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http://repository.jmls.edu/lawreview/vol32/iss4/9

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COMMENTS

A GAME OF HIGH STAKES ROULETTE: CREDIT CARD COMPANIES CASH IN ON GAMBLERS’ BAD LUCK

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INTRODUCTION

Plastic or cash? The option of using a credit card makes consumer purchasing power easy, immediate, and accessible. For an example of the power of credit, look at a typical day in the life of Joe. Joe comes home from a hard day’s work. He feels a little lucky. He decides to gamble and have some fun. Joe turns on his computer and surfs the Internet for the virtual casino web sites with which he has an account. From the comfort of his living room, Joe brings the glitz of Las Vegas to his fingertips. Simply by typing his credit card number to enter the web site, Joe accesses the world of high roller stakes. However, before Joe realizes it, he has blown a lot of dough. After a few visits to the virtual casino, Joe will not fathom how much money he has lost until he receives a staggering credit card bill. Joe, with other bills to pay and a wife and three kids to support, does not have nearly enough money to cover the debt. Deeply in debt, Joe must file for bankruptcy.

However, filing for bankruptcy because of gambling debts is complicated. It deals with many factors. Such factors involved can include the intent of the debtor to repay, the determination of what debts are dischargeable, and the determination of whether any evidence of fraud exists.

A debtor who files for bankruptcy under Chapter 7 of the Bankruptcy Code faces possible liquidation of all his assets and non-exempt property for collection and distribution by the designated trustee to the creditors.1 Under Chapter 7, the debtor is al-

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* J.D. Candidate, June 2000. This Comment is dedicated to the Author’s family for their love and infallible support. Also, the Author would like to thank Cory Aronovitz (J.D. 1993) for his invaluable guidance during the writing process.

1. See 11 U.S.C. § 726 (1998) (specifying how payments of claims are to be
allowed a "fresh start" by discharging preexisting debts without obligation of future repayments. Dischargeability involves "the release of a debtor from all of his debts which are provable in bankruptcy, except such as are excepted by the Bankruptcy Code." Due to the possibility of discharging of debts, individuals file for Chapter 7 seventy percent of the time, as opposed to Chapter 13, which can include the requirement of paying future income to pay off debts.

In the past, most bankruptcy courts held that gambling debts were non-dischargeable. However, due to the sharp rise of legalized gambling in many states, courts are now allowing the discharge of gambling debts. Debtors attempt to discharge their gambling debts under 11 U.S.C. § 727. Creditors attempt to seek

2. The concept of "fresh start" was explained by the Supreme Court in Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934):


4. BLACK'S LAW DICTIONARY 463 (6th ed. 1990). Discharge of debts is a step that regularly follows the filing of a petition in bankruptcy and the administration of her estate. Through discharge, the debtor is released from the obligation of all her debts which were or might be proved in the proceedings, so that they are no longer a charge upon her, and so that she may thereafter engage in business and acquire property without its being liable for the satisfaction of such former debts.


7. Id.

8. Id. 11 U.S.C. § 727 states the following: (the court shall grant the debtor a discharge, unless — . . . (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case; . . .
A Game of High Stakes Roulette

a ruling of non-dischargeability for the debt under 11 U.S.C. § 523(a)(2)(A), which allows the discharge of a debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or insider's financial condition...." For the purposes of 11 U.S.C. § 523(a)(2)(A), "fraud" refers to "common law fraud based on an intent not to repay the debt."\(^{10}\)

For gambling debts, bankruptcy courts look to the debtor's intent to repay the debt.\(^{11}\) However, proving the fraudulent element of § 523(a)(2)(A) becomes very tricky for creditors, especially since a gambler always plays to win.\(^{12}\) "People gamble with the hope that they will hit the jackpot and be able to bail themselves out of dire financial straits. Consequently, when a debtor takes out a cash advance [by credit card], he usually has the subjective intent to repay the debt."\(^{13}\)

The difficulty in proving fraudulent intent becomes more complex when the debt is due to Internet gambling. The U.S. Senate is currently debating a bill that would make Internet gambling illegal in the United States.\(^{14}\) The issue of the legality of Internet.

\(^{9}\) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities.

\(^{10}\) Edgar & Triebold, supra note 6, at 8.


\(^{13}\) Id.

\(^{14}\) Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. (1999). This Act seeks to amend 18 U.S.C. §§ 1081 and 1084 by prohibiting bets and wagers from being transmitted over a wire communication. Id. The Internet Gambling Prohibition Act (also known as the Kyl Bill) states in § 2(b):

PROHIBITION—Subject to subsection (d), it shall be unlawful for a per-
gambling has important ramifications for the dischargeability of gambling debts.

Part I of this Comment discusses the eventual acceptance of gambling by the American public and government, and the incredible growth of the Internet gambling industry. Part I further discusses the current status of Internet gambling in terms of its legality.

Part II of this Comment explains how a court discerns whether credit card debt incurred from gambling is dischargeable. Part II further analyzes what is a dischargeable debt and why a debt should be non-dischargeable if illegality or fraud is involved. In addition, Part II discusses how the rapid growth of the gambling industry correlates with the sharp increase in bankruptcy filings. Moreover, Part II analyzes how the growth of Internet gambling will further exacerbate the amount of debt and number of bankruptcy filings.

Finally, Part III proposes that Internet gambling should be prohibited and that as a result, Internet gambling debts should be non-dischargeable. Part III outlines suggestions to reduce gambling bankruptcies.

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son engaged in a gambling business to use the Internet or any other interactive computer service—

- to place, receive, or otherwise make a bet or wager; or
- to send, receive, or invite information assisting in the placing of a bet or wager.

PENALTIES—A person engaged in a gambling business who violates paragraph (1) shall be—

- fined in an amount equal to not more than the greater of the amount that such person received in bets or wagers as a result of engaging in that business in violation of this subsection; or $20,000; or
- imprisoned not more than 4 years; or both.


17. See generally Drought, supra note 3, at 1328-35 (analyzing the different approaches courts use to establish the intent of the debtor).

18. Id.

I. THE FACE OF GAMBLING: FROM BACKROOM PARLORS TO CASINOS AT YOUR FINGERTIPS

The opportunity to gamble legally at casinos in the United States increased exponentially over the last decade. The relatively new Internet gambling industry threatens to steal numerous casino patrons due to easy, immediate accessibility from the comfort of the gambler’s home. The legal status of Internet gaming will determine the success of the Internet gambling industry.

A. Growth and Acceptance of the Gambling Industry

Americans enjoy gambling. In 1996, U.S. casino revenue totaled $22.8 billion, doubling the amount of revenue from the previous four years. Thirty-two percent of U.S. households gambled at a casino in 1996. U.S. households made 176 million visits to casinos in 1996, an increase of fourteen percent over the previous year. Estimates in 1998 alone show Americans wagered more than $600 billion, nearly $2,400 for every man, woman and child. The growth of the gambling industry is related to the acceptance of gambling by the American public and the government as a source of revenue and jobs.

"The disappearance of gambling as a specific ground for denying discharge reflected changing societal attitudes [that] continue today." In the eighteenth century, Americans believed gamblers were sinners, mandating condemnation.

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20. Bell, supra note 16. Bell discusses how Americans have already embraced traditional forms of gambling provided by casinos and other forms of legal gambling. Id. For this reason, Bell believes that Americans will take warmly to Internet gambling. Id.


23. Id. Also, trip frequency among casino patrons increased. Id. Gaming households made an average of 4.8 trips to casinos in 1996, an increase from 4.5 trips in 1995. Id.

24. Crist, supra note 15, at 85; Bell, supra note 16.


27. I. Nelson Rose, Gambling and the Law—Update 1993, 15 HASTINGS COMM. & ENT. L.J. 93, 94-95 (1992). Rose delineates in-depth a description of the history of legal gambling in America, from the Colonial Period to the Wild West expansion following the Great Depression and continuing throughout the current decade. Id. at 95-98. He observes that "[t]hese developments mark an important change in public policy from nearly complete prohibition to grudg-
of the first Bankruptcy Code reflected the perception of gamblers by making gambling debts non-dischargeable. In the nineteenth century, the attitude toward gambling changed. "Gambling came to be considered a vice rather than a sin, and the gambler was considered weak rather than fallen." Today, more often than not, gambling is seen as entertainment and not a vice, thereby gaining public acceptance and use by the government as an economic tool. Therefore, even though gambling does not necessarily prevent dischargeability of debt, creditors argue that credit card debt from gambling should be subject to the fraud exception to discharge.

In the last ten years, the gambling industry, especially the casino sector, has exploded in America. Today, twenty-four states have at least one casino located within their borders, and a total of thirty-seven states have established lotteries. Sixty-two percent of U.S. adults in 1996 agreed that casino entertainment is acceptable for anyone. The acceptance and popularity of gambling in America clearly paved the way for support of Internet gambling.

B. The Rapid Rise of Internet Gambling

Since 1995, when the first web-sites appeared, Internet gambling has turned into an "industry" with billion dollar potential.
Early gambling sites offered casino-like games that did not require betting with "real money,"38 in three years, remarkable advancements in Internet security and speed made gambling on the Internet more viable and, as a result, the industry has flourished.39

The industry's rapid growth can be attributed to the low cost of entry and profit margins that surged with the increased volume of players.40 Internet gambling sites are developed and started up for as little as $135,000, while the cost of maintaining the site remains the same regardless of how few or how many on-line customers the site has.41 Nearly all types of gambling are now available on the Internet, including horse and dog racing, sports wagering, lotteries, and casino-style games.42

In 1997, Internet gambling generated $600 million in revenue.43 Analysts predict on-line casinos will have worldwide revenues of some $7.9 billion by the year 2001, $3.5 billion of it coming from U.S. consumers.44 However, since the legal status of the gambling industry in the U.S. remains uncertain, the forecasts of the industry's growth are quite unpredictable.45

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40. Flatt, supra note 38.
41. Crist, supra note 15, at 90.
42. Cabot, supra note 15, at 9. The predominate types of Internet gambling sites are virtual casinos and sports wagering. Id. "As of May 1998, there [were] approximately [ninety] on-line casinos, [thirty-nine] lotteries, eight bingo games, and [fifty-three] sports books, [along with other] horse and dog-racing related sites." Flatt, supra note 38. Already, the industry has experienced mergers and acquisitions, the development of industry and trade associations, and publications. Id. Virtual casinos offer software-based video facsimiles of most casino games. Cabot, supra note 15, at 9. "The most popular are slot machines, including one creative site that combines science and gambling by having the reel symbols depict various parts of the human anatomy." Id. Other gambling-related sites exist on the Internet, such as legal casinos that have home pages so prospective patrons can view the casino property and learn about its facilities, and amenities. Id. at 10. These sites are popular because federal law prohibits many legal U.S. casinos from advertising their casinos by television, radio, or direct mail. Id.
44. Id.
45. See Crist, supra note 15, at 83 (discussing the simplicity of establishing an Internet casino web site); see also Sinclair, supra note 43, at 8 (highlighting the recent significant increase in Internet gambling revenue).
C. Legal Status of Internet Gambling in Limbo

"In the United States, gambling regulation traditionally has been a state, rather than a federal function." Nevertheless, the National Association of Attorneys General (NAAG) called for a federal response to Internet gambling. The Attorneys General hold the position that the global accessibility of Internet technology does not allow states to address the different policy considerations that have resulted in widely disparate legal and regulatory gambling schemes.

The drafters of current federal gambling statutes expressed no intention of addressing Internet gambling, but rather intended to address gambling over more traditional communications mediums, such as telephone lines. As a result, any attempt to legally prohibit Internet gambling must be done by applying the current statutes to the more sophisticated medium of the Internet. The Senate currently is debating the Kyl Bill, known as the Internet Gambling Prohibition Act, to address jurisdictional concerns regarding enforcement of various state Internet gaming laws. Proponents of the bill seek to prohibit Internet gambling by amending the 1961 Wire Communications Act.

The Federal Wire Act, codified as 18 U.S.C. § 1084, is the federal law most often applied to Internet gambling. The Federal Wire Act prohibits betting or wagering conducted over interstate...
telephone lines.\textsuperscript{54} The purpose of the statute was to allow federal officials to prosecute bookies, or anyone who used telephones to accept wagers on sporting events or horse races.\textsuperscript{55}

Uncertainty remains regarding the future legal status of Internet gambling.\textsuperscript{56} Even if the Kyl Bill is signed into law, the bill would be difficult to implement.\textsuperscript{57} Federal authorities would need to address certain problems regarding prohibition of Internet gambling.\textsuperscript{58}

Internet gambling has created a growing apprehension that the Internet is an unsafe vehicle to conduct any confidential business transactions.\textsuperscript{59} Gamblers placing credit card bets face the real risk that a computer hacker could steal their card numbers.\textsuperscript{60} Money security problems are heightened by the impossible task of policing the activity of on-line gamblers.\textsuperscript{61} Internet gambling lacks

\textsuperscript{54} Id.
\textsuperscript{55} Id. Enacted in the early 1960's, 18 U.S.C. § 1084 provides in relevant part:

[w]hoever being engaged in the business of betting or wagering knowingly using a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers or for information assisting in the placing of these bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1084 (1998) This section also mandates that the person be engaged “in the business of betting or wagering.” Id. Thus, courts require that a party be engaged in the “sale of a product or service for fee.” United States v. Barborian, 528 F. Supp. 324, 329 (D.R.I. 1981). The courts also require that a party be engaged in a “continuing course of conduct.” United States v. Scavo, 593 F.2d 837, 842 (8th Cir. 1979). “Consequently, where an interactive gambling operator charges the customers for its service, the continuing activities of the operators will likely constitute being ‘engaged in business of betting or wagering,’ thus leaving them open to liability under the statute.” Cabot & Doty, supra note 49, at 4.


57. Id.


59. See Ilene Knable Gotta & Rebecca R. Fry, Danger May Await Internet Shoppers, NAT'L L.J., Mar. 25, 1996, at C9 (stating “[a] healthy dose of doubt and caution are warranted before embarking on a cyberspace shopping [or gambling] spree”); Montpas, supra note 58, at 171 (noting the security risk regarding computer hackers' ability to steal credit card numbers).

60. Montpas, supra note 58, at 171. Moreover, Montpas explains that “even if the gambler has a standing account, which is required by nearly all of the bookmaking services available, the account numbers are just as much at risk as the credit card numbers.” Id.

any disincentive that would curb gambling beyond one's means because of the lack of any tangible representation of money. Also, even if Internet gambling became illegal, underage gamblers still have easy access to the virtual casinos.

Despite the problems regarding policing the Internet, if online gambling were prohibited, the burdens of Internet gambling substantially outweigh the benefits. In other words, the promises of increased jobs and tax revenues do not outweigh the social burdens that legalized Internet gambling would create. For this reason, it is highly likely that in the near future, federal laws will prohibit Internet gambling.

II. DISCHARGEABILITY OF DEBT: ANALYZING THE OFF-LINE CONSEQUENCES OF ON-LINE GAMBLING

Credit card debt from Internet gambling may be dischargeable, even if Internet gambling becomes illegal. In deciding whether credit card debt should be excepted from discharge in cases of actual fraud, courts look to the debtor's intent to repay the debt, rather than his actual ability to repay. The intent to repay the debt is subjective, not objective. The problem lies with the ease in which a gambler can enter a virtual casino and lose large sums of money. A gambler does not play to lose. Therefore, the gambler always has the subjective intent to win. Since the gam-
bler believes she is going to win, she also intends to repay whatever debt she owes through her winnings. Thus, the gambler is in a no-lose situation. Even if the gambler illegally gambles on the Internet, as long as she maintains that she intended to repay the amount she owes the credit card company, according to law, her debt may be discharged.

Dischargeability of gambling debts is easily applicable to Internet gambling. The debtor simply asserts her intention to repay the amount she owes the credit card company to discharge her Internet gambling debts. Due to increased exposure to gambling on the Internet and a dramatic rise in the issuance of credit cards to consumers, bankruptcy courts will continue to see a significant increase in the number of debtors file for Chapter 7 for gambling debts.

A. Courts Look to the Intent of the Debtor

A debtor who files for bankruptcy seeks to have a “fresh start” by release of pre-existing debts through the remedy of discharge.

and pay off the debt. Id. Eventually, the debtor filed for bankruptcy in April, 1995. Id. at 768 n.8. The bankruptcy court held that the debtor possessed a fraudulent intent at the time she incurred the gambling debts and denied discharge of those debts. Id. The U.S. District Court for the Eastern District of Michigan reversed the bankruptcy court ruling as “clearly erroneous.” Id. at 765. With regard to intent, the debtor testified that she used the credit cards for the purpose of gambling, and that she realized the only way to pay for her losses was through the winnings that she earned. Id. at 766-67. Through the testimony of the debtor, it became clear that the debtor could not reasonably expect to repay her credit card debt. Depperschmidt & Kratzke, supra at 397. The trial transcript from Rembert stated the following:

Q. Judge: And let me ask you this—this important question: At the time you were borrowing this money for gambling, $18,000 to $24,000 in this six or seven month period, how did you think you were going to be able to pay it back?
A. I thought I was going to win.
Q. Do you recognize now that it was not a reasonable expectation on your part?
A. Yes. I recognized it before now.

Rembert, 219 B.R. 763 at 767 (quoting trial transcript). The debtor also answered negatively to the question of whether she ever took money from Citibank without intending to pay it back. Id. at 767 (regarding testimony from trial transcript).

70. Depperschmidt & Kratzke, supra note 69, at 397.
71. See AT&T Universal Card Servs. Corp. v. Harris (In re Harris), 210 B.R. 617, 620 (Bankr. M.D. Fla. 1997) (holding that debt resulting from credit card cash advances was dischargeable, even if the advances were obtained for the purposes of purchasing illegal drugs). The court reasoned that since the defendant intended to repay the cash advances, the plaintiff failed to meet its burden of proving that the defendant used the credit card fraudulently, and defendant's testimony was reliable, the debt was dischargeable. Id.

72. Drought, supra note 3, at 1326-27. “The remedy of discharge is a principal feature of the federal bankruptcy system, as provided in Title 11 of the
The "fresh start" policy is only available to the "honest but unfortunate debtor." Besides assisting overburdened debtors, the Bankruptcy Code helps protect creditors from fraudulent conveyances. "As a result, the right of discharge is not absolute." Even though fresh starts to dishonest debtors are limited, exceptions to discharge are narrowly construed in favor of the debtor.

The creditor has the burden of establishing non-dischargeability by a preponderance of the evidence. To have a debt declared non-dischargeable for actual fraud, the creditor must prove that:

1. the debtor made a material representation,
2. the debtor knew the representation was false at the time of making it, or made the representation with gross recklessness as to the truth,
3. the debtor made the representation with the intention of deceiving the creditor,
4. the creditor justifiably relied upon such representation, and
5. the creditor sustained loss and damage as the proximate result of the representation.

Bankruptcy courts have difficulty trying to apply these requirements to cases concerning credit card use and actual fraud.

United States Code." Id. Discharge of debts fulfills the purpose of the Bankruptcy Code by providing "a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.'" Grogan v. Garner, 498 U.S. 279, 286 (1991) (quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)). For explanation regarding the concept of "fresh start," see supra note 2.

73. Grogan, 498 U.S. at 287.

74. Charles G. Hallinan, The "Fresh Start" Policy in Consumer Bankruptcy: A Historical Inventory and An Interpretive Theory, 21 U. RICH. L. REV. 49, 50 (1986). Even though the Bankruptcy Code provides protection to creditors, the vast majority of consumer bankruptcies usually result in little or no actual payments to creditors. Id. See also 11 U.S.C. § 548 (1993) (describing how a bankruptcy trustee is protected from fraudulent transfers). Section 548 states:

(a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

A. made such a transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; . . . .

Id. "Where a debtor has committed fraud under the code, he is not entitled to the benefit of a policy of liberal construction against creditors." Cohen v. De La Cruz (In re Cohen), 106 F.3d 52, 59 (3d Cir. 1997).


76. Meyer v. Rigdon, 36 F.3d 1375, 1385 (7th Cir. 1994).

77. Grogan, 498 U.S. at 287.

since there is no "face-to-face" contact between the credit card issuer and the debtor. The debtor transacts with a third party who is selling the goods and services, rather than the issuer of the credit card who extends credit. To further illustrate, the bankruptcy court in *Chase Manhattan Bank v. Murphy (In re Murphy)* stated "the cardholder and bank have no personal contact. Consequently, the cardholder cannot be said to have directly represented anything to the issuing bank [and] the bank has nothing upon which to base an act of reliance." To calculate dischargeability of credit card debts, courts have adopted four different tests, creating an inconsistent standard.

The first test is known as "implied representation." Under this test, "the element of representation is implied from the mere use of a bank card... [which indicates] to the issuer that the holder has both the intent and ability to pay the issuer for the charged purchases and advances." A slight variation of this theory holds that there is only an implied intent to pay, rather than the ability to pay for the charges incurred. The inquiry is pared down significantly because, under the implied representation test, the creditor can establish intent merely by use of a credit card. This theory has drawn criticism because it shifts the burden of proof to the debtor. It has also drawn criticism because people generally rely on credit cards when they lack the present means to pay cash.

The second approach that courts follow is "assumption of risk." The assumption of risk test involves "charges incurred by the debtor after the creditor revokes the card or terminates its use[,] generally mak[ing] those debts non-dischargeable, provided that a timely complaint is filed in bankruptcy court." A credit card holder does not make any representation merely by using a

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86. Drought, *supra* note 3 at 1331.
89. Depperschmidt & Kratzke, *supra* note 69, at 392.
90. *Id.*
credit card.\textsuperscript{91} False representation occurs only when the cardholder continues to use the card after the bank clearly notifies the user that his credit privileges are revoked.\textsuperscript{92} The court in First National Bank of Mobile v. Roddenberry noted that risk is inherent in today's credit card economy, and the bank voluntarily assumes the risk of non-payment until deciding to revoke the card.\textsuperscript{93} The court also reasoned that lending institutions calculated non-payment risk factors into their finance charges.\textsuperscript{94} The court concluded by holding that the "voluntary assumption of risk on part of a bank continues until it is clearly shown that the bank unequivocally and unconditionally revoked the right of the cardholder to further possession and use of the card, and until the cardholder is aware of this revocation."\textsuperscript{95} The assumption of risk theory represents a minority view.\textsuperscript{96}

"Totality of circumstances," otherwise known as the "objective test," is the third method courts utilize to calculate dischargeability. The debtor's intent to repay can be inferred from the totality of his circumstances.\textsuperscript{97} Under this test, which may incorporate the "assumption of risk theory," some debts may be non-dischargeable if the debtor incurs them after the creditor revokes the card.\textsuperscript{98} The courts use a list of objective factors to determine if the debtor committed "actual fraud."\textsuperscript{99} The totality of circumstances test is

\begin{itemize}
\item [91.] First Nat'l Bank of Mobile v. Roddenberry, 701 F.2d 927, 932-33 (11th Cir. 1983).
\item [92.] \textit{Id.} at 932.
\item [93.] \textit{Id}.
\item [94.] \textit{Id}.
\item [95.] \textit{Id}.
\item [96.] \textit{Id}.
\item [97.] American Express Travel Related Servs. Co. v. McKinnon (In re McKinnon), 192 B.R. 768, 772 (Bankr. N.D. Ala. 1996); Frackowiak, \textit{supra} note 87 at 644-45.
\item [98.] \textit{Id}.
\item [99.] Depperschmidt & Kratzke, \textit{supra} note 69, at 392.
\end{itemize}
preferred by courts because it does not infer any element of non-dischargeability and allows the possibility that pre-revocation charges could be found non-dischargeable.\textsuperscript{100}

The fourth theory is the “common law,” or “subjective” test.\textsuperscript{101} The common law approach looks to all facts and circumstances of the debtor to assess intent at the time the debtor entered into the transaction.\textsuperscript{102} Unlike the former tests, the subjective test does not engage in a factor-oriented inquiry.\textsuperscript{103} For debtors with a gambling problem, this theory provides the best opportunity for discharge.\textsuperscript{104}

The keynote case exemplifying the common law approach is \textit{Anastas v. American Savings Bank (In re Anastas)}.\textsuperscript{105} The debtor in this case proceeded to accumulate credit card debt of approximately $40,000, primarily incurred by cash advances taken for gambling at Lake Tahoe.\textsuperscript{106} The \textit{Anastas} court held that the debtor did have the requisite intent to repay the debt, despite the fact that he amassed the majority of the debt from gambling.\textsuperscript{107} Even though the court gave great weight to the debtor’s gambling problem, the court reasoned that the debtor's actions were enough to show intent to repay the debt because the debtor always made the minimum payments on his credit card.\textsuperscript{108} The court stated that “Anastas testified that he always possessed the intent to repay his credit card debts, but that he had a gambling addiction which led him to unexpected financial circumstances.”\textsuperscript{109} The \textit{Anastas} court looked to the debtor’s specific belief given the nature of his addiction.\textsuperscript{110} The \textit{Anastas} court did not look at what a reasonable person would have known, considering that the chances of winning enough money to pay off the insurmountable credit card debt were slim.\textsuperscript{111} The ruling in \textit{Anastas} is an indication that courts using

\begin{itemize}
\item[\textsuperscript{100}] Whether the purchases were made for luxuries or necessities.
\item[\textsuperscript{101}] Id. at 392-93 (citing Citibank (S.D.), N.A. v. Dougherty (\textit{In re Dougherty}), 84 B.R. 653, 657 (B.A.P. 9th Cir. 1988)).
\item[\textsuperscript{102}] Depperschmidt & Kratzke, supra note 69, at 392.
\item[\textsuperscript{103}] Id.
\item[\textsuperscript{104}] Chase Manhattan Bank v. Murphy (\textit{In re Murphy}), 190 B.R. 327, 333 (Bankr. N.D. Ill. 1995).
\item[\textsuperscript{105}] See \textit{Anastas v. American Sav. Bank (In re Anastas)}, 94 F.3d 1280, 1284 (9th Cir. 1996) (examining the debtor's intent while putting aside the debtor's financial condition).
\item[\textsuperscript{106}] See Murphy, 190 B.R. at 333 (holding credit card debt incurred for gambling purposes to be dischargeable); see also Chevy Chase Bank v. Briese (\textit{In re Briese}), 196 B.R. 440, 451 (Bankr. W.D. Wis. 1996) (holding debt was dischargeable despite debtor's extreme financial obligations).
\item[\textsuperscript{107}] Id. at 1283.
\item[\textsuperscript{108}] Id. at 1287.
\item[\textsuperscript{109}] Id.
\item[\textsuperscript{110}] Id.
\item[\textsuperscript{111}] \textit{Anastas}, 94 F.3d at 1287.
\item[\textsuperscript{112}] \textit{Id.} Chase Manhattan Bank v. Murphy (\textit{In re Murphy}) is another ex-
the subjective approach provide the best opportunity for discharge, especially for debtors who are addicted to gambling.\textsuperscript{112}

\textit{Chevy Chase Bank v. Briese (In re Briese)}, is another example of a case that held credit card debt from gambling was dischargeable.\textsuperscript{113} The \textit{Briese} court explained the necessity of analyzing the debtor's intent from a subjective perspective, not merely concerning gambling addict cases, but bankrupt debtors as a whole:

ample where the court held credit card debt dischargeable even though the debt was limited to the debtor's gambling habit. 190 B.R. 327, 333 (Bankr. N.D. Ill. 1995). In \textit{Murphy}, cash advances from a credit card financed the debtor's addiction of sports-betting and stock market investments. \textit{Id.} at 329. For a brief duration, the debtor was fortunate enough to repay his mounting debt. \textit{Id.} However, eventually the debtor's lucky streak ended and he spiraled downward into bankruptcy. \textit{Id.} In holding the debt dischargeable, the court concluded:

\begin{quote}
[i]n this case, considering all the surrounding circumstances, the Court finds that at the time the Debtor incurred the debts at issue he intended to repay them and believed (however unreasonably) that he would have the means to do so from his gambling and investments. The Debtor had for years successfully relied on such "income" to pay off his credit card debt\ldots. The Debtor did not significantly alter his spending habits in the months preceding the filing of the bankruptcy petition; rather his betting did not come through for him as it had in the past. \textit{Id.} at 334. "The court did not analyze the situation from an outsider's perspective." Gerlach, \textit{supra} note 12, at 1018. "Rather, it looked to the surrounding circumstances from the viewpoint of the debtor and asked itself what the debtor believed given the nature of his addiction." \textit{Id.}
\end{quote}

\textsuperscript{112} Gerlach, \textit{supra} note 12, at 1017.

\textsuperscript{113} 196 B.R. 440 (Bankr. W.D. Wis. 1996) In \textit{Briese}, the debtor was a part-time nurse's aid, supporting her five children and funding her gambling habit through cash advances on a credit card. \textit{Id.} at 443-44. By the fall of 1994, she was $30,000 in debt, which required minimum monthly payments of $800, more than half her gross monthly salary. \textit{Id.} at 444. Although deep in debt, Mrs. Briese paid her bills on time and testified that she would cut up a credit card upon "maxing out." \textit{Id.} During the fall of 1994, the plaintiff, Chevy Chase Bank, sent the Brieses a "pre-approved" credit card solicitation promising a credit line up to $10,000. \textit{Id.} A credit reporting service provided Chevy Chase Bank with a list of likely targets for credit card solicitations, which included the name of the debtor. \textit{Id.} Despite reaching the limit on all their other credit cards, Mrs. Briese and her husband still applied for the Chevy Chase credit card. \textit{Id.} Regardless of the fact that the bank discovered the Brieses' unsecured debts totaled more than two-thirds of their annual income, Chevy Chase still issued a credit card to them with a limit of $11,500. \textit{Id.} Eventually, Mrs. Briese amassed a $15,000 debt with the intention of winning money to pay off her previous debts. \textit{Id.} at 445. Finally, Mrs. Briese dug her family into such a financial hole that she had to file for relief under Chapter 7. \textit{Id.} Chevy Chase contended that its claim of $7,811.05 should be declared non-dischargeable under § 523(a)(2)(A) as credit obtained through "false pretenses, a false representation, or actual fraud." \textit{Id.} Applying the subjective standard to the facts, the court determined that based on the credible testimony of Mrs. Briese, she did not act with intent when she obtained cash advances. \textit{Id.} at 452-53.
[In many instances... there is likely to be quite a gulf between what the proverbial 'reasonably prudent person' might consider appropriate and the actual mental state of a debtor teetering on the brink of bankruptcy. Human experience tells us debtors can be unreasonably optimistic despite their financial circumstances.]

The court in Briesse paid particular attention to the influence of gambling on a debtor's mental state, in reasoning, "[t]he fact that [Mrs. Briesse] subsequently lost all that she had won is not evidence of fraudulent intent; it only evidences the drug-like power of gambling upon certain people." The court also rejected any contention that a debt should be non-dischargeable simply because it was incurred as a result of gambling, despite cases which dismissed the debtor's hope of winning as unrealistic and speculative. Further, the Briesse court stated, "[s]ection 523(a)(2)(A) was not intended to deny discharge to 'debtors who made significant, 114. Id. at 451 (quoting GM Card v. Cox (In re Cox), 182 B.R. 626, 635 (Bankr. D. Mass. 1995)).

115. Id. at 452.

116. Id. at 453. The court cited Karelin v. Bank of Am. Nat'l Trust & Savs. Ass'n (In re Karelin), 109 B.R. 943 (B.A.P. 9th Cir. 1990) and Chemical Bank v. Clagg (In re Clagg), 150 B.R. 697 (Bankr. C.D. Ill. 1993), which both held that debts incurred by gambling were non-dischargeable because the debtors had no intent to repay. Briesse, 196 B.R. at 453.

In Karelin, 18 months before filing for bankruptcy, the debtor, a compulsive gambler, lost up to $260,000 in various casinos by using credit card cash advances. 109 B.R. at 945. The Court held that the bankruptcy court's finding was not clearly erroneous based on evidence that the defendant had no intent to repay despite her testimony to the contrary. Id. at 948. The bankruptcy court applied the "totality of the circumstances" test and considered such evidence as:

the use to which Ms. Karelin put the borrowed funds, Ms. Karelin's knowledge of the consistently unsuccessful results of her more than fifteen years' gambling experience, the loss of her job and failure of her new business, her large gambling losses immediately preceding the cash advances, the extent of her assets and the liens she had granted on them within several months preceding the cash advances, and Ms. Karelin's business experience and general demeanor on the witness stand.

Id. After emphasizing that an unrealistic hope of repayment is not in itself fraudulent conduct, the court concluded Ms. Karelin "could not possibly have failed to perceive the hopelessness of repaying the resulting obligation." Id. at 947.

In Clagg, the debtor funded his gambling habit through credit cards, resulting in substantial debt that he hoped to repay through his winnings at "Lotto." 150 B.R. at 698. The court in Clagg held that "[i]ntent to repay requires some factual underpinnings which lead a person to a degree of certainty that he or she would have the ability to repay. Mere hope, or unrealistic or speculative sources of income, are insufficient." Id.

In contrast, the Briesse court concluded that Mrs. Briesse was not guilty of fraud. 196 B.R. at 453. The court reasoned that under the subjective test of intent Mrs. Briesse's honest, although "questionable and undoubtedly foolish," belief that she could win enough to pay her debts was sufficient. Id.
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albeit patently unreasonable, financial miscalculations,' nor did Congress single out gambling debts for any particular punishment."117 Thus, Chevy Chase Bank failed to prove the fraudulent intent element of § 523(a)(2)(A).118

Of the four approaches bankruptcy courts use to measure the intent of a gambling addict to repay his debt, the subjective test is the most sympathetic to the gambler, because a debtor's intent is subjective.119 However, the subjective test has a flaw that arises from its "abundant compassion for bankrupt debtors."120 A debtor can manipulate the court's reasoning quite easily by playing on the court's emotions.121 Also, it is virtually impossible to discern whether a debtor intends to repay the credit card debt with his earnings, even if the goal of taking a cash advance is to win the money back.122

With the increased opportunity to gamble across America, bankrupt gambling addicts can further expose the weaknesses of the subjective intent test. The burden on a creditor to prove the lack of intention of the debtor to repay his debts is simply too difficult of a burden.

B. Exposure to Gambling Increases Chances For Bankruptcy

"People pile up credit card bills, including cash advances for gambling debts, and get in over their heads. Then they wipe [their debt] all out through bankruptcy."123 In 1996, there were 1.3 million bankruptcies.124 Between April and June of 1997, a record 367,000 bankruptcies were filed.125 With the number of personal bankruptcies rising to nearly a million and a half within the last year, the figures indicate that one in every sixty-eight homes opted to file for bankruptcy."126

The rising number of bankruptcies in America is directly attributable to the proliferation of gambling opportunities.127 "There are now 298 counties that have at least one major legal gambling

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118. Id. at 454.
120. Id.
121. Id.
122. Id.
124. See Bankruptcy, Gambling Linked, THE COMMERCIAL APPEAL (Memphis, Tenn.), Aug. 21, 1997, at A2 (describing statistical information regarding the relationship between gambling and bankruptcy).
125. Id.
127. Kratzke & Depperschmidt, supra note 19, at 258.
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facility . . . and it does not include . . . places where state lotteries or bingo parlors are available.128 Even state governments have entered the gambling arena, as evidenced by the recent dramatic increase in states with lotteries.129 Many state governments not only tolerate gambling, but they give it their blessing.130 Government acceptance of gambling can be attributed to the gambling industry's ability to draw revenue and provide employment.131 Estimates in 1998 show Americans wagered more than $600 billion.132

Caught up in the wave of the increasingly prevalent gaming industry is the compulsive gambler, who uses credit perniciously to the point of insolvency.133 A University of Minnesota study indicated that one percent of that state's population were "problem pathological gamblers," meaning that they "lose control and continue gambling in spite of adverse consequences."134 If Minnesota's one percent figure were the same nationwide, it would indicate that nearly 2.7 million Americans are compulsive gamblers.135

Research suggests that compulsive gambling is not innate, rather the gambler must first be exposed in some way to the industry.136 Consequently, the increased possibilities of exposure to gambling increase the prospect of growth in the number of compulsive gamblers.137 One distressful example of this growth potential for compulsive gamblers is found in Iowa.138 In 1989, two years before the legalization of Native American and riverboat casinos, a study completed in Iowa revealed that approximately 1.7% of Iowa's adult residents were compulsive gamblers.139 By 1995, four years after the legalization of Native American and riverboat casinos, a similarly performed study found that 6.4% of Iowa's entire population were problem or compulsive gamblers.140

The link between compulsive gambling, increased exposure, and bankruptcy is heightened when factoring in the use of credit cards.141 "More than [twenty] percent of compulsive gamblers have

129. Id.
130. Id.
131. See Gerlach, supra note 12, at 991-93.
132. Crist, supra note 15, at 85; Bell, supra note 16.
133. Kratzke & Depperschmidt, supra note 19, at 259.
135. Id.
136. See id. (discussing the SMR study).
137. Id.
138. Id.
140. Id.
141. Id.
filed for bankruptcy as a result of their gambling losses..." and that "upwards of [ninety] percent of compulsive gamblers had used their credit card lines to obtain funds for gambling and then lost." A 1995 Minneapolis Star Tribune study examined 105 bankruptcy filings to which gambling was linked. The study concluded that gambling was the cause of 27% of the $4.2 million of total debt. Average annual earnings of these debtors were $35,244, while debts on average were $40,066. Although the average was eight credit cards per person, one filer accumulated debt on twenty-five credit cards. The ease of obtaining credit cards combined with increased exposure to gambling facilities has contributed to the rise in gambling related bankruptcies.

C. Internet Gambling Raises the Stakes Further

When factoring in the ease of obtaining credit cards with the rapid accessibility of Internet casinos, the resulting combination could dramatically increase the number of bankruptcies filed. With Internet gambling, part of the danger lies in the fact that "[a] person does not have to leave his or her home to play casino games." Even though the Internet casino lacks the social and environmental experiences of a live casino, the Internet does provide a great advantage to gamblers in locations where gambling is not yet legal or where legal casinos are simply too far from home. However, the easier accessibility to Internet gambling promotes increased exposure to gambling, creating a higher likelihood of developing an addiction. An increase in the number of people addicted to Internet gambling would significantly impact the number of bankruptcies filed.

Making gambling widely available to everyone with a computer and a modem, and making it available in people's living rooms, will draw out the general population's susceptibility to compulsive gambling. Moreover, Internet gambling, because of its instant feedback mechanism, is known to addict gamblers faster than other forms of gambling; thus, sociologists and psychiatrists widely refer to it as the "crack-cocaine of gambling ad-

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143. See id. (summarizing the SMR study).
144. Id.
146. Id.
148. Id.
149. See Newsline, Internet Casinos Launches On-line Gambling Service, Multimedia Monitor, Apr. 1995 (quoting psychiatrist James Hilliard, Chairman of the Department of Psychiatry at the University of Cincinnati).
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Not only does on-line gambling threaten to increase the number of compulsive gamblers overall, it threatens to change the demographics of this group. Despite state efforts to control access to gaming through strict age or income restrictions, gambling addiction in the United States today is growing fastest among high school and college youths, a demographic most familiar with the Internet.

The possibility of an increase in addicted gamblers due to Internet gaming will not only effect the number of bankruptcies, but will also have an impact on the American consumer. Because a vast amount of debt is incurred by credit cards, creditors supplement their losses by increasing interest rates and annual fees. Not only did the number of bankruptcies rise in recent years, but also the number of credit cards issued increased dramatically.

D. Credit Card Companies Win the Gambler's Game of Roulette

For the past two decades, there has been a surge in the number of companies issuing credit cards and the number of credit cards issued. About 460 million people have credit cards at their disposal, thanks to nearly 9,000 companies providing the plastic. In 1992, the number of American families carrying at least one bank-type credit card (i.e., VISA, MasterCard, Discover) was

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150. See John Warren Kindt, The Economic Impacts of Legalized Gambling Activities, 43 DRAKE L. REV. 51, 81 (1994) (urging further study of the gambling industry due to risks of addiction to gambling). An internal memo urged sponsors of a proposed Chicago casino that “it probably won’t be enough for Arthur Anderson and Northwestern University to develop numbers that are ‘credible’, although that is the essential first step to take” and that “we must also use these studies to make a compelling and convincing case for the kind of jobs that will be created, with an emphasis on their ‘quality’ and ‘career’ potential.” Id. at 53-55. Moreover, during the eight-month time frame for consideration of the casino, publicized job estimates ranged from 15,000 to 100,000; the alleged range of new tourists fluctuated between an initial estimate of 2.9 million to an estimate of 10.2 million; and estimated tax revenues increased from $327 million to $644 million. Id.


153. See Robin Widgery, Warning: Legal Gambling Is a Costly Game, CHRISTIAN SCIENCE MONITOR, May 23, 1994, at 19 (quoting Howard Shaffer, Director of the Harvard Medical School Center for Addiction Studies in a discussion on the dangers of gambling to youths).

154. See House of Cards, CONSUMER REP., Jan. 1996, at 31 (discussing the types of companies issuing credit cards).

155. Id.
48%. By 1995, that number had risen to 62%.

Median credit limits have also increased recently. In 1992, the median limit was $5,400. By 1995, the median limit was $9,000. Increasing credit limits were proportional to increasing credit card debt. The Wall Street Journal reported that in 1988, outstanding consumer credit card debt was $174 billion. A decade later, this number nearly tripled. Today, there are more credit card carriers, higher limits, and heavier burdens.

The rise in credit card use over the last decade correlates with bankruptcy filings hitting an all-time high in 1997. The number of personal bankruptcies filed jumped 19%, to 1.34 million in 1997. The onslaught of credit card debt and consequent Chapter 7 filings by consumer debtors has led to a swell of complaints filed by credit institutions seeking to protect their interests. Increased bankruptcy proceedings reflect the rapid growth of the credit card industry and its practice of mailing pre-approved credit solicitations that fill consumers' mailboxes on a weekly basis. Potential customers are tempted by credit cards with no annual fees, temporary low “teaser” rates, high credit limits, and the option to consolidate their already substantial credit card debt. In return, banks make huge profits from high interest rates on overdue balances. Ironically, oftentimes, even after accepting the of-

157. Id.
158. Id.
159. Id.
160. Id.
162. Id.
163. Id.
165. Id.
167. Id. Consumers are lured by credit institutions to pay excessive rates for “incentives” such as frequent flier miles and discount rates on cars and long distance telephone calls. Nelson D. Schwartz & Scott Medintz, Credit Check, SMART MONEY, Feb. 1997, Vol. IV, No. II, at 112. “People fall in love with the rewards... these cards wouldn’t be successful if people acted completely rationally. But the market for incentives isn’t rational—never has been. And the emotional lift from getting miles or something else assuages the guilt of paying high rates.” Id. (quoting a former Citibank official).
fers, consumers find themselves in bankruptcy courts seeking relief from their escalating obligations because they failed to pay their debts. 170

Courts have difficulty trying to assess blame for the many credit card defaults. Some courts take the position that "casual and inadequate lending practices" of the credit card industry are to blame, and therefore, under § 727, bankruptcy debts should be discharged. 171 Other courts reason that consumer debtors cannot escape individual financial responsibility for credit card charges incurred under circumstances evidencing a near hopeless financial state. 172


[Recent actions of credit card companies seeking to hold their debt non-dischargeable on the theory that the debtors' use of a card is a representation of debtors' ability to repay and thereafter non-payment constitutes a fraud which should deny dischargeability, is pure garbage. Credit card companies are obscene in their reckless issuance of "pre-approved" credit without any review or underwriting. They are unconscionable in their greedy lust for profits, charging 21%, 22%, even 23% interest. (Not many years ago, interest above 10% in Florida was a crime of usury). 11 U.S.C. § 523 should be amended to provide that any credit extended, pre-approved, without request, and without submission of a financial statement, should be fully dischargeable in every instance.


[There are some who place blame for credit card defaults upon the industry and the seeming cavalier manner in which cards are issued to nearly anyone. While the industry may well be far too lax in its card issuance policies, this court does not believe that policy should in any respect lessen the degree of individual financial responsibility to be imposed upon credit card consumers. It is not the issuance or even possession of a card which results in the incredible number of credit card driven consumer bankruptcies. Rather, it is the unbridled and irresponsible use of credit by people who either have no cash flow consciousness in the first place, or who conveniently leave it at the curb side when entering a retail establishment that is at the root of the problem. To place the blame on the card issuer is akin to moralizing over the crime of shoplifting by putting the retailer at fault for attractive merchandising efforts and for not stationing armed guards at every isle [sic]. Each person must accept responsibility for his or her own pocketbook.

Id.
Regardless of whether the credit card industry or the debtor is to blame, Internet gambling debt will continue even if the government outlaws such gambling. Courts merely assess the intentions of the debtor and do not judge the debtor's actions. Therefore, even if the gambler incurs all his debt from an illegal virtual casino, the court may discharge the debt as long as the debtor had intent to repay.

III. FLIPPING THE SWITCH ON INTERNET CASINOS AND THE DISCHARGEABILITY OF GAMBLING DEBTS

Currently, it is legal in the United States to enter a virtual casino to gamble. Internet experts and opponents of the Kyl Bill view the language as largely unenforceable. Opponents further cite the possibility of intrusion into the place where Americans have the greatest expectation of privacy: their homes.

Despite the legal status of Internet gambling, eventually, gambling over the Internet should be prohibited in the United States. It is important to remember that the future of Internet gambling legislation is not bound by the current state of such laws. Rather, prompt attention to the matter can affect both the law and its enforceability.

Redrafting the legislation is the first and easiest step in regulating or prohibiting Internet gambling. Implementing these drafts will prove to be more difficult. Because of the complexities of implementing anti-gambling laws on the Internet, no series of federal laws could create an entirely gambling-free environment. "Prohibition would result in [I]nternet gambling becoming an unregulated industry dominated by persons willing to violate law in the United States and elsewhere." The size of the Internet gambling industry will ultimately depend, however, on the determination the government makes in enforcing the law.

Considering the possible prohibition of Internet gambling, the focus shifts to whether the debtor who files for bankruptcy can discharge his credit card gambling debts if that type of gambling is illegal. An individual cannot have a good faith subjective intent to repay an illegal transaction. Therefore, a debtor should not be

174. Id.
176. Id.
177. Id.
178. Id.
179. Id.
181. Id.
able to discharge credit card debts due to illegal Internet gambling.

However, a court may overlook the illegal transaction and merely analyze the intent of the debtor. The court in *AT&T Universal Card Services Corp. v. Harris* held that even though the debtor used cash advances from his credit card to buy illegal drugs, the purchase of drugs was irrelevant to the question of whether Harris intended to repay. The court found that Harris' debts were dischargeable. The court based its decision on Harris' financial history and Harris' testimony in that he fully intended to repay the debt.

Despite the persuasive reasoning in *Harris*, by allowing the discharge of credit card debts from illegal Internet gambling, courts would essentially be approving illegal behavior. Courts should not merely look at a debtor's intent to repay the debt since an illegal transaction by itself is fraudulent.

Given the easy access to virtual casino sites, the possibility of addiction to Internet gambling becomes more prevalent. Eventually, the courts' discharge of illegal credit card Internet gambling debts will cost the consumer. Consumers who use credit cards will "pick up the tab" by paying higher interest rates and higher annual fees.

Congress should not focus on prohibiting Internet gambling. Instead, Internet gambling should be regulated. Also, credit

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183. Id.
184. Id. The court looked at the fact that defendant Harris did not exceed the credit limit on his account. Id. The court reasoned that defendant was not financially sophisticated and in an unstable financial condition when the charges were made. Id. Defendant did have a positive work history. Id. In this case, there was no evidence of actual fraud, and plaintiff failed to meet its burden of proving that defendant obtained and used the credit card fraudulently. Id.
186. Id.
187. According to Cory Aronovitz, an attorney in Chicago and noted expert in gaming law issues, "[t]o maintain the gaming environment within cyberspace, a dedicated effort and the pledge of cooperation is required." Summary Relating to Dev. of Interactive/Internet Gaming Review Board, presented at Internet Gambling: The First Int'l Symposium on Internet Gambling Law & Management, Nov. 11-13, 1997, Washington D.C. Aronovitz proposes the creation of the Internet Gaming Review Board (IGB), an independent body that would have the authority to "fully and effectively administer, regulate and enforce the system of certification of interactive gambling." Id. Further, the IGB should have jurisdiction over the following activities.
1. Investigate applicants and determine the suitability of applicants for certification. The IGB shall have the authority to employ the services of an investigative consultant.
2. To establish and maintain a website that provides current information relating to certified applicants, actions taken against applicants, in-
card companies need to complete more thorough background checks on consumers to prevent issuing credit cards to individuals who are consistently in debt. A simple check of a credit report can prevent a debtor from obtaining a new source of money to fund a possible gambling addiction. With the rapid increase in the number of bankruptcy filings and its link to gambling, it is imperative that regulations prevent repeated debtors from digging themselves into a financial hole.

Another solution to relieve consumers from the burden of gambling bankruptcies is to reform the Bankruptcy Code. The Court in *AT&T Universal Card Services Corp. v. Totina* noted:

[that gambling debt should be dischargeable in bankruptcy provokes strong reactions. However this court may feel about the morality of the Bankruptcy Code permitting discharge of such debt, there is no statutory rule that the use of credit cards to incur gambling debts shows the requisite intent of a debtor not to pay his debts . . . . If Congress intended that credit card advances for gambling losses be treated in any different fashion than any other debts incurred by an honest—albeit, misinformed, and always overly optimistic—debtor, it can always amend the Bankruptcy Code.]

Currently, two important consumer bankruptcy reform bills are pending in Congress that if passed, would have a direct effect on the treatment of gambling debt. The "Bankruptcy Reform Act
of 1998” would provide a “needs-based bankruptcy system” and an amendment to § 523(a)(2)(C) to create a presumption that consumer debts incurred within ninety days of bankruptcy are non-dischargeable.\textsuperscript{190} Further, the bill also ensures that “debt incurred when the debtor had no reasonable expectation or ability to repay are non-dischargeable.”\textsuperscript{191} Another bill, titled, “Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998” would prohibit claims that “arise from a debt incurred in or adjacent to a gambling facility or a debt that the creditor knew or should have known was intended to be used for gambling.”\textsuperscript{192}

CONCLUSION

Internet gambling, credit cards, and the courts’ favorable subjective intent analysis of debtors creates a dangerous combination of elements that increase the number of bankruptcy filings in a cyclical manner. The credit card companies entice consumers with pre-approved credit solicitations. Internet gamblers use the credit cards to fund their participation. The gamblers expend all their credit on virtual casinos. Courts discharge the Internet gamblers’ debts simply because the debtors swore they meant to pay back the creditors with their winnings. In this game of roulette, it seems the only winner is the credit card industry, cashing in on the Internet gambler’s bad luck.

\textsuperscript{190} Id. The bill (H.R. 3150) was introduced on February 3, 1998 by Rep. George Gekas (R-PA).

\textsuperscript{191} Id.

\textsuperscript{192} Id. at 41. Representatives Jerrold Nadler (D-NY) and John Conyers (D-MI) introduced the bill (H.R. 3146).