



SPONSOR: Rep. Longhurst & Sen. Poore
Reps. Brady, Briggs King, Cooke, Osienski,
Michael Smith

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 180
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PROFESSIONAL ATHLETES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 50F. PROFESSIONAL ATHLETE FUNDING ACT.

§ 5001F. Short title.

This chapter is known and may be cited as “Professional Athlete Funding Act”.

§ 5002F. Legislative findings.

(a) The General Assembly finds all of the following:

(1) When a professional athlete and an investor enter into a contract, a binding agreement is formed wherein both parties make promises that can be enforced through legal remedies. One such agreement is the Player brand agreement.

(2) Most agreements are entered into when the athlete is making the transition from collegiate athletics to the professional level or when the athlete is just beginning a professional career.

(3) The protection of the professional athlete is paramount to ensure that professional athletes are not financially exploited by unscrupulous investors.

(4) Current law does not adequately protect the professional athlete nor does it provide a remedy for the athlete who is taken advantage of by an unscrupulous investor. Since a player brand agreement is not a loan, it is not subject to laws and regulations that govern loans. Player brand agreements also may not be dischargeable under bankruptcy law, unless a court of competent jurisdiction determines that the obligations would impose an undue hardship on the professional athlete and the dependents of the professional athlete by not discharging the obligation.

(5) There is also no uniformity or regulation in player brand agreements. The amount a professional athlete is required to pay under a player brand agreement may be more or less than the amount provided to the professional athlete and may vary in proportion to the future income or earnings of the professional athlete.

(6) Professional athletes have also been disadvantaged by agreements that give the investor rights over the actions of the professional athlete.

(b) Based on its finding in subsection (a), the General Assembly determines that it is in the State's interest to enact the Professional Athlete Funding Act to regulate player brand agreements and codify the best practices that protect the professional athlete.

§ 5003F. Definitions.

As used in this chapter:

(1) "Future income or earnings" means future income or earnings received or earned by a professional athlete solely as a professional athlete, and not in any other capacity.

(2) "Investor" means an individual or entity who invests capital in professional athletes in exchange for a share of the professional athletes' future income or earnings.

(3) "Player brand agreement" means a written agreement between a professional athlete and an investor under which the professional athlete commits to pay a specified percentage of the professional athlete's future income or earnings for a specified period of time, in exchange for payments to or on behalf of the professional athlete for advancement of the professional athlete's professional career, development, personal finances, or other purpose. A player brand agreement may also be referred to as an income share agreement.

(4) "Professional athlete" means an individual who meets any one of the following:

a. Is employed as an athlete by a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contest and exhibitions in which its member teams regularly engage.

b. Is employed as an athlete by a minor league team that is affiliated with an association that meets the terms under paragraph (4)a. of this section.

c. Is classified or considered an amateur or professional golfer under the rules of the United States Golf Association.

§ 5004F. Terms and conditions of player brand agreements.

(a) A player brand agreement that complies with the requirements of § 5004F(b) is a valid, binding, and enforceable contract notwithstanding any state or common law limiting or regulating assignment of future income or earnings.

(b) Each player brand agreement must satisfy all of the following conditions:

(1) Is written in the professional athlete's native language or a language in which the professional athlete is fluent.

(2) Specifies the percentage of future income or earnings that the professional athlete is obligated to pay to the investor and that said percentage was chosen by the professional athlete.

(3) Identifies 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) Does not require the professional athlete to pay more than 15% of the professional athlete's future income or earnings exclusively, however the professional athlete has the opportunity to choose to receive less of an investment in exchange for a lower percentage of the athlete's future income or earning.

(5) Does not require the professional athlete to share future income or earnings earned beyond the professional athlete's professional career.

(6) Is signed and executed under all of the following conditions:

a. The signing is audio or video recorded and clearly identifies by name and title, role, or position each individual present at the signing of the player brand agreement, whether the individual is present in person or by telephone, videoconferencing, or any other form of technology enabling remote attendance.

b. The signing occurs in the professional athlete's native language or a translator is present and participates in the signing of the player brand agreement.

c. The signing is accompanied by confirmation in writing that the professional athlete understands all of the following:

1. The professional athlete may be required to pay the investor substantially more money over the course of the professional athlete's career than the professional athlete received from the investor, including specific examples of potential payments that may be required depending on the occurrence of hypothetical future events.

(2) The professional athlete has the opportunity to choose a lower percentage of investment in exchange for a lower percentage of the professional athlete's future income and earnings.

3. If the professional athlete does not satisfy the conditions specified in the player brand agreement to contractually trigger payment to the investor, the professional athlete is under no obligation to pay the investor back.

4. The professional athlete had the opportunity for a lawyer, financial advisor, or other representative of the professional athlete's to review the agreement for the professional athlete and that the percentage of future income to pay back to the investor in exchange for present payment by the investor is approved by the professional athlete.

5. The professional athlete confirms that the professional athlete understands all material elements of the player brand agreement.

(7) Does not prohibit the professional athlete from disclosing the existence or terms of the player brand agreement, or the player brand agreement itself, to the professional athlete's agents, attorneys, financial advisors, union, or professional sports league or association.

(8) Preserves the right of the professional athletes to bring disputes which arise out of the player brand agreement either through arbitration or in a court of law, and clearly identifies all of the following:

a. That the arbitrator used must be either of the following:

1. A person named in or selected under an agreement.

2. A member in good standing of the Bar of the Supreme Court of this State for at least 10 years.

b. The jurisdiction of the court of law that will preside over such disputes.

§ 5005F. Enforcement and remedies.

(a) The Attorney General has the same authority to enforce and carry out this section as under Chapter 25 of Title 29.

(b) In addition to any penalties provided elsewhere in this Code, an investor who violates any provisions of this Chapter shall, in addition to all costs of investigation, be subject to a civil penalty of not more than \$5,000 per violation.

(c) The remedies and penalties in this section are not exclusive and are in addition to any other procedures, rights, or remedies which exist with respect to any other provisions of law including a private cause of action by any party to the player brand agreement brought in any court of competent jurisdiction in this State.

(d) Nothing in this Chapter shall be or interpreted as a waiver of any rights that may exist by statute or at common law, including recognized contract defenses.