

104TH CONGRESS
2D SESSION

S. 1696

To provide antitrust clarification, to reduce frivolous antitrust litigation, to promote equitable resolution of disputes over the location of professional sports franchises, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 1996

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide antitrust clarification, to reduce frivolous antitrust litigation, to promote equitable resolution of disputes over the location of professional sports franchises, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Professional Sports
5 Antitrust Clarification Act of 1996”.

6 **SEC. 2. ACTIONS AUTHORIZED.**

7 (a) IN GENERAL.—Notwithstanding any provision of
8 the antitrust laws, and subject to section 3 and subsection

1 (b) of this section, a professional sports league or its mem-
2 ber franchises may establish and enforce rules and proce-
3 dures for the purpose of deciding whether a member fran-
4 chise may change its home territory.

5 (b) CONSTRUCTION.—Nothing in this section shall be
6 construed to exempt from the antitrust laws any conduct
7 which would be unlawful under any antitrust law if en-
8 gaged in by a single entity.

9 **SEC. 3. REQUIREMENTS FOR ANTITRUST PROTECTION.**

10 (a) IN GENERAL.—This Act applies to a professional
11 sports league and its member franchises if such league—

12 (1) establishes applicable rules and procedures
13 to govern whether a member franchise may change
14 its home territory that are available upon request to
15 any interested party;

16 (2) affords due process, including 180 days no-
17 tice and an opportunity to be heard, to interested
18 parties prior to deciding whether a member fran-
19 chise may change its home territory; and

20 (3) promotes comparable economic opportuni-
21 ties by sharing revenue among member franchises to
22 account for disparities in revenue received or costs
23 saved due to direct or indirect public benefits and
24 subsidies, including publicly financed facilities, rent
25 abatement, special tax treatment, favorable arrange-

1 ments for parking, concessions, and other amenities,
2 and other public benefits not generally available to
3 businesses as a whole within the jurisdiction.

4 (b) RULES AND PROCEDURES.—Rules and proce-
5 dures established under subsection (a)(1) shall require
6 consideration of various factors to protect the public inter-
7 est, including—

8 (1) the extent to which fan support for a mem-
9 ber franchise has been demonstrated through attend-
10 ance, ticket sales, and television ratings, during the
11 period in which the member franchise played in its
12 home territory;

13 (2) the extent to which the member franchise
14 has, directly or indirectly, received public financial
15 support through publicly financed facilities, rent
16 abatement, special tax treatment, favorable arrange-
17 ments for parking, concessions, and other amenities,
18 and any other public benefits not generally available
19 to businesses as a whole within the jurisdiction, and
20 the extent to which such support continues;

21 (3) the effect that relocation would have on con-
22 tracts, agreements, and understandings between the
23 member franchise and public and private parties;

24 (4) the extent of any net operating losses expe-
25 rienced by the member franchise in recent years and

1 the extent to which the member franchise bears re-
2 sponsibility for such losses; and

3 (5) any bona fide offer to purchase the member
4 franchise at fair market value, if such offer includes
5 the continued location of such member franchise in
6 its home territory.

7 **SEC. 4. JUDICIAL REVIEW.**

8 (a) STANDARD OF REVIEW.—The standard of judi-
9 cial review shall be de novo in any action challenging the
10 establishment and enforcement of rules and procedures for
11 deciding whether a member franchise may change its
12 home territory, except that the reviewing court shall give
13 deference to actions of the professional sports league re-
14 garding compliance with paragraphs (1) and (3) of section
15 3(a).

16 (b) DECLARATORY ACTIONS.—A professional sports
17 league or any interested party may seek a declaratory
18 judgment with respect to whether paragraphs (1) and (3)
19 of section 3(a) are adequately satisfied by the professional
20 sports league for this Act to apply.

21 (c) LIMITATION ON MONETARY DAMAGES.—A judi-
22 cial finding that a professional sports league did not com-
23 ply with any provision of section 3 shall result only in fur-
24 ther proceedings by the professional sports league and

1 shall not result in liability under the antitrust laws or
2 monetary damages, if—

3 (1) the professional sports league implemented
4 a revenue sharing plan in a good faith attempt to
5 comply with section 3(a)(3) prior to the specific dis-
6 pute in issue; or

7 (2) a prior declaratory judgment held that the
8 revenue sharing plan of the professional sports
9 league complied with section 3(a)(3).

10 (d) VENUE.—In any action challenging the establish-
11 ment and enforcement of rules and procedures to decide
12 whether a member franchise may change its home terri-
13 tory, venue shall be proper only in the United States Dis-
14 trict Court for the District of Columbia, except that—

15 (1) venue shall be proper only in the United
16 States District Court for the Southern District of
17 New York if the existing or proposed home territory
18 of a member franchise is located within 100 miles of
19 the United States District Court for the District of
20 Columbia; and

21 (2) venue shall be proper only in the United
22 States District Court for the Northern District of Il-
23 linois if—

24 (A) the existing home territory of a mem-
25 ber franchise is located within 100 miles of the

1 United States District Court for the District of
2 Columbia or the Southern District of New
3 York; and

4 (B) the proposed home territory of the
5 member franchise is located within 100 miles of
6 the United States District Court for the Dis-
7 trict of Columbia or the Southern District of
8 New York.

9 **SEC. 5. DEFINITIONS.**

10 For purposes of this Act—

11 (1) the term “antitrust laws”—

12 (A) has the same meaning as in subsection
13 (a) of the first section of the Clayton Act (15
14 U.S.C. 12(a)), except that such term includes
15 section 5 of the Federal Trade Commission Act
16 (15 U.S.C. 45) to the extent that such section
17 relates to unfair methods of competition; and

18 (B) includes any State law comparable to
19 the laws referred to in subparagraph (A);

20 (2) the terms “professional sports team”,
21 “team”, “member franchise”, and “franchise” mean
22 any team of professional athletes that is a member
23 of a professional sports league;

24 (3) the terms “professional sports league” and
25 “league” mean—

1 (A) an association of 2 or more profes-
2 sional sports teams that governs the conduct of
3 its members and regulates the contests and ex-
4 hibitions in which such teams regularly engage;

5 (B) whose decisions relating to franchise
6 relocation would otherwise be subject to the
7 antitrust laws; and

8 (C) that has combined franchise revenues
9 of more than \$10,000,000 per year;

10 (4) the term “interested party” means the
11 member franchise at issue, local and State govern-
12 ment officials, owners and operators of playing fa-
13 cilities, concessionaires, and others whose business
14 relations would be directly and significantly affected
15 by the franchise relocation at issue, and representa-
16 tives of organized civic and fan groups; and

17 (5) the term “playing facility” means the sta-
18 dium, arena, or other venue in which professional
19 sports teams regularly conduct their contests and ex-
20 hibitions.

21 **SEC. 6. EFFECTIVE DATE.**

22 This Act applies to any action occurring on or after
23 the date of enactment of this Act.

○