

THE MOMENTOUS LAW FOR US POKER

The nation's Capital becomes the first jurisdiction to approve online gaming



April 7, 2011, saw a historic moment in iGaming as the District of Columbia became the first American jurisdiction to enact a law that allows online poker wagering. The amendment, called the 'Lottery Modernization Act of 2010' for the year it was introduced, was quietly slipped into a larger budget bill passed by the DC Council in December 2010. As with all municipal laws for the nation's capital, it was officially enacted only after passing through Congress.

This amendment changes prior DC gaming law by redefining the term 'lotteries' to include not only games of chance, but also games of skill such as poker. Since lotteries in the District are operated by the DC Lottery and Charitable Games Control Board, this law legalises only online poker operated by the DC Lottery, and does not make it legal for other American poker operators to offer online gaming in the district. The law does not change the legal status of offshore operators which currently offer poker within the district – if it was legal for them to do so before, it remains legal now. While additional steps must be taken by the DC government to actually implement online poker play, this law is a promising first step that opens the door for other states, as well as the federal government, to follow suit in legalising online poker.

Revenue generation

The law was implemented to generate revenue in a city with a projected budget deficit of nearly \$200 million. Some have questioned how much money this venture can realistically bring in considering that players must be physically located in the District of Columbia in order to play and DC has only 600,000 residents. The city is counting on the over 40 million visitors it receives annually to boost the playing pool, and projects that online poker will add \$13 million to the city's reserves in the first four years it is offered. This projection by the city's Office of the Chief Financial Officer is a conservative estimate, and real returns could be significantly higher.

In preparation for offering online poker, the DC Council has already signed a \$38 million contract with Greece-based gaming giant Intralot to provide new, state-of-the-art lottery systems to service both its traditional and online lottery offerings. Intralot gained the contract only after years of political wrangling as the result of the DC Council's insistence that Intralot join with a local partner to administer the DC Lottery. The resulting joint venture with Veteran's Services Corp (VSC), called DC09, has faced criticism after it was revealed that VSC had falsified its prior experience and appears to have no relevant experience or capabilities to

administer a lottery system. Indeed, the DC Lottery system was plagued with delays and malfunctions when DC09 began administering the system in November 2010. At least part of this was attributed to DC09's use of 4G wireless to service terminals rather than the Internet-based communication system Intralot had originally promised.

Challenges and obstacles

While Intralot has not formally presented a technical implementation plan for offering online poker, there will be a number of technical hurdles to overcome when it does. Since the law requires players to be physically located within the district, Intralot will need to develop and implement a system capable of determining a person's physical location through an Internet Protocol (IP) address, the technology of which is not always reliable at the city and state level.

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In addition to the technical challenges, there are additional legal obstacles to overcome before Intralot launches the new DC Lottery poker websites. The new law provides only the basic enabling legislation that authorises the DC Lottery to offer online poker. The DC municipal government next must enact regulations outlining the exact terms of play to ensure that all potential offerings comply with appropriate federal laws. Other DC regulations that refer to a lottery as a 'game of chance' must be amended to conform to the new definition of 'lottery'. Regulations regarding the administration of online gaming must be drafted and pass through a public comment period. Finally, the DC Lottery will have to decide which online games to introduce, and work with approved lottery contractors and vendors to implement the games.

Intervention

It remains possible that the federal government will intervene even if DC passes through these municipal obstacles and begins offering online poker. While the Department of Justice has consistently objected to the legality of online poker in general, the federal government has traditionally shown great deference to state-run lotteries, for instance in the 1975 Exemptions Relating to State Conducted Lotteries

Act which exempts the states, and the District of Columbia, from federal anti-lottery prohibitions. Therefore, DC might avoid some of the negative federal attention that private operators have received from the government. On the other hand, although DC is treated as a state for the purposes of some laws, it is unique from states in that under the US Constitution, Congress is authorised to pass legislation concerning the district without approval from residents or the local government. Therefore, Congress could take it upon itself to pass a law banning online poker in DC at any time.

Even if DC online poker gets up and running, it remains to be seen whether new players will flock to an online poker site run by the DC Lottery. Existing online poker players are generally loyal to their favourite sites and may be unlikely to switch over, especially to a website which is new and unproven and is likely to undergo numerous

changes even after it is implemented. While the lotto site may attract new players who appreciate the added legal security of the government-operated framework, those players are not likely to be the regular players placing higher bets that the city is counting on to generate revenue.

Momentous law

The work remaining to be done to implement online poker in DC does not diminish the significance of this new law. Regardless of when the DC Lottery begins offering online poker, it is momentous that a US jurisdiction now has a law on the books that authorises online poker. We hope this changing legal landscape will give prosecutors pause before bringing new online poker-related lawsuits, and that DC's new law will provide inspiration and momentum for the passage of similar state and federal laws. ■

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