

18 or 21?

What is the Legal Age for Gambling Online?

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As the issue of underage gambling takes on increasing significance within the online gaming industry, a threshold question remains unresolved: At what age does an individual attain “legal age” to wager online? The age at which a person becomes an “adult” in the United States is primarily governed by state law.¹ For most purposes, in the vast majority of states, an individual is considered to be an adult when he or she reaches the age of 18. At this “age of majority,” a person can legally enter into binding contracts, vote and state and federal elections, own property, and purchase tobacco products. However, to engage in other activities, such as the purchase of alcohol or owning a handgun, an individual must be at least 21 years old. In those United States jurisdictions that have legalized brick and mortar casino gambling, bettors must be at least 21 years old to bet at a casino. However, where other forms of gambling are involved, such as parimutuel dog racing, the minimum age to gamble is 18.²

So what about online gambling? Should any age restriction be imposed; and if so, what is the magic age at which individuals should be considered sufficiently mature to make intelligent decisions on the issue of wagering?

By their very nature, all age restrictions are arbitrary. Every person matures at a different pace, and therefore uniform age restrictions do not work perfectly for all unique individuals. Lawmakers have struggled with the issue of age in regards to sexual activity by minors, and have

¹ See: e.g., §1.01(13), *Fla. Stat.* (2004).

² §550.0425, *Fla. Stat.* (2004).

developed wildly conflicting “age of consent” restrictions in the United States. The age at which an individual can engage in intimate relations with a member of the opposite sex ranges from 13 in some states up to 18, in others.³ The rationale advanced for restricting intimate relations for teenagers is similar to that offered for restricting other “vice related” activities. It is claimed that adolescents are legally incapable of making informed decisions whether to engage in potentially damaging activity – either emotionally or physically – and thus the law must interpose a prohibition from a paternalistic, protectionist point of view.

Many negative impacts allegedly caused by gambling activities have been offered as a basis for gambling regulation in general, including the disruption of moral and cultural patterns, the increase in local crime, the fostering of prostitution, the development of corruption and the infiltration of organized crime.⁴ These concerns are highlighted by opposition groups to argue that “children” have no business wagering. However, online gambling differs significantly from the traditional brick and mortar variety, and does not produce the same negative impacts. Thus, the arguments for imposing age restrictions on Internet gaming are not as strong.

Assuming for the sake of argument that adolescents of some age should be shielded from commercial online gambling activities, the issue of a precise age cutoff remains in doubt. The age problem is highlighted by the fact that online gambling is instantaneously available to a world wide audience, which collectively possesses a multitude of differing cultural norms and customs. In some cultures, children grow up gambling from the time they are first able to communicate. On the other extreme are repressive regimes, which prohibit all traditional vice activities, including any form of gambling, under penalty of imprisonment, or worse.

³ In 4 states, the age of consent is 13 years old; in 9 states, 14 years old; in 4 states, 15 years old; 22 states, 16 years old; 4 states, 17 years old; and in the rest, 18 years old. Phillips, *Children, Adults, Sex and the Criminal Law: In Search of Reason* (1977), 22 Seton Hall Legis. J. 1.

⁴ *Posadas de Puerto Rico Associates v. Tourism Co of Puerto Rico*, 478 U.S. 328, 345, 106 S.Ct 2968, 92 L.Ed.2d 266 (1986)

The gambling age issue has recently risen to the forefront: Various state attorneys general have recently sent communications to some of the author's clients, expressing concern about the ability of individuals aged 18-21, to gamble on the clients' websites, since the states' laws impose a 21 year old cutoff. To be sure, the norm in the online gambling industry is to require that bettors be 18 or older to open accounts and wager, not 21. This policy clearly conflicts with many states' laws requiring land-based casino gamblers to be 21 or older, but is consistent with age restrictions for other forms of gambling, such as horse racing or the purchase of a lottery ticket. Such conflict leaves room for confusion, doubt, and potential legal exposure.

An important distinction between brick and mortar gambling and online gambling is the fact that most casinos in the United States rely heavily on the service of alcohol for their profitability and ambiance. Drinking and gambling go together, well, like . . . drinking and gambling. The presence of alcohol is likely a significant factor in the regulators' decision to set the legal gambling age at 21, as opposed to 18. The casino culture has developed such that cocktail waitresses hand out free alcoholic beverages to gamblers while at the tables or slot machines as a means to keep them in place and presumably increase the casinos' profitability. The waitresses should be permitted to presume that any individual engaged in gambling activities is also old enough to drink. While this may not be the decisive factor for requiring a 21 year cutoff, it certainly plays a significant role.

Obviously, Internet gambling does not involve the consumption of alcohol. Thus, a reasonable argument exists to tie the age at which individuals are permitted to gamble online, not to the legal age for alcohol consumption, but to the legal age for the ability to enter into contracts. Certainly, no online gambling website desires to do business with an individual who can later disclaim any gambling losses due to their legal inability to enter into binding

agreements. Individuals under the age of 18 cannot be held to their contracts, which are considered “voidable” at the option of the minor.⁵ Thus, 18 appears to be a rational legal cutoff for online gambling, as it addresses the contract validity issue, and conforms to the traditional western notions of the “age of majority.” However, regulators and law enforcement officers in the United States have yet to be convinced of the soundness of this position. Therefore, the more conservative approach is to set the bar at 21, to assuage the concerns of the brick and mortar world.

Regardless of the minimum age selected for participation, some form of online age verification is essential. The study released in July, 2005, on the issue of underage access to online gambling services, conducted in the United Kingdom, added fuel to the fire on these discussions. The study tested 37 online gaming sites to see if a minor could set up an account and gamble.⁶ The site “passed” the test for age verification if, after the registration process, the account was blocked or request was made for further proof of age and identification at that point.⁷

With the dramatic increase in popularity of poker among American teens, this issue will not soon go away.⁸ Given the increasing adolescent interest in poker, largely fueled by televised poker tournaments, any website offering poker play ought to be particularly sensitive to the age verification issue.

Since technology has not yet developed to the point of verifying an individual’s online identity through retina scans or fingerprint analysis, other, less perfect, forms of age verification

⁵ E.g.: 17 Fla. Jur. Infants §17; *Orange Motors of Miami, Inc. v. Miami Nat. Bank*, 227 So.2d 717 (Fla. 3d DCA 1969).

⁶ Staff, “New Research Shows that Minors Have Easy Access to Online Gambling Services,” *IGamingNews.com* (July 27, 2004) located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5250>.

⁷ *Id.*

⁸ K. Smith, “Hardly Child’s Play – Popularity of Poker Among American Teens Raises Concerns,” *Interactive Gaming News*, RiverCityGroup.com (January 26, 2005).

have developed. One such device, created by the author, requires the user to submit the equivalent of an online affidavit, setting forth his or her date of birth in accordance with the recently-passed E-SIGN legislation, as detailed on www.BirthDateVerifier.com. Other systems rely on ID databases, or personal information, such as social security numbers or driver's license numbers. Given the world-wide audience for online gambling, any system that is reliant on database information for age verification, is necessarily deficient. Thus far, there is no world-wide identification database capable of providing confirmation of every individual's age, everywhere on the planet. Until such (scary) databases are developed, the industry will necessarily be required to rely on a combination of imperfect age verification devices, such as credit cards and sworn statements, in order to verify age of online users. However, some attempt to weed out children from online gambling services should be taken, particularly in the current legal climate.

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