with the department ~~of State,~~ in a manner  
 228 and on a form complying with the requirements of to be furnished  
 229 ~~by~~ the department, an application for registration of that  
 230 ~~trademark or service~~ mark setting forth, but not limited to, the  
 231 following information:

232 (a) The name and business address of the person applying  
 233 for such registration, and, if a business entity, the place  
 234 ~~corporation, the state~~ of incorporation or organization;

235 (b) The goods or services on or in connection with which  
 236 the mark is used and the mode or manner in which the mark is  
 237 used in connection with such goods or services and the class or  
 238 classes in which such goods or services fall;

239 (c) The date ~~when~~ the mark was first used anywhere and the  
 240 date ~~when~~ it was first used in this state by the applicant, the  
 241 applicant's ~~or her or his~~ predecessor in interest, ~~business~~ or a

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242 related company of the applicant ~~or the applicant's predecessor;~~  
 243 and

244 (d) A statement that the applicant is the owner of the  
 245 mark, that the mark is in use, and that, to the best of the  
 246 applicant's knowledge, no other person except a related company  
 247 has registered such mark in this state, or has the right to use  
 248 such mark in this state, either in the identical form thereof or  
 249 in such near resemblance thereto as to be likely, when applied  
 250 to the goods or services of such other person, to cause  
 251 confusion, to cause mistake, or to deceive ~~or confuse or to be~~  
 252 ~~mistaken therefor.~~

253 (2) Every applicant for registration of a certification  
 254 mark in this state shall file with the department ~~of State, in a~~  
 255 manner and on a form complying with the requirements of to be  
 256 ~~furnished by~~ the department, an application setting forth, but  
 257 not limited to, the following information:

258 (a) The information required by paragraph (1)(a);

259 (b) The date when the certification mark was first used  
 260 anywhere and the date when it was first used in this state under  
 261 the authority of the applicant;

262 (c) The manner in which and the conditions under which the  
 263 certification mark is used in this state; and

264 (d) A statement that the applicant is exercising control  
 265 over the use of the mark, that the applicant is not herself or  
 266 himself engaged in the production or marketing of the goods or  
 267 services to which the mark is applied, and that no person except  
 268 the applicant or persons authorized by the applicant, or related

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269 | companies thereof, has the right to use such mark in this state,  
 270 | either in the identical form thereof or in such near resemblance  
 271 | thereto as to be likely, when applied to the goods or services  
 272 | of such other person, to cause confusion, to cause mistake, or  
 273 | to deceive ~~or confuse or to be mistaken~~ therefor.

274 | (3) Every applicant for registration of a collective mark  
 275 | in this state shall file with the department ~~of State,~~ in a  
 276 | manner and ~~on a~~ form complying with the requirements of ~~to be~~  
 277 | ~~furnished~~ by the department, an application setting forth, but  
 278 | not limited to, the following information:

279 | (a) The information required by paragraphs (1)(a) and (b);

280 | (b) The date when the collective mark was first used  
 281 | anywhere and the date when it was first used in this state by  
 282 | any member of the applicant or a related company of such member;

283 | (c) The class of persons entitled to use the mark,  
 284 | indicating their relationship to the applicant, and the nature  
 285 | of the applicant's control over the use of the mark; and

286 | (d) A statement that no person except the applicant or  
 287 | members of the applicant, or related companies thereof, has the  
 288 | right to use such mark in this state, either in the identical  
 289 | form thereof or in such near resemblance thereto as to be  
 290 | likely, when applied to the goods or services of such other  
 291 | person, to cause confusion, to cause mistake, or to deceive ~~or~~  
 292 | ~~confuse or to be mistaken~~ therefor.

293 | (4) The department may also require that a drawing of the  
 294 | mark, complying with the requirements of the department,  
 295 | accompany the application.

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296        ~~(5)-(4)~~ Every application under this section shall be  
 297 signed and verified by the applicant or by a member of the firm  
 298 or an officer or other authorized representative of the business  
 299 entity ~~of the corporation, association, union or other~~  
 300 ~~organization~~ applying.

301        ~~(6)-(5)~~ Every application under this section shall be  
 302 accompanied by three specimens or facsimiles showing the mark as  
 303 actually used ~~a specimen or facsimile of such mark in~~  
 304 ~~triplicate.~~

305        ~~(7)-(6)~~ Every application under this section shall be  
 306 accompanied by a filing fee ~~of \$87.50~~, payable to the department  
 307 in accordance with s. 495.191 of State, ~~for each class of goods~~  
 308 ~~or services as specified in s. 495.111, in connection with which~~  
 309 ~~the mark is used.~~

310        Section 6. Section 495.035, Florida Statutes, is created  
 311 to read:

312        495.035 Filing of applications.--

313        (1) Upon the receipt of an application for registration  
 314 and payment of the application fee, the department may cause the  
 315 application to be examined for conformity with this chapter.

316        (2) The applicant shall provide any additional pertinent  
 317 information requested by the department, including a description  
 318 of a design mark, and may make, or authorize the department to  
 319 make, such amendments to the application as may be reasonably  
 320 requested by the department or deemed by applicant to be  
 321 advisable to respond to any rejection or objection.

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322       (3) The department may require the applicant to disclaim  
323 an unregistrable component of a mark otherwise registrable, and  
324 an applicant may voluntarily disclaim a component of a mark  
325 sought to be registered. No disclaimer shall prejudice or affect  
326 the applicant's or registrant's rights then existing or  
327 thereafter arising in the disclaimed matter, or the applicant's  
328 or registrant's rights of registration on another application,  
329 if the disclaimed matter is or has become distinctive of the  
330 applicant's or registrant's goods or services.

331       (4) Amendments may be made by the department upon the  
332 application submitted by the applicant upon the applicant's  
333 agreement, or a new application may be required to be submitted.  
334 Amendments to an otherwise properly filed application shall not  
335 affect the application filing date for purposes of determining  
336 the applicant's or registrant's filing priority rights.

337       (5) If the applicant is found not to be entitled to  
338 registration, the department shall advise the applicant of the  
339 rejection and of the reasons for rejection. The applicant shall  
340 have 3 months in which to reply or amend the application, in  
341 which event the application shall be reexamined. This procedure  
342 may be repeated until:

343       (a) The department makes final its refusal to register the  
344 mark; or

345       (b) The applicant fails to reply or amend the application  
346 within the specified period, whereupon the application shall be  
347 abandoned.

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349 For good cause shown, such as the pendency of litigation  
350 involving the mark, the department may extend the period of time  
351 in which to respond to the rejection or suspend examination of  
352 the application.

353 (6) If the department makes final its refusal to register  
354 the mark, the applicant may seek review of such decision in  
355 accordance with ss. 120.569 and 120.57.

356 (7) In the event of multiple applications concurrently  
357 being processed by the department which seek registration of the  
358 same or confusingly similar marks for the same or related goods  
359 or services, the department shall grant priority to the  
360 applications in order of receipt. If a prior-received  
361 application is granted a registration, the other application or  
362 applications shall then be rejected. The applicant of a rejected  
363 application may bring an action for cancellation of the  
364 registration upon grounds of prior or superior rights to the  
365 mark, in accordance with the provisions of s. 495.101(3).

366 Section 7. Section 495.041, Florida Statutes, is amended  
367 to read:

368 495.041 Use by related companies.--Where a mark registered  
369 or unregistered is or may be used legitimately by related  
370 companies, such use shall inure to the benefit of the owner of  
371 the mark, and such use shall not affect the validity of such  
372 mark or of its registration, provided such mark is not used in  
373 such manner as to deceive the public. If first use of a mark by  
374 a person is controlled by the registrant or applicant for  
375 registration of a mark with respect to the nature and quality of

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376 | the goods or services, such first use shall inure to the benefit  
377 | of that registrant or applicant, as the case may be.

378 | Section 8. Section 495.061, Florida Statutes, is amended  
379 | to read:

380 | 495.061 Certificate of registration.--

381 | (1) Upon compliance by the applicant with the requirements  
382 | of this chapter, the department ~~of State~~ shall cause a  
383 | certificate of registration to be issued and delivered to the  
384 | applicant. The certificate of registration shall be issued under  
385 | the signature of the Secretary of State and the seal of the  
386 | state, and it shall show the name and business address and, if a  
387 | business entity ~~corporation~~, the place ~~state~~ of incorporation or  
388 | organization, of the person claiming ownership of the mark in  
389 | this state, the date claimed for the first use of the mark  
390 | anywhere and the date claimed for the first use of the mark in  
391 | this state, the class or classes of goods or services and a  
392 | description of the goods or services on or in connection with ~~on~~  
393 | which the mark is used, a reproduction of the mark, the  
394 | registration date and the term of the registration.

395 | (2) Any certificate of registration issued by the  
396 | department ~~of State~~ under the provisions hereof or a copy  
397 | thereof duly certified by the department ~~of State~~ shall be  
398 | admissible in evidence as competent and sufficient proof of the  
399 | registration of such mark in any action or judicial proceedings  
400 | in any court of this state, and shall be prima facie evidence of  
401 | the validity of the registration, registrant's ownership of the  
402 | mark, and of registrant's exclusive right to use the mark in

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403 | this state on or in connection with the goods or services  
 404 | specified in the certificate, subject to any conditions and  
 405 | limitations stated therein.

406 | ~~(3) Contingent on the registration of a mark under this~~  
 407 | ~~chapter, the reservation of such mark based on intent to use, as~~  
 408 | ~~provided in this chapter, shall be prima facie evidence of~~  
 409 | ~~priority of ownership of such mark within this state on or in~~  
 410 | ~~connection with the goods or services specified in the~~  
 411 | ~~reservation against any other person, except for a person whose~~  
 412 | ~~mark has not been abandoned and who, prior to such reservation,~~  
 413 | ~~has used the mark within this state on or in connection with~~  
 414 | ~~such goods or services.~~

415 | Section 9. Section 495.071, Florida Statutes, is amended  
 416 | to read:

417 | 495.071 Duration and renewal.--

418 | (1) Registration of a mark hereunder shall be effective  
 419 | for a term of 5 ~~10~~ years from the date of registration and, upon  
 420 | application filed within 6 months prior to the expiration of  
 421 | such term, in a manner and form complying with the requirements  
 422 | of ~~on a form to be furnished by~~ the department ~~of~~ State, the  
 423 | registration may be renewed for a like term beginning at the end  
 424 | of the expiring term. Every application under this section shall  
 425 | be accompanied by a filing fee ~~A renewal fee of \$87.50 for each~~  
 426 | ~~class of goods or services with respect to which such renewal is~~  
 427 | ~~sought,~~ payable to the department in accordance with s. 495.191  
 428 | ~~of State, shall accompany the application for renewal of the~~  
 429 | ~~registration.~~



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430 (2) A ~~mark~~ registration may be renewed for successive  
 431 periods of 5 ~~10~~ years in like manner.

432 (3) Any registration in effect on January 1, 2007, shall  
 433 continue in effect for the unexpired term thereof and may be  
 434 renewed by filing an application for renewal with the department  
 435 in a manner and form complying with the requirements of the  
 436 department and paying the renewal fee therefor within 6 months  
 437 prior to the expiration of the registration. ~~The Department of~~  
 438 ~~State shall notify registrants of marks hereunder of the~~  
 439 ~~necessity of renewal within the year next preceding the~~  
 440 ~~expiration of the 10 years from the date of registration by~~  
 441 ~~writing to the last known address of the registrants. The~~  
 442 ~~department shall prescribe the forms on which to make the~~  
 443 ~~required notification and the renewal called for in subsection~~  
 444 ~~(1) and may substitute the uniform business report, pursuant to~~  
 445 ~~s. 606.06, as a means of satisfying the requirement of this~~  
 446 ~~part.~~

447 (4) All applications for renewal ~~renewals~~ under this  
 448 chapter, whether of registrations made under this act or of  
 449 registrations made under any prior acts, shall include a  
 450 verified statement that the mark is still in use in this state,  
 451 and shall include a specimen showing actual use of the mark on  
 452 or in connection with the goods or services subject to the  
 453 renewal application, or shall state that its nonuse is due to  
 454 special circumstances which excuse such nonuse and is not due to  
 455 any intention to abandon the mark.

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456 Section 10. Section 495.081, Florida Statutes, is amended  
 457 to read:

458 495.081 Assignments; changes of name; security interests  
 459 Assignment.--

460 (1) A registered mark or a mark for which an application  
 461 for registration has been filed ~~Any mark and its registration~~  
 462 ~~hereunder~~ shall be assignable with the goodwill ~~good will~~ of the  
 463 business in which the mark is used or with that part of the  
 464 goodwill ~~good will~~ of the business connected with the use of and  
 465 symbolized by the mark. Assignments ~~Assignment~~ shall be by an  
 466 instrument ~~instruments~~ in writing duly executed and may be  
 467 recorded with the department ~~of State~~ upon the payment of the  
 468 applicable a fee. A photocopy of an assignment shall be accepted  
 469 for recording if it is certified by any of the parties thereto,  
 470 or their successors, to be a true and correct copy of the  
 471 original. Upon recording of the assignment, of \$50, payable to  
 472 ~~the department of State which, upon recording of the assignment,~~  
 473 shall issue in the name of the assignee a new certificate for  
 474 the remainder of the term of the registration or of the last  
 475 renewal thereof.

476 (2) An assignment of any registration under this chapter  
 477 ~~shall be void as~~ against any subsequent purchaser for valuable  
 478 consideration without notice, unless such assignment is recorded  
 479 with the department ~~of State~~ within 3 months after the date of  
 480 the assignment or prior to the subsequent purchase thereof or at  
 481 ~~any time after the expiration of such 3 month period, unless an~~  
 482 ~~assignment given in connection with any subsequent purchase is~~

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483 ~~recorded with the Department of State prior to or within 10 days~~  
484 ~~after such assignment is recorded.~~

485 (3) A registrant or applicant for registration effecting a  
486 change of the name may record a certificate of change of name of  
487 the registrant or applicant with the department upon the payment  
488 of the recording fee payable to the department in accordance  
489 with s. 495.191. In the case of a pending application for a mark  
490 that becomes approved for registration, the department shall  
491 issue a certificate of registration in the registrant's new  
492 name. In the case of a registered mark, the department shall  
493 issue a new certificate of registration in the registrant's new  
494 name for the remainder of the term of the registration or last  
495 renewal thereof. A person's failure to record a name change in  
496 accordance with this subsection shall not affect the person's  
497 substantive rights in the mark or its registration.

498 (4) Acknowledgment shall be prima facie evidence of the  
499 execution of an assignment or other instrument and, when  
500 recorded by the department, the record shall be prima facie  
501 evidence of execution.

502 (5) Security interests in marks shall be created and  
503 perfected in accordance with chapter 679.

504 Section 11. Section 495.091, Florida Statutes, is amended  
505 to read:

506 495.091 Records.--The department ~~of State~~ shall keep for  
507 public examination a record of all marks registered or renewed  
508 under this chapter, including all documents recorded under s.  
509 495.081.

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510 Section 12. Section 495.101, Florida Statutes, is amended  
 511 to read:

512 495.101 Cancellation.--The department ~~of State~~ shall  
 513 cancel from the register:

514 ~~(1) After 1 year from the effective date of this chapter,~~  
 515 ~~all registrations under prior laws which are more than 10 years~~  
 516 ~~old and not renewed in accordance with this chapter.~~

517 (1)(2) Any registration for concerning which the  
 518 department ~~of State~~ has received shall receive a voluntary  
 519 request for cancellation by the registrant, which request shall  
 520 be in a manner and form complying with the requirements of the  
 521 department thereof from the registrant.

522 (2)(3) All registrations granted under this chapter and  
 523 not renewed in accordance with the provisions hereof.

524 (3)(4) Any registration for concerning which a court of  
 525 competent jurisdiction finds shall find that:

526 (a) The registered mark has been abandoned. ~~A mark shall~~  
 527 ~~be deemed to be "abandoned" when either of the following occurs:~~

528 1. ~~When its use has been discontinued with intent not to~~  
 529 ~~resume such use. Intent not to resume may be inferred from~~  
 530 ~~circumstances. Nonuse for 2 consecutive years shall be prima~~  
 531 ~~facie evidence of abandonment.~~

532 2. ~~When any course of conduct of the owner, including acts~~  
 533 ~~of omission as well as commission, causes the mark to become the~~  
 534 ~~generic name for the goods or services on or in connection with~~  
 535 ~~which it is used, or otherwise to lose its significance as a~~

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536 | ~~mark. Purchaser motivation shall not be a test for determining~~  
 537 | ~~abandonment under this paragraph.~~

538 |       (b) The registrant ~~of a trademark or service mark~~ is not  
 539 | the owner of the mark.

540 |       (c) The registration was granted improperly.

541 |       (d) The registration was obtained fraudulently.

542 |       (e) The mark is or has become the generic name for the  
 543 | goods or services, or a portion thereof, for which the mark has  
 544 | been registered.

545 |       (f) ~~(e)~~ The registered mark is so similar, as to be likely  
 546 | to cause confusion or mistake or to deceive, to a mark  
 547 | registered by another person in the United States Patent and  
 548 | Trademark Office, prior to the date of the filing of the  
 549 | application for registration by the registrant hereunder, and  
 550 | not abandoned; ~~provided,~~ however, ~~that~~ should the registrant  
 551 | prove that the registrant ~~she or he~~ is the owner of a concurrent  
 552 | registration of a ~~her or his~~ mark in the United States Patent  
 553 | and Trademark Office covering an area including this state, the  
 554 | registration hereunder shall not be canceled.

555 |       (g) ~~(f)~~ In the case of a certification mark, that the  
 556 | registrant does not control or is not able to exercise control  
 557 | over the use of such mark; or engages in the production or  
 558 | marketing of any goods or services to which the certification  
 559 | mark is applied; or the registrant permits the use of the  
 560 | certification mark for purposes other than to certify; or the  
 561 | registrant discriminately refuses ~~refused~~ to certify or ~~to~~  
 562 | continue to certify the goods or services of any person who

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563 maintains the standards or conditions which such mark certifies.  
564 Nothing in this paragraph shall be deemed to prohibit the  
565 registrant from using its certification mark in advertising or  
566 promoting recognition of the certification program or of the  
567 goods or services meeting the certification standards of the  
568 registrant.

569 (4)(5) When a court of competent jurisdiction shall order  
570 cancellation of a registration on any ground.

571 Section 13. Section 495.111, Florida Statutes, is amended  
572 to read:

573 (Substantial rewording of section. See s. 495.111, F.S.,  
574 for present text.)

575 495.111 Classification.--

576 (1) The following general classes of goods and services,  
577 conforming to the classification adopted by the United States  
578 Patent and Trademark Office, are established for convenience of  
579 administration of this chapter:

580 (a) Goods:

581 1. Class 1 Chemicals used in industry, science, and  
582 photography; agriculture, horticulture, and forestry;  
583 unprocessed artificial resins and, unprocessed plastics;  
584 manures; fire extinguishing compositions; tempering and  
585 soldering preparations; chemical substances for preserving  
586 foodstuffs; tanning substances; and adhesives used in industry.

587 2. Class 2 Paints, varnishes, lacquers; preservatives  
588 against rust and against deterioration of wood; colorants;

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589 mordants; raw natural resins; and metals in foil and powder form  
590 for painters, decorators, printers, and artists.

591 3. Class 3 Bleaching preparations and other substances  
592 for laundry use; cleaning, polishing, scouring, and abrasive  
593 preparations; soaps; perfumery, essential oils, cosmetics, and  
594 hair lotions; and dentifrices.

595 4. Class 4 Industrial oils and greases; lubricants; dust  
596 absorbing, wetting, and binding compositions; fuels (including  
597 motor spirit) and illuminants; and candles and wicks for  
598 lighting.

599 5. Class 5 Pharmaceuticals and veterinary preparations;  
600 sanitary preparations for medical purposes; dietetic substances  
601 adapted for medical use and food for babies; plasters and  
602 materials for dressings; material for stopping teeth and dental  
603 wax; disinfectants; preparations for destroying vermin; and  
604 fungicides and herbicides.

605 6. Class 6 Common metals and their alloys; metal building  
606 materials; transportable buildings of metal; materials of metal  
607 for railway tracks; nonelectric cables and wires of common  
608 metal; ironmongery and small items of metal hardware; pipes and  
609 tubes of metal; safes; goods of common metal not included in  
610 other classes; and ores.

611 7. Class 7 Machines and machine tools; motors and engines  
612 (except for land vehicles); machine coupling and transmission  
613 components (except for land vehicles); agricultural implements  
614 other than hand-operated; incubators for eggs.

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615       8. Class 8 Hand tools and hand-operated implements;  
 616 cutlery; side arms; and razors.

617       9. Class 9 Scientific, nautical, surveying, photographic,  
 618 cinematographic, optical, weighing, measuring, signaling,  
 619 checking (supervision), and life-saving and teaching apparatus  
 620 and instruments; apparatus and instruments for conducting,  
 621 switching, transforming, accumulating, regulating, or  
 622 controlling electricity; apparatus for recording, transmission,  
 623 or reproduction of sound or images; magnetic data carriers and  
 624 recording discs; automatic vending machines and mechanisms for  
 625 coin-operated apparatus; cash registers, calculating machines,  
 626 and data processing equipment and computers; and fire-  
 627 extinguishing apparatus.

628       10. Class 10 Surgical, medical, dental, and veterinary  
 629 apparatus and instruments, artificial limbs, eyes, and teeth;  
 630 orthopedic articles; and suture materials.

631       11. Class 11 Apparatus for lighting, heating, steam  
 632 generating, cooking, refrigerating, drying, ventilating, water  
 633 supply, and sanitary purposes.

634       12. Class 12 Vehicles; apparatus for locomotion by land,  
 635 air, or water.

636       13. Class 13 Firearms; ammunition and projectiles;  
 637 explosives; and fireworks.

638       14. Class 14 Precious metals and their alloys and goods  
 639 in precious metals or coated therewith (not included in other  
 640 classes); jewelry and precious stones; and horological and  
 641 chronometric instruments.



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642       15. Class 15 Musical instruments.

643       16. Class 16 Paper, cardboard, and goods made from these  
644 materials (not included in other classes); printed matter;  
645 bookbinding material; photographs; stationery; adhesives for  
646 stationery or household purposes; artists' materials; paint  
647 brushes; typewriters and office requisites (except furniture);  
648 instructional and teaching material (except apparatus); plastic  
649 materials for packaging (not included in other classes);  
650 printers' type; and printing blocks.

651       17. Class 17 Rubber, gutta-percha, gum, asbestos, mica,  
652 and goods made from these materials and not included in other  
653 classes; plastics in extruded form for use in manufacture;  
654 packing, stopping, and insulating materials; and flexible pipes  
655 not of metal.

656       18. Class 18 Leather and imitations of leather and goods  
657 made of these materials and not included in other classes;  
658 animal skins and hides; trunks and traveling bags; umbrellas,  
659 parasols, and walking sticks; and whips, harness, and saddlery.

660       19. Class 19 Building materials (nonmetallic);  
661 nonmetallic rigid pipes for building; asphalt, pitch, and  
662 bitumen; nonmetallic transportable buildings; monuments, not of  
663 metal.

664       20. Class 20 Furniture, mirrors, and picture frames;  
665 goods (not included in other classes) of wood, cork, reed, cane,  
666 wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-  
667 pearl, and meerschaum and substitutes for all these materials,  
668 or of plastics.

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669           21. Class 21 Household or kitchen utensils and containers  
 670 (not of precious metal or coated therewith); combs and sponges;  
 671 brushes (except paint brushes); brush-making materials; articles  
 672 for cleaning purposes; steel wool; unworked or semiworked glass  
 673 (except glass used in building); and glassware, porcelain, and  
 674 earthenware not included in other classes.

675           22. Class 22 Ropes, string, nets, tents, awnings,  
 676 tarpaulins, sails, sacks, and bags (not included in other  
 677 classes); padding and stuffing materials (except of rubber or  
 678 plastics); and raw fibrous textile materials.

679           23. Class 23 Yarns and threads for textile use.

680           24. Class 24 Textiles and textile goods not included in  
 681 other classes and bed and table covers.

682           25. Class 25 Clothing, footwear, and headgear.

683           26. Class 26 Lace and embroidery, ribbons, and braid;  
 684 buttons, hooks and eyes, pins, and needles; and artificial  
 685 flowers.

686           27. Class 27 Carpets, rugs, mats and matting, linoleum,  
 687 and other materials for covering existing floors; and wall  
 688 hangings (nontextile).

689           28. Class 28 Games and playthings; gymnastic and sporting  
 690 articles not included in other classes; and decorations for  
 691 Christmas trees.

692           29. Class 29 Meat, fish, poultry, and game; meat  
 693 extracts; preserved, dried, and cooked fruits and vegetables;  
 694 jellies, jams, and compotes; eggs, milk, and milk products; and  
 695 edible oils and fats.

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696           30. Class 30 Coffee, tea, cocoa, sugar, rice, tapioca,  
 697 sago, and artificial coffee; flour and preparations made from  
 698 cereals, bread, pastry and confectionery, and ices; honey and  
 699 treacle; yeast, baking powder; salt, and mustard; vinegar and  
 700 saucers (condiments); spices; and ice.

701           31. Class 31 Agricultural, horticultural, and forestry  
 702 products and grains not included in other classes; live animals;  
 703 fresh fruits and vegetables; seeds, natural plants, and flowers;  
 704 foodstuffs for animals and malt.

705           32. Class 32 Beers; mineral and aerated waters and other  
 706 nonalcoholic drinks; fruit drinks and fruit juices; and syrups  
 707 and other preparations for making beverages.

708           33. Class 33 Alcoholic beverages except beers.

709           34. Class 34 Tobacco; smokers' articles; and matches.

710           (b) Services:

711           1. Class 35 Advertising; business management; business  
 712 administration; and office functions.

713           2. Class 36 Insurance; financial affairs; monetary  
 714 affairs; and real estate affairs.

715           3. Class 37 Building construction; repair; and  
 716 installation services.

717           4. Class 38 Telecommunications.

718           5. Class 39 Transport; packaging and storage of goods;  
 719 and travel arrangements.

720           6. Class 40 Treatment of materials.

721           7. Class 41 Education; providing of training;  
 722 entertainment; and sporting and cultural activities.

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723           8. Class 42 Scientific and technological services and  
 724 research and design relating thereto; industrial analysis and  
 725 research services; design and development of computer hardware  
 726 and software; and legal services.

727           9. Class 43 Services for providing food and drink; and  
 728 temporary accommodation.

729           10. Class 44 Medical services; veterinary services;  
 730 hygienic and beauty care for human beings or animals; and  
 731 agriculture, horticulture, and forestry services.

732           11. Class 45 Personal and social services rendered by  
 733 others to meet the needs of individuals; and security services  
 734 for the protection of property and individuals.

735           (c) Certification and collective membership marks:

736           1. Class 200 Collective membership marks.

737           2. Class A Certification marks for goods.

738           3. Class B Certification marks for services.

739           (d) The goods and services recited in collective trademark  
 740 and collective service mark applications are assigned to the  
 741 same classes that are appropriate for those goods and services  
 742 in general.

743           (2) The establishment of the classes of goods and services  
 744 set forth in subsection (1) is not for the purpose of limiting  
 745 or extending the rights of the applicant or registrant. A single  
 746 application for registration of a mark may include any or all  
 747 goods upon which, or services with which, the mark is actually  
 748 being used comprised in one or more of the classes listed, but  
 749 in the event that a single application includes goods or

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750 services in connection with which the mark is being used which  
 751 fall within different classes of goods or services, a fee  
 752 equaling the sum of the fees for registration in each class  
 753 shall be payable.

754 Section 14. Section 495.131, Florida Statutes, is amended  
 755 to read:

756 495.131 Infringement.--Subject to the provisions of s.  
 757 495.161, any person who shall, without the consent of the  
 758 registrant:

759 (1) ~~Use, without the consent of the registrant,~~ any  
 760 reproduction, counterfeit, copy, or colorable imitation of a  
 761 mark registered under this chapter ~~on any goods or~~ in connection  
 762 with the sale, offering for sale, distribution, or advertising  
 763 of any goods or services on or in connection with which such use  
 764 is likely to cause confusion, ~~or~~ to cause mistake, or to deceive  
 765 ~~as to the source or origin of such goods or services;~~ or

766 (2) Reproduce, counterfeit, copy, or colorably imitate a  
 767 ~~any such~~ mark registered under this chapter and apply such  
 768 reproduction, counterfeit, copy, or colorable imitation to  
 769 labels, signs, prints, packages, wrappers, receptacles, or  
 770 advertisements intended to be used upon or in connection  
 771 ~~conjunction~~ with the sale, ~~offering for sale,~~ distribution, or  
 772 advertising ~~in this state~~ of goods or services on or in  
 773 connection with which such use is likely to cause confusion, to  
 774 cause mistake, or to deceive;

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776 shall be liable in a civil action by the owner of such  
 777 registered mark for any or all of the remedies provided in s.  
 778 495.141, except that under subsection (2) hereof the registrant  
 779 shall not be entitled to recover profits or damages unless the  
 780 acts have been committed with knowledge that such mark is  
 781 intended to be used to cause confusion or mistake or to deceive.

782 Section 15. Section 495.141, Florida Statutes, is amended  
 783 to read:

784 495.141 Remedies.--

785 (1) Any owner of a mark registered under this chapter may  
 786 proceed by suit to enjoin the manufacture, use, display, or sale  
 787 of any counterfeits or imitations thereof and any court of  
 788 competent jurisdiction may grant injunctions to restrain such  
 789 manufacture, use, display or sale as may be by the said court  
 790 deemed just and reasonable, and may require the defendants to  
 791 pay to such owner all profits derived from and/or all damages  
 792 suffered by reason of such wrongful manufacture, use, display,  
 793 or sale and to pay the costs of the action; and such court may  
 794 also order that any such counterfeits or imitations in the  
 795 possession or under the control of any defendant in such case be  
 796 delivered to an officer of the court, or to the complainant, to  
 797 be destroyed. In assessing profits the plaintiff shall be  
 798 required to prove defendant's sales only; defendant must prove  
 799 all elements of cost or deduction claimed. In assessing damages  
 800 the court may enter judgment, according to the circumstances of  
 801 the case, for any sum above the amount found as actual damages,  
 802 not exceeding three 3 times such amount. If the court shall find

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803 that the amount of the recovery based on profits is either  
 804 inadequate or excessive the court may in its discretion enter  
 805 judgment for such sum as the court shall find to be just,  
 806 according to the circumstances of the case. Such sum in either  
 807 of the above circumstances shall constitute compensation and not  
 808 a penalty. The court may also award reasonable attorney's fees  
 809 to the prevailing party according to the circumstances of the  
 810 case.

811 (2) The enumeration of any right or remedy herein shall  
 812 not affect a registrant's right to prosecute under any penal law  
 813 of this state.

814 Section 16. Section 495.145, Florida Statutes, is created  
 815 to read:

816 495.145 Forum for actions regarding registration.--An  
 817 action seeking cancellation of a registration of a mark  
 818 registered under this chapter may be brought in any court of  
 819 competent jurisdiction in this state. Service of process on a  
 820 nonresident registrant may be made in accordance with s. 48.181.  
 821 The department shall not be made a party to cancellation  
 822 proceedings.

823 Section 17. Section 495.151, Florida Statutes, is amended  
 824 to read:

825 (Substantial rewording of section. See  
 826 s. 495.151, F.S., for present text.)

827 495.151 Dilution.--

828 (1) The owner of a mark that is famous in this state shall  
 829 be entitled, subject to the principles of equity and upon such

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830 terms as the court deems reasonable, to an injunction and to  
831 obtain such other relief against another person's commercial use  
832 of a mark or trade name if such use begins after the mark has  
833 become famous and is likely to cause dilution of the distinctive  
834 quality of the famous mark, as provided in this section. In  
835 determining whether a mark is distinctive and famous, a court  
836 may consider factors, including, but not limited to:

837 (a) The degree of inherent or acquired distinctiveness of  
838 the mark in this state.

839 (b) The duration and extent of use of the mark in  
840 connection with the goods and services with which the mark is  
841 used.

842 (c) The duration and extent of advertising and publicity  
843 of the mark in this state.

844 (d) The geographical extent of the trading area in which  
845 the mark is used.

846 (e) The channels of trade for the goods or services with  
847 which the mark is used.

848 (f) The degree of recognition of the mark in the trading  
849 areas and channels of trade in this state used by the mark's  
850 owner and the person against whom the injunction is sought.

851 (g) The nature and extent of use of the same or similar  
852 mark by third parties.

853 (h) Whether the mark is the subject of a state  
854 registration in this state or a federal registration under the  
855 Federal Trademark Act of March 3, 1881, or the Federal Trademark



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856 Act of February 20, 1905, or a principal register registration  
 857 under the Federal Trademark Act of July 5, 1946.

858 (2) In an action brought under this section, the owner of  
 859 a famous mark shall be entitled only to injunctive relief in  
 860 this state unless the person against whom the injunctive relief  
 861 is sought willfully intended to trade on the owner's reputation  
 862 or to cause dilution of the famous mark. If such willful intent  
 863 is proven, and the mark is registered in this state, the owner  
 864 shall also be entitled to all remedies set forth in this  
 865 chapter, subject to the discretion of the court and the  
 866 principles of equity.

867 (3) The following shall not be actionable under this  
 868 section:

869 (a) Fair use of a famous mark by another person in  
 870 comparative commercial advertising or promotion to identify the  
 871 competing goods or services of the owner of the famous mark.

872 (b) Noncommercial use of the mark.

873 (c) All forms of news reporting and news commentary.

874 Section 18. Section 495.161, Florida Statutes, is amended  
 875 to read:

876 495.161 Common-law rights.--Nothing herein shall adversely  
 877 affect ~~or diminish~~ the rights or the enforcement of rights in  
 878 marks acquired in good faith at any time at common law.

879 Section 19. Section 495.171, Florida Statutes, is amended  
 880 to read:

881 495.171 Effective date; repeal of conflicting ~~prior~~  
 882 acts.--

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883           (1) This chapter, as amended by this act, shall be in  
 884 force and take effect January ~~October~~ 1, 2007 ~~1967~~, ~~after its~~  
 885 ~~enactment,~~ but shall not affect any suit, proceeding, or appeal  
 886 then pending.

887           (2) Sections 506.06-506.13 ~~Former ss. 495.01-495.14~~ are  
 888 repealed on January 1, 2007 ~~the effective date of this act,~~  
 889 provided that as to any suit, proceeding or appeal, and for that  
 890 purpose only, pending at the time this chapter, as amended by  
 891 this act, takes effect such repeal shall be deemed not to be  
 892 effective until final determination of said pending suit,  
 893 proceeding or appeal.

894           Section 20. Section 495.181, Florida Statutes, is amended  
 895 to read:

896           (Substantial rewording of section. See  
 897 s. 495.181, F.S., for present text.)

898           495.181 Construction of chapter.--The intent of this  
 899 chapter is to provide a system of state trademark registration  
 900 and protection substantially consistent with the federal system  
 901 of trademark registration and protection under the Trademark Act  
 902 of 1946, as amended. To that end, the construction given the  
 903 federal act should be examined as persuasive authority for  
 904 interpreting and construing this chapter.

905           Section 21. Section 495.191, Florida Statutes, is created  
 906 to read:

907           495.191 Fees.--Filing and other applicable fees payable to  
 908 the department under this chapter shall be as follows:

909           (1) Application filing fee: \$87.50 per class.

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- 910           (2) Renewal application fee: \$87.50 per class.
- 911           (3) Assignment filing fee: \$50 per class.
- 912           (4) Certificate of name change filing fee: \$50.
- 913           (5) Voluntary cancellation filing fee: \$50.
- 914           (6) Certificate of registration under seal: \$8.75.
- 915           (7) Certified copy of application file: \$52.50.
- 916           Section 22. Sections 506.06, 506.07, 506.08, 506.09,
- 917 506.11, 506.12, and 506.13, Florida Statutes, are repealed.
- 918           Section 23. This act shall take effect January 1, 2007.