



MARCH 2020 • NO. 1

Advent of Legal Sports Betting across the D.C. Metro Area

Residents all across the Washington, D.C., metropolitan area could soon have access to legal sports betting. With the District of Columbia poised to officially launch sports betting within the next several weeks, both the Virginia and Maryland legislatures are deep into consideration of bills that would allow sports wagering within each state by the end of 2020. But there are many hurdles yet to clear before every D.C. metro area resident can legally place a wager on their favorite team.

DISTRICT OF COLUMBIA

The District of Columbia was the first in the D.C. metro area to enact legislation authorizing sports wagering, on January 23, 2019. D.C. residents are still waiting for the chance to place their first legal sports bet. Under D.C. Act 22-594 (the “Act”), each of the four major sporting arenas in the District (Capital One Arena, Audi Field, National Park, and St. Elizabeths East Entertainment and Sports Arena) are authorized to receive a Class A operator license to conduct sports wagering with patrons physically present at the arena or online within two city blocks of each arena. In addition, hotels, bars, and restaurants located outside of the two-block buffer zone around each arena are authorized to receive a Class B operator license to conduct sports wagering with patrons physically present in the hotel, bar, or restaurant. The D.C. Office of Lottery and Gaming (the “Office”) started accepting applications for Class A and Class B operator licenses in the end of November 2019. William Hill has reportedly applied for a license to operate at Capital One Arena, but none of the other arenas have reportedly filed similar applications.

The Act also authorized the Office to offer online sports wagering throughout the District, either through authorizing and taxing an unlimited number of online operators or through entering into exclusive deals with “a limited number of partners” to offer mobile and web-based sports wagering on behalf of the D.C. Lottery. The Office chose to contract with a single operator, Intralot, to operate a mobile and web-based sports wagering platform on behalf of the D.C. Lottery, and the D.C. Council ratified that choice in a separate Sports Wagering Procurement Practice Reform Exemption Act of 2019. The award of that contract has been tied up in litigation for nearly a year; but the DC Lottery has stated that the city’s official sports betting app is expected to be ready for public use at some point in the latter part of this month.

MARYLAND

The Maryland General Assembly (the “Assembly”) is actively considering a measure (SB4) that would allow each of the six casinos in the state, as well as horse race tracks and off-track betting parlors, to obtain a license to conduct sports betting. The latest version of SB4,

voted unanimously out of the Senate Budget & Taxation Committee on March 3, 2020, also would give the Washington Redskins football franchise the opportunity to obtain a license to conduct sports betting, but only on the condition that the franchise commit to significantly renovate FedEx Field or build a new stadium facility nearby. In addition, each sports wagering licensee would be permitted to operate one online “skin” to conduct mobile and web-based sports wagering.

Under Article XIX § 1(e) of the Maryland Constitution, enacting sports wagering in Maryland would, however, require the state’s voters to approve that expansion of commercial gaming in a statewide referendum. However, one unique provision of the Maryland Constitution, Article XVI § 2, allows for referenda to only be placed before the voters in conjunction with statewide elections for the United States House of Representatives. Thus, if supporters of SB4 cannot act quickly enough to get that referendum on the ballot in November 2020, sports wagering in Maryland might be delayed until at least 2022. Sports wagering proponents, therefore, face some urgency to try to push a sports wagering authorization bill through the Assembly before the scheduled end of the legislative session on April 6, 2020.

VIRGINIA

Virginia appears poised to approve sports betting, as part of a large expansion of commercial gambling throughout the Commonwealth. Two bills passed by the Virginia General Assembly on March 8, 2020—HB4 dealing with casino gaming, and SB384 dealing exclusively with sports betting—would authorize operators to offer a wide range of wagering on professional and collegiate sports (other than collegiate sporting events involving one or more teams from Virginia, or in-play wagering on any college sporting events). It will now be up to Virginia Governor Ralph Northam to decide whether to approve one or both bills.

SB384 contemplates the director of the Virginia Lottery Authority (the “Authority”) issuing permits to operate sports wagering to between four and 12 gaming operators, plus any MLB, NBA, NFL, NHL or MLS team that relocates to Virginia and the operator of the facility at which such major league sports franchise plays in Virginia. If casino gaming is also authorized, each of the casino properties would be practically guaranteed one of the 12 licenses, but at least four licenses must be issued to sports betting operators other than the casino operators. All operators would be authorized to offer Internet and mobile sports wagering, regardless of whether the operators maintained a physical location (such as a casino or sports venue) to conduct retail wagering, and customers would be permitted to establish sports wagering accounts over the Internet without ever visiting a physical location. The bill contemplates a tax rate of 15 percent of adjusted gross revenue and sports wagering licenses good for three years. SB384 directs the Authority to complete its work on sports wagering regulations by no later than September 15, 2020, and provides that the Authority should make a determination on initial applications for sports betting permits within 60 days of their receipt.

HB4 deals specifically with land-based casinos, and envisions authorizing up to five separate casino properties, distributed throughout five economically distressed cities around Virginia (Bristol, Danville, Portsmouth, Norfolk, and Richmond). HB4 calls on each city to select a preferred casino operator, and then hold a referendum on November 3, 2020, on whether casino gambling should be allowed in their city. If sports betting is also authorized, each casino that is ultimately established could apply for one of the 12 sports betting licenses to be issued to gaming operators, and HB4 specifies that the Lottery shall issue a license to any authorized casino operator that applies for a permit to operate an online sports betting platform or sports

betting facility. The bill contemplates tax rates ranging from 18 percent to 30 percent of adjusted gross receipts from casino gaming (depending on the total annualized adjusted gross receipts of each property) and casino licenses good for 10 years. HB4 also specifies that all wagers must be placed by persons physically present at the casino facility, precluding the possibility of non-sports wagering over the Internet.

CONCLUSION

The opportunities for investors and sports wagering operators to expand into the D.C. metro area—the sixth largest metropolitan area in the United States and the second largest on the Eastern Seaboard—could be expanding dramatically in the coming months. Navigating those opportunities will require experienced counsel. With leading members of our [Gaming](#) practice throughout the United States, including specifically in our Washington, D.C., office, Blank Rome LLP is well positioned to assist any investors or businesses looking to take advantage of those opportunities.

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