

HOUSE BILL 596

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CF 1lr0780

By: **Delegate D.E. Davis**

Introduced and read first time: January 20, 2021

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Professional Athlete Funding Act**

3 FOR the purpose of establishing certain requirements for certain player brand agreements
4 between certain professional athletes and certain investors; establishing that player
5 brand agreements that comply with requirements of certain provisions of this Act
6 are valid, binding, and enforceable contracts notwithstanding certain laws; stating
7 the findings of the General Assembly; providing that the Attorney General and the
8 Division of Consumer Protection of the Office of the Attorney General have certain
9 authority to enforce this Act; authorizing certain professional athletes to bring an
10 action in a certain court to recover for certain injuries or losses sustained as a result
11 of a violation of this Act; authorizing a court to award certain costs and fees under
12 certain circumstances; establishing a certain penalty for a violation of this Act;
13 establishing a certain short title for this Act; providing for the application of this Act;
14 defining certain terms; and generally relating to professional athletes and player
15 brand agreements.

16 BY adding to

17 Article – Commercial Law

18 Section 11–1701 through 11–1706 to be under the new subtitle “Subtitle 17.
19 Professional Athlete Funding Act”

20 Annotated Code of Maryland

21 (2013 Replacement Volume and 2020 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Commercial Law**

25 **SUBTITLE 17. PROFESSIONAL ATHLETE FUNDING ACT.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-1701.

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION OF THE
5 OFFICE OF THE ATTORNEY GENERAL.

6 (C) "FUTURE INCOME OR EARNINGS" MEANS INCOME OR EARNINGS
7 RECEIVED OR EARNED IN THE FUTURE BY A PROFESSIONAL ATHLETE SOLELY AS A
8 PROFESSIONAL ATHLETE, AND NOT IN ANY OTHER CAPACITY.

9 (D) "INVESTOR" MEANS A PERSON THAT INVESTS CAPITAL IN
10 PROFESSIONAL ATHLETES IN EXCHANGE FOR A SHARE OF THE PROFESSIONAL
11 ATHLETES' FUTURE INCOME OR EARNINGS.

12 (E) (1) "PLAYER BRAND AGREEMENT" MEANS A WRITTEN AGREEMENT
13 BETWEEN A PROFESSIONAL ATHLETE AND AN INVESTOR UNDER WHICH THE
14 PROFESSIONAL ATHLETE COMMITS TO PAY A SPECIFIED PERCENTAGE OF THE
15 PROFESSIONAL ATHLETE'S FUTURE INCOME OR EARNINGS FOR A SPECIFIED
16 PERIOD OF TIME, IN EXCHANGE FOR PAYMENTS TO OR ON BEHALF OF THE
17 PROFESSIONAL ATHLETE FOR ADVANCEMENT OF THE PROFESSIONAL ATHLETE'S
18 PROFESSIONAL CAREER, DEVELOPMENT, PERSONAL FINANCES, OR OTHER
19 PURPOSE.

20 (2) "PLAYER BRAND AGREEMENT" INCLUDES A WRITTEN
21 AGREEMENT THAT IS REFERRED TO AS AN INCOME SHARE AGREEMENT.

22 (F) "PROFESSIONAL ATHLETE" MEANS AN INDIVIDUAL WHO IS:

23 (1) EMPLOYED AS AN ATHLETE BY A TEAM THAT IS A MEMBER OF AN
24 ASSOCIATION OF SIX OR MORE PROFESSIONAL SPORTS TEAMS WHOSE TOTAL
25 COMBINED REVENUES EXCEED \$10,000,000 PER YEAR, IF THE ASSOCIATION
26 GOVERNS THE CONDUCT OF ITS MEMBERS AND REGULATES THE CONTESTS AND
27 EXHIBITIONS IN WHICH ITS MEMBER TEAMS REGULARLY ENGAGE;

28 (2) EMPLOYED AS AN ATHLETE BY A MINOR LEAGUE TEAM THAT IS
29 AFFILIATED WITH AN ASSOCIATION THAT MEETS THE DESCRIPTION UNDER ITEM (1)
30 OF THIS SUBSECTION; OR

31 (3) CLASSIFIED OR CONSIDERED AN AMATEUR OR PROFESSIONAL
32 GOLFER UNDER THE RULES OF THE UNITED STATES GOLF ASSOCIATION.

1 11-1702.

2 (A) THE GENERAL ASSEMBLY FINDS THAT:

3 (1) WHEN A PROFESSIONAL ATHLETE AND AN INVESTOR ENTER INTO
4 A CONTRACT, A BINDING AGREEMENT IS FORMED WHEREIN BOTH PARTIES MAKE
5 PROMISES THAT CAN BE ENFORCED THROUGH LEGAL REMEDIES;

6 (2) ONE SUCH AGREEMENT IS THE PLAYER BRAND AGREEMENT;

7 (3) MOST AGREEMENTS ARE ENTERED INTO WHEN THE ATHLETE IS
8 MAKING THE TRANSITION FROM COLLEGIATE ATHLETICS TO THE PROFESSIONAL
9 LEVEL OR WHEN THE ATHLETE IS JUST BEGINNING A PROFESSIONAL CAREER;

10 (4) THE PROTECTION OF THE PROFESSIONAL ATHLETE IS
11 PARAMOUNT TO ENSURE THAT PROFESSIONAL ATHLETES ARE NOT FINANCIALLY
12 EXPLOITED BY UNSCRUPULOUS INVESTORS;

13 (5) CURRENT LAW DOES NOT ADEQUATELY PROTECT THE
14 PROFESSIONAL ATHLETE NOR DOES IT PROVIDE A REMEDY FOR THE ATHLETE WHO
15 IS TAKEN ADVANTAGE OF BY AN UNSCRUPULOUS INVESTOR;

16 (6) SINCE A PLAYER BRAND AGREEMENT IS NOT A LOAN, IT IS NOT
17 SUBJECT TO LAWS AND REGULATIONS THAT GOVERN LOANS;

18 (7) PLAYER BRAND AGREEMENTS ALSO MAY NOT BE DISCHARGEABLE
19 UNDER BANKRUPTCY LAW, UNLESS A COURT OF COMPETENT JURISDICTION
20 DETERMINES THAT THE OBLIGATIONS WOULD IMPOSE AN UNDUE HARDSHIP ON THE
21 PROFESSIONAL ATHLETE AND THE DEPENDENTS OF THE PROFESSIONAL ATHLETE
22 BY NOT DISCHARGING THE OBLIGATION;

23 (8) THERE IS NO UNIFORMITY OR REGULATION IN PLAYER BRAND
24 AGREEMENTS;

25 (9) THE AMOUNT A PROFESSIONAL ATHLETE IS REQUIRED TO PAY
26 UNDER A PLAYER BRAND AGREEMENT MAY:

27 (I) BE MORE OR LESS THAN THE AMOUNT PROVIDED TO THE
28 PROFESSIONAL ATHLETE; AND

29 (II) VARY IN PROPORTION TO THE FUTURE INCOME OR
30 EARNINGS OF THE PROFESSIONAL ATHLETE; AND

(10) PROFESSIONAL ATHLETES HAVE BEEN DISADVANTAGED BY AGREEMENTS THAT GIVE THE INVESTOR RIGHTS OVER THE ACTIONS OF THE PROFESSIONAL ATHLETE.

(B) BASED ON THE FINDINGS UNDER SUBSECTION (A) OF THIS SECTION, THE GENERAL ASSEMBLY DETERMINES THAT IT IS IN THE STATE'S INTEREST TO ENACT THIS SUBTITLE TO REGULATE PLAYER BRAND AGREEMENTS AND CODIFY THE BEST PRACTICES THAT PROTECT THE PROFESSIONAL ATHLETE.

11-1703.

(A) A PLAYER BRAND AGREEMENT THAT COMPLIES WITH THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION IS A VALID, BINDING, AND ENFORCEABLE CONTRACT NOTWITHSTANDING ANY STATE STATUTORY OR COMMON LAW LIMITING OR REGULATING ASSIGNMENT OF FUTURE INCOME OR EARNINGS.

(B) A PLAYER BRAND AGREEMENT:

(1) SHALL BE WRITTEN IN THE PROFESSIONAL ATHLETE'S NATIVE LANGUAGE OR A LANGUAGE IN WHICH THE PROFESSIONAL ATHLETE IS FLUENT;

(2) SHALL SPECIFY THE PERCENTAGE OF FUTURE INCOME OR EARNINGS THAT THE PROFESSIONAL ATHLETE IS OBLIGATED TO PAY TO THE INVESTOR AND THAT THE PERCENTAGE WAS CHOSEN BY THE PROFESSIONAL ATHLETE;

(3) SHALL IDENTIFY THE SPECIFIC CATEGORIES OR KINDS OF FUTURE INCOME OR EARNINGS TO BE USED FOR PURPOSES OF CALCULATING THE OBLIGATION OF THE PROFESSIONAL ATHLETE UNDER THE PLAYER BRAND AGREEMENT;

(4) MAY NOT REQUIRE THE PROFESSIONAL ATHLETE TO PAY MORE THAN 30% OF THE PROFESSIONAL ATHLETE'S FUTURE INCOME OR EARNINGS EXCLUSIVELY TO THE INVESTOR;

(5) MAY NOT REQUIRE THE PROFESSIONAL ATHLETE TO SHARE A PERCENTAGE OF THE PROFESSIONAL ATHLETE'S FUTURE INCOME OR EARNINGS FOR MORE THAN 30 YEARS; AND

(6) SHALL BE SIGNED AND EXECUTED UNDER ALL OF THE FOLLOWING CONDITIONS:

(I) THE SIGNING IS AUDIO OR VIDEO RECORDED AND CLEARLY

1 IDENTIFIES BY NAME AND TITLE, ROLE, OR POSITION EACH INDIVIDUAL PRESENT AT
2 THE SIGNING OF THE PLAYER BRAND AGREEMENT, WHETHER THE INDIVIDUAL IS
3 PRESENT IN PERSON OR BY TELEPHONE, VIDEOCONFERENCING, OR ANY OTHER
4 FORM OF TECHNOLOGY ENABLING REMOTE ATTENDANCE;

5 (II) THE SIGNING OCCURS IN THE PROFESSIONAL ATHLETE'S
6 NATIVE LANGUAGE OR A TRANSLATOR IS PRESENT AND PARTICIPATES IN THE
7 SIGNING OF THE PLAYER BRAND AGREEMENT; AND

8 (III) THE SIGNING IS ACCOMPANIED BY CONFIRMATION IN
9 WRITING THAT THE PROFESSIONAL ATHLETE UNDERSTANDS ALL OF THE
10 FOLLOWING:

11 1. THE PROFESSIONAL ATHLETE MAY BE REQUIRED TO
12 PAY THE INVESTOR SUBSTANTIALLY MORE MONEY OVER THE COURSE OF THE
13 PROFESSIONAL ATHLETE'S CAREER THAN THE PROFESSIONAL ATHLETE RECEIVED
14 FROM THE INVESTOR, INCLUDING SPECIFIC EXAMPLES OF POTENTIAL PAYMENTS
15 THAT MAY BE REQUIRED DEPENDING ON THE OCCURRENCE OF HYPOTHETICAL
16 FUTURE EVENTS;

17 2. IF THE PROFESSIONAL ATHLETE DOES NOT SATISFY
18 THE CONDITIONS SPECIFIED IN THE PLAYER BRAND AGREEMENT TO
19 CONTRACTUALLY TRIGGER PAYMENT TO THE INVESTOR, THE PROFESSIONAL
20 ATHLETE IS UNDER NO OBLIGATION TO PAY THE INVESTOR BACK;

21 3. THE PROFESSIONAL ATHLETE HAD THE
22 OPPORTUNITY FOR A LAWYER, FINANCIAL ADVISOR, OR OTHER REPRESENTATIVE
23 OF THE PROFESSIONAL ATHLETE TO REVIEW THE AGREEMENT FOR THE
24 PROFESSIONAL ATHLETE AND THAT THE PERCENTAGE OF FUTURE INCOME TO PAY
25 BACK TO THE INVESTOR IN EXCHANGE FOR PRESENT PAYMENT BY THE INVESTOR IS
26 APPROVED BY THE PROFESSIONAL ATHLETE; AND

27 4. THE PROFESSIONAL ATHLETE CONFIRMS THAT THE
28 PROFESSIONAL ATHLETE UNDERSTANDS ALL MATERIAL ELEMENTS OF THE PLAYER
29 BRAND AGREEMENT.

30 11-1704.

31 (A) EXCEPT FOR § 13-411 OF THIS ARTICLE AND SUBJECT TO SUBSECTION
32 (B) OF THIS SECTION, THE ATTORNEY GENERAL AND THE DIVISION SHALL HAVE
33 THE SAME AUTHORITY TO ENFORCE THIS SUBTITLE AS PROVIDED IN TITLE 13 OF
34 THIS ARTICLE.

(B) AN INVESTOR WHO VIOLATES THIS TITLE IS SUBJECT TO A CIVIL PENALTY, IN ADDITION TO ALL COSTS, NOT TO EXCEED \$1,000 FOR EACH VIOLATION OF THIS TITLE.

11-1705.

(A) IN ADDITION TO ANY ACTION BY THE ATTORNEY GENERAL OR THE DIVISION AUTHORIZED UNDER THIS ARTICLE, A PROFESSIONAL ATHLETE MAY BRING AN ACTION IN AN APPROPRIATE COURT TO RECOVER FOR INJURY OR LOSS SUSTAINED AS A RESULT OF A VIOLATION OF THIS SUBTITLE.

(B) IF A PROFESSIONAL ATHLETE PREVAILS IN AN ACTION BROUGHT UNDER THIS SUBTITLE AND IS AWARDED DAMAGES, THE COURT ALSO MAY AWARD COURT COSTS AND FEES, INCLUDING REASONABLE ATTORNEY'S FEES.

11-1706.

THIS TITLE MAY BE CITED AS THE PROFESSIONAL ATHLETE FUNDING ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any player brand agreements entered into before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.