Caught in the Intersection Between Public Policy and Practicality: A Survey of the Legal Treatment of Gambling-Related Obligations in the United States

*Joseph Kelly**

I. Introduction and Historical Roots

This article offers a survey of the law and practice of gambling debt enforcement and recovery in the United States. Two historical sources of law influence modern gambling debt enforcement and recovery. The English common law interpretation of the *Statute of Anne* is the first historical source;[1] the second tradition traces its roots to classical Rome.[2] Both of these centuries-old traditions either severely limited or absolutely prohibited the enforcement of gambling debts.

England's *Statute of Anne*, enacted in 1710, prohibited the enforcement of gambling debts[3] and provided for a recovery action by

* Joseph Kelly, J.D., Ph.D. is Professor of Business Law at SUNY College Buffalo. He is licensed to practice law in Nevada, Illinois, and Wisconsin. The author wishes to especially thank Lise Napieralski, a SUNY college business student, Hendrik Brand, Shirish Chotalia, Esq., James Deutsch, Esq., George Haberling, Ana Lemos, Hector MacQueen, Quirino Mancini, David Miers, Stephen Philippsohn, Marion Rodwell, Heidi Scott, Arvan Van't Veer, Thibault Verbiest, and Franz Wohlfhart for assistance in this article. All mistakes are those of the author.

1 An Act for the Better Preventing of Excessive and Deceitful Gaming, 1710, 9 Ann. c. 14, §§ 1, 2, 4 (Eng.) [hereinafter *Statute of Anne*].

2 *See* Sheldon Amos, The History and Principles of the Civil Law of Rome 175-76 (1883).

3 The Statute's first section states that all notes, securities, and so forth, executed after May 1, 1711, for consideration of gambling or betting debts are void. *Statute of Anne*, *supra* note 1, § 1. The statute reads:

> [F]rom and after the first day of *May* one thousand seven hundred and eleven, all Notes, Bills, Bonds, Judgments, Mortgages or other Securities or Conveyances whatsoever, given, granted, drawn or entred into, or executed by any Person or Persons whatsoever, where the whole or any Part of the Consideration of such Conveyances or Securities, shall be for any Money, or other valuable Thing whatsoever, won by gaming or playing at Cards, Dice, Tables, Tennis, Bowls or other Game or Games whatsoever, or by betting on the Sides or Hands of such as do game at any of the Games aforesaid, or for the reimbursing or repaying any Money knowingly lent, or advanced for such gaming or betting as aforesaid, or lent or advanced at the Time and Place of such Play, to any Person or Persons so gaming or betting as aforesaid, or that shall, during such Play, so play or bett, shall be utterly void, frustrate, and of none Effect, to all Intents and Purposes whatsoever; any Statute, Law, or Usage to the contrary thereof in any wise notwithstanding . . . .

the losing gambler,[4] or any other person on the gambler's behalf, for gambling debts already paid.[5] The most interesting portion of the statute lies in its recovery provisions. The statute permitted a bettor who lost ten pounds sterling or more to recover his loss and costs of litigation if he brought an action within three months.[6] If the bettor failed to sue within three months, any other person could sue to recover the bettor's losses; however, any such recovery was split equally with the parish poor where the wager occurred.[7] The independence of the United States rendered the *Statute of Anne* relevant, but not controlling. Therefore, each individual state was given the freedom to choose whether to apply the statute and its principles. Nevertheless, the *Statute of Anne* has become part of the law in a number of the states via case law or statute.

The second legal tradition relevant to modern gambling debt enforcement comes from classical Rome. Roman law generally prohibited the enforcement of gambling debts; however, it provided exceptions for bets on "manly" athletic sports, such as the javelin, wrestling, and chariot racing, where "the subject of contention was valour."[8] Roman law placed limits on the amount of bets according to the bettor's class status.[9] Some U.S. jurisdictions continue to recognize an exception for wagering based upon skill and allow their courts to reduce the amount of the debt to a reasonable amount for the debtor.

Id. While the *Statute of Anne* was silent on an action by a winner, *Blaxton v. Pye*, 2 K.B. 309 (1766), barred an action by a winner to enforce a gaming debt.

4 The recovery provision states:

> [A]ny Person . . . who shall . . . by playing at Cards, Dice, Tables, or other Game or Games whatsoever, or by betting on the Sides or Hands of such as do play any of the Games aforesaid, lose to any . . . Person . . . so playing or betting in the whole, the Sum or Value of ten Pounds, and shall pay or deliver the same or any Part thereof, the Person . . . losing and paying or delivering the same, shall be at Liberty within three Months then next, to sue for and recover the Money or Goods so lost, and paid or delivered or any Part thereof, from the respective Winner . . . thereof, with Costs of Suit, by Action of Debt . . . .

Statute of Anne, *supra* note 1, § 2.

5 The third party recovery provision of the *Statute of Anne* states:

> [A]nd in case the Person or Persons who shall lose such Money or other Thing as aforesaid, shall not within the Time aforesaid, really and *bona fide*, and without Covin or Collusion, sue, and with Effect prosecute for the Money or other Thing, so by him or them lost, and paid or delivered as aforesaid, it shall and may be lawful to and for any Person or Persons, by any such Action or Suit as aforesaid, to sue for and recover the same, and treble the Value thereof, with Costs of Suit, against such Winner or Winners as aforesaid; the one Moiety thereof to the Use of the Person or Persons that will sue for the same, and the other Moiety to the Use of the Poor of the Parish where the Offence shall be committed.

Id.

6 *Id*.

7 *Id*.

8 AMOS, *supra* note 2, at 175-76.

9 *Id*. at 176.

The law surrounding gaming historically has been influenced and shaped by competing "philosophical, theological, social, and economic" beliefs.[10] Those who oppose gambling point to immorality and the negative impacts on society.[11] Those who support legalized gambling focus on the community's need to create economic activity and tax revenue,[12] and on an individual's freedom to make moral decisions.[13] Modern gambling debt enforcement law is a balancing act: weighing legal tradition, conflicting moral ideals, and economic need. The influence of historical tradition and morality can still be seen in modern gaming law. The weight allocated to these factors varies, usually depending on the degree of legalization of gambling in the jurisdiction. This article discusses the way in which different states have decided to balance these often-competing interests.

United States law concerning the enforcement of gambling debts arises under three different factual scenarios, each with different legal ramifications. The first situation arises when the casino is located and the gambler is domiciled in the same state—"In-State Enforcement." The second and third situations arise when the gambler is not domiciled in the state where the debt was incurred. In this situation, the winning party, such as a casino, can choose to pursue one of two courses: either 1) sue the gambler in the state where the debt was made, and then seek to enforce the judgment where the gambler is domiciled—"Registration of a Sister–State Judgment"; or 2) sue the gambler directly in the gambler's home state—"Direct Litigation." The following is a discussion of the laws that are applicable to each of these situations.

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10 Anthony N. Cabot & William Thompson, *Gambling and Public Policy*, *in* CASINO GAMING: POLICY, ECONOMICS AND REGULATION 17, 18 (Anthony N. Cabot ed., 1996).

11 *See* Mark G. Tratos, *Gaming on the Internet III: The Politics of Internet Gaming and the Genesis of Legal Bans or Licensing*, 610 PLI/Pat 711, 752 (2000) ("[M]uch of the revulsion about gambling from the Christian community relates back to the casting of lots which the Bible recorded that the Roman soldiers did in an attempt to win the robe of Christ."); Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 13 (1992) ("[T]he cost [of lotteries] has been shouldered by the impoverished, people prone to compulsive behavior, children and victims of gambling-related crimes."); Erika Gosker, Note, *The Marketing of Gambling to the Elderly*, 7 ELDER L.J. 185, 187 (1999) ("[S]ome believe that society has convinced the public that people can obtain and even deserve money without working to earn it.").

12 S*ee* NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT, at 6-2 (1999) *available at* http://govinfo.library.unt.edu/ngisc.indes.html [hereinafter NGISC FINAL REPORT] ("[G]ambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States."); Tratos, *supra* note 11, at 752 ("[G]ambling proponents . . . identify its direct significant socioeconomic benefits."); Gosker, *supra* note 11, at 187 ("[S]tate and local governments view casino gambling as a source of revenue because it attracts tourists, creates jobs, and generates taxes.").

13 Cabot & Thompson, *supra* note 10, at 18 ("Societies that emphasize personal freedoms and individual choices are more likely to adopt permissive policies on gambling.").

II. In-State Enforcement

Gambling can take a nearly infinite number of forms, and each State generally has the freedom to decide whether to legalize any form of gambling. The type of gambling that a state has chosen to legalize impacts its gambling debt enforcement or recovery body of law. Although there is no perfect way to group the enforcement strategies that have developed among the states, some categorization is helpful to the discussion. This section splits up the United States into three broad categories according to the type of gambling that each state has legalized: states with only limited legal gambling and no casinos, states with state-licensed casinos, and states with Native American Casinos. In general, states that have not legalized casinos retain strict laws forbidding the enforcement of gambling debts, while those that have legalized casinos have slowly relaxed such prohibitions. It took Nevada over fifty years after the legalization of casinos to finally legalize the collection of gambling debts. For states that have only recently legalized casinos, most during the 1990s, this process has just begun.

A. States with Limited Legal Gambling (No Casinos)

Forty-eight states in the United States have some form of legal gambling; however, only twenty-eight allow casinos.[14] Thus, twenty states legalize limited forms of gambling. For example, thirty-eight states and the District of Columbia have a state-sanctioned lottery.[15] Many states also allow other types of limited gambling, such as: bingo, video poker, and horse or dog track betting.[16] This section focuses on those states that historically have had a strong public policy against gambling, yet have legalized some limited forms. In these states, the obvious starting point is an examination of which parts of the *Statute of Anne* have been retained as law. Modernly, three parts of the *Statute of Anne* remain relevant: 1) the rule that gambling debts are void; 2) the provision that allows a loser to recover losses; and 3) the provision that allows a third party to recover the losses of gamblers.[17]

Most of these states have retained the first section of the *Statute of Anne*, declaring all gambling debts void through specific

14 NGISC Final Report, *supra* note 12, at 1-1, 2-6.

15 *Lottery Industry Leaders Name Michigan Lottery As One of the 10 Most Efficient in the United States*, PR Newswire, Mar. 18, 2002.

16 At the time of the NGISC report, stand-alone electronic gambling devices, such as video poker, were legal in seven states, betting on horse races was legal in forty-three states, and betting on greyhound dog races was legal in fifteen states. *Id*. at 2-4, 2-11.

17 *See supra* notes 1, 3-5.

statutory provisions.[18] Some of these states have even retained the prohibition, notwithstanding the legality of gambling in that state. In *Kentucky Off-Track Betting, Inc. v. McBurney*,[19] the defendant was indebted to an off-track operator for almost $390,000 in checks exchanged for a promissory note.[20] After paying eighty-four thousand dollars, the defendant stopped making payments on the debt and the off-track operator sued.[21] The defendant claimed that Kentucky law rendered gambling debts unenforceable.[22] The court agreed and refused to recognize the balance of the debt.[23] The court rejected the contention that Kentucky had impliedly repealed the prohibition by encouraging betting on horse races via simulcast and by legalizing a lottery and charitable gambling.[24]

In Virginia, all gambling debts are void pursuant to "[t]he public policy of the Commonwealth expressed through statutory provisions . . . since 1740 . . . ."[25] In *Hughes v. Cole*,[26] the Virginia Supreme Court refused to enforce an alleged oral agreement among North Carolina residents, which resulted in the purchase of a nine million dollar Virginia lottery ticket.[27] Subsequently, North Carolina decisions suggested that the agreement was unenforceable because it violated North Carolina public policy;[28] however, North Carolina left the issue of enforcement to the Virginia courts.[29] The Virginia Supreme Court then concluded that under

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18 *E.g.*, ALA. CODE § 88-1-150 (2001); CONN. GEN. STAT. § 52-553 (1991); D.C. CODE ANN. § 16-1701 (2001); FLA. STAT. ANN. § 849.26 (West 2001); GA CODE ANN. § 13-8-3(a) (2001); 720 ILL. COMP. STAT. 5/28-7 (2002); KY. REV. STAT. ANN. § 372.010 (Banks-Baldwin 2001); MINN. STAT. § 541.21 (2001); MISS. CODE ANN. § 87-1-1 (2001); N.J. STAT. ANN. § 2A:40-1 (West 2000); N.C. GEN. STAT. § 16-1 (2001); OHIO REV. CODE ANN. § 3763.01 (West 2001); 73 PA. CONS. STAT. § 2031 (West 2002); R.I. GEN. LAWS § 11-19-17 (2001); S.D. CODIFIED LAWS § 53-9-2 (Michie 2001); TENN. CODE ANN. § 29-19-101 (2001); VA. CODE ANN. § 11-14 (Michie 2001); WASH. REV. CODE ANN. § 4.24.090 (West 1988); W. VA. CODE ANN. § 55-9-1 (Michie 2000); WIS. STAT. ANN. § 895.055 (West 2001); WYO. STAT. ANN. § 1-23-106 (Michie 2001).

19 993 S.W.2d 946 (Ky. 1999).

20 *Id.* at 947.

21 *Id.*

22 *Id.* The Kentucky statute states:

> Every contract, conveyance, transfer or assurance for the consideration, in whole or in part, of money, property or other thing won, lost or bet in any game, sport, pastime or wager, or for the consideration of money, property or other thing lent or advanced for the purpose of gaming, or lent or advanced at the time of any betting, gaming, or wagering to a person then actually engaged in betting, gaming, or wagering, is void.

KY. REV. STAT. § 372.010 (Banks-Baldwin 2001).

23 *Kentucky Off-Track Betting*, 993 S.W.2d at 947.

24 *Id.* at 948-49. Two dissenting judges, however, accepted this argument. *Id.* at 949-50.

25 Resorts Int'l Hotel, Inc. v. Agresta, 569 F. Supp. 24, 25 (E.D. Va. 1983).

26 465 S.E.2d 820, 835 (Va. 1996).

27 *Id.*

28 *Id.* at 826 (quoting Cole v. Hughes, 442 S.E.2d 86, 90 (N.C. Ct. App. 1994)).

29 *Hughes*, 465 S.E.2d at 826.

Virginia law, any such agreement would be unenforceable, though not illegal.[30]

The validity of the first part of the *Statute of Anne*, voiding all gambling contracts, clearly continues in Virginia. One court has suggested that the debtor recovery provision may also be operative.[31] *Rahmani v. Resorts International Hotel, Inc.*,[32] involved a Virginia citizen's attempt to recover nearly four million dollars in gambling losses at two New Jersey casinos over the course of thirteen years.[33] The court, sitting in diversity, dismissed her action holding that New Jersey law applied and did not provide for such recovery.[34] In dicta, the court noted the result would have been the same under Virginia law,[35] concluding that the Virginia law permitting the recovery of gambling losses applies only to intrastate losses.[36] The court further opined that if a Virginia gambler could recover for out-of-state losses pursuant to the Virginia statute, "it would have the perverse effect of encouraging Virginians to gamble, albeit out-of-state."[37]

Perhaps the most unusual gambling debt case occurred in Wisconsin, where gambling contracts were void.[38] In 1990, Robert Gonnelly cashed three checks totaling nearly twenty-four thousand dollars at a Kennel Club in order to place bets at the Kennel Club's dog races.[39] When the State attempted to prosecute Gonnelly for issuing worthless checks, his only defense was that the checks were gaming contracts, and therefore, void.[40] The Wisconsin Court of Appeals upheld the trial court's order dismissing the criminal complaint because checks issued for gaming purposes are unenforceable.[41] Although the gambler was twenty thousand dollars richer, the court did not comment as to whether this was a desirable outcome, and noted that its "task is simply to ascertain the legislative intent of the statutes. If another result is deemed wiser, it is for the people—through the legislature—and not for this court to fashion one."[42]

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30 *Id.* at 827 ("At the heart of the problem is Code § 11-14, which provides in pertinent part that '[a]ll . . . contracts whereof the whole or any part of the consideration be money or other valuable thing won . . . at any game . . . shall be utterly void.'").

31 Rahmani v. Resorts Int'l Hotel, Inc., 20 F. Supp. 2d 932 (E.D. Va. 1998).

32 *Id.* at 934.

33 *Id.* at 933-34.

34 *Id.* at 935.

35 *Id.* at 935-36.

36 *Id.* at 936-37.

37 *Id.*

38 WIS. STAT. ANN. § 895.055 (West 2001).

39 State v. Gonnelly, 496 N.W.2d 671, 672 (Wis. Ct. App. 1992).

40 *Id.*

41 *Id.*

42 *Id.* at 675. In 1997, the Wisconsin legislature amended its *Statute of Anne* provision, effectively taking specified forms of legal gambling out of the void debt classification. WIS. STAT. ANN. § 895.055(3). Minnesota has achieved a similar result through case law.

Many states have adopted the recovery provisions of the *Statute of Anne*.[43] These states allow a gambler to recover losses typically within three to six months of the date of the wager.[44] Some states have also adopted the third party recovery provisions of the *Statute of Anne*, allowing any person to sue in place of the loser if the loser does not sue within the permitted period.[45] Often, the third party is allowed to recover treble damages; however, the state may require one-half of the recovery be given to the government or to a specific fund, such as the county educational fund, as was required by the *Statute of Anne*.[46]

In only a few recent cases has a plaintiff, either the debtor or a third party, sued to recover gambling losses pursuant to the *Statute of Anne*; most of these cases have been in South Carolina. Between 1991 and 2000, video poker machines were legal in South Carolina.[47] These machines were the basis for several successful suits for recovery under the South Carolina recovery provision, which "varies very little in substance" from the original *Statute of Anne*.[48] These lawsuits addressed four main issues: 1) the correct

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In *State v. Stevens*, 495 N.W.2d 513 (Minn. Ct. App. 1999), the appellate court dismissed the prosecution of theft by check, based on checks written to purchase pool tabs. The court stated, "Because Stevens' checks were void as to the saloon and the youth hockey association, a designated recipient of pull tab proceeds, it was legally impossible for Stevens to defraud them. Legal impossibility is a defense to the substantive crime with which Stevens was charged." *Id.* at 515.

43 *E.g.*, ALA. CODE § 8-1-150 (2001); ARK. CODE ANN. § 16-118-103 (Michie 2001); CONN. GEN. STAT. § 52-553 (1991); D.C. CODE ANN. § 16-1702 (2001); GA. CODE ANN. § 13-8-3(b) (2001); KY. REV. STAT. ANN. § 372.020 (Banks-Baldwin 2001); MD. ANN. CODE art. 27, § 243 (2001); MASS. GEN. LAWS ANN. ch. 137, § 1 (West 2001); MICH. COMP. LAWS § 750.315 (2001); MISS. CODE ANN. § 87-1-5 (1991); MO. ANN. STAT. § 434.030 (West 1992); MONT. CODE ANN. § 23-4-131 (2001); N.J. STAT. ANN. § 2A:40-5 (West 2001); N.M. STAT. ANN. § 44-5-1 (Michie 2001); OHIO REV. CODE ANN. § 3763.02 (West 2001); OR. REV. STAT. § 30.740 (1999); S.C. CODE ANN. § 32-1-10 (Law. Co-op. 2001); S.D. CODIFIED LAWS § 21-6-1 (Michie 2001) (In 1990, South Dakota modified its law so that § 21-6-1 did "not apply to authorized gaming and lotteries." S.D. CODIFIED LAWS § 42-7B-55 (Michie 2001)); TENN. CODE ANN. § 28-3-106 (2001); VA. CODE ANN. § 11-15 (Michie 2001) (a Virginia court has stated this section is to be liberally interpreted concerning gambling. McIntyre v. Smyth, 62 S.E. 930 (Va. 1908)); W. VA. CODE § 55-9-2 (2001).

44 *E.g.*, ALA. CODE § 8-1-150 (six months); ARK. CODE ANN. § 16-118-103 (ninety days or three months); CONN. GEN. STAT. ANN. § 52-554 (West 1991) (three months); D.C. CODE ANN. § 16-1702 (three months); GA. CODE ANN. § 13-8-3(b) (six months); KY. REV. STAT. ANN. § 372.020 (five years); MASS. GEN. LAWS ANN. ch. 137, § 1 (three months); MICH. COMP. LAWS § 750.315 (three months); N.J. STAT. ANN. § 2A:40-5 (six months); OHIO REV. CODE ANN. § 3763.02 (six months); S.C. CODE ANN. § 32-1-10 (three months); S.D. CODIFIED LAWS § 21-6-1 (six months); TENN. CODE ANN. § 28-3-106 (ninety days or three months); VA. CODE ANN. § 11-15 (three months); W. VA. CODE § 55-9-2 (three months).

45 *E.g.*, D.C. CODE ANN. § 16-1702; GA. CODE ANN. § 13-8-3; KY. REV. STAT. ANN. § 372.040; N.J. STAT. ANN. § 2A:40-6; OHIO REV. CODE ANN. § 3763.04.

46 *E.g.*, D.C. CODE ANN. § 16-1702; KY. REV. STAT. ANN. § 372.040.

47 The state referendum banning video poker machines as of July 1, 2000, was upheld by the South Carolina Supreme Court in *Joytime Distributors and Amusement Co. v. State*, 528 S.E.2d 647 (S.C. 1999). For a discussion of the legal debate surrounding video poker machines in South Carolina, see Harriet P. Luttrell, *Video Poker: A Survey of Recent Developments Surrounding the Legal and Moral Debate*, 51 S.C. L. REV. 1065 (2000).

48 Berkebile v. Outen, 426 S.E.2d 760, 763 (S.C. 1993).

burden of proof;[49] 2) how to apply the statute of limitations;[50] 3) whether a party suing in place of a losing gambler was acting in a collusive fashion;[51] and 4) whether the Video Games Machines Act impliedly repealed the *Statute of Anne* remedies.[52]

In *Rorrer v. P.J. Club, Inc.*,[53] the South Carolina Court of Appeals upheld a jury verdict awarding over twenty thousand dollars to the husband of a compulsive gambler.[54] The trial judge had also awarded treble damages pursuant to a South Carolina statute.[55] The basic issue on appeal was whether the trial court correctly applied the preponderance of the evidence standard in awarding treble damages, instead of the more difficult clear and convincing evidence standard.[56] The appellate court affirmed, concluding that the higher standard was unnecessary because the purpose of the statute was to protect the family of the compulsive gambler.[57]

The issue regarding application of the statute of limitations was addressed in *Ardis v. Ward*.[58] In that case, the plaintiff, Bill Ardis, sued for actual damages plus treble damages on behalf of Delores Ardis, who lost a total of nearly thirty thousand dollars over ninety-three different occasions on the defendant's video poker machines.[59] Each individual loss exceeded the statutory loss-limit of fifty dollars.[60] Mr. Ardis sued because the statute of limitations on Delores's action had run after three months.[61] The supreme court remanded the case and allowed Mr. Ardis to pursue

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49 Rorrer v. P.J. Club, Inc., 556 S.E.2d 726 (S.C. Ct. App. 2001).

50 Ardis v. Ward, 467 S.E.2d 742 (S.C. 1996).

51 Mullinax v. J.M. Brown Amusement Co., 485 S.E.2d 103 (S.C. Ct. App. 1997), *aff'd*, 508 S.E.2d 848 (S.C. 1998).

52 Justice v. The Pantry, 496 S.E.2d 871 (S.C. Ct. App. 1998), *aff'd*, 518 S.E.2d 40 (S.C. 1999). The South Carolina *Statute of Anne*-type remedies provide:

> In case any person who shall lose such money or other thing as aforesaid shall not, within the time aforesaid, really and bona fide and without covin or collusion sue and with effect prosecute for the money or other things so by him or them lost and paid and delivered as aforesaid, it shall be lawful for any other person, by any such action or suit as aforesaid, to sue for and recover the same and treble the value thereof . . . .

S.C. CODE ANN. § 32-1-20 (Law. Co-op. 2001).

53 556 S.E.2d 726.

54 *Id*. at 730.

55 *Id*. at 728 n.2.

56 *Id*. at 730.

57 *Id.* at 731.

58 467 S.E.2d 742 (S.C. 1996); *accord* Montjoy v. One Stop of Abbeville, Inc., 478 S.E.2d 683 (S.C. 1996).

59 *Ardis*, 467 S.E.2d at 743.

60 *Id*.

61 *Id.* The South Carolina recovery provision provides:

> Any person who shall . . . lose to any person or persons so playing or betting, in the whole, the sum or value of fifty dollars[, can sue] within three months . . . [to] recover the money or goods so lost and paid or delivered or any part thereof from the respective winner or winners thereof, with costs of suit . . . .

S.C. CODE ANN. § 32-1-10 (Law. Co-op. 1991).

the claim because a third party suit is not limited by the three month period.[62]

In *Mullinax v. J.M. Brown Amusement Co.,*[63] the South Carolina appellate court reversed a trial court's dismissal of a wife's attempt to recover for her husband's gambling debts.[64] The trial court dismissed the action because it found the suit was "brought in a collusive fashion," in violation of the South Carolina third party recovery statute.[65] The appellate court explained that the statute's intent was to prevent the gambler from receiving some benefit from the suit.[66] However, Mrs. Mullinax's situation was exactly what the statute intended to address: the financial ruin of a family due to the compulsive gambling of one spouse.[67] The fact that Mr. Mullinax helped his wife prepare for the suit by providing information and documentation did not overcome this policy and make the suit collusive.[68]

In *Justice v. The Pantry*,[69] the plaintiff filed lawsuits for the recovery of gambling debts incurred by his mother and sister at video poker machines.[70] The appellate court reversed the trial court's decision that the Video Games Machines Act impliedly repealed the recovery statutes.[71] Similarly, in *McCurry v. Keith*,[72] the appellate court concluded that recovery of losses was allowed, irrespective of the legality of the gambling.[73] Interestingly, a subsequent appellate decision in the case reduced the plaintiff's recovery, using her winnings as a set off.[74]

Not all states have legislation mirroring the *Statute of Anne*. For instance, North Carolina has no statute that allows losers to sue to recover gambling losses.[75] In *State v. Hair*,[76] the North Car-

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62 *Ardis*, 467 S.E.2d at 744.

63 485 S.E.2d 103 (S.C. Ct. App. 1997), *aff'd*, 508 S.E.2d 848 (S.C. 1998).

64 *Mullinax*, 485 S.E.2d at 104.

65 *Id.* at 105.

66 *Id.* at 106.

67 *Id.* at 107.

68 *Id.* On remand, the jury took less than two hours to reach a verdict in favor of the defense. It seems that the jury refused to believe that the gambler had the seventy thousand dollars he claimed to have lost. *See Video Gambling Company Wins Losses Lawsuit*, POST & COURIER (Charlston, S.C.), Jan. 31, 1999, at B3.

69 496 S.E.2d 871 (S.C. Ct. App. 1998), *aff'd*, 518 S.E.2d 40 (S.C. 1999).

70 *Justice*, 496 S.E.2d at 872.

71 The South Carolina Supreme Court declined to review the appellate court's decision that the Video Games Machines Act did not impliedly repeal S.C. CODE ANN. § 32-1-20—South Carolina's *State of Anne* provisions. Justice v. The Pantry, 518 S.E.2d 40, 41 n.1 (S.C. 1999).

72 439 S.E.2d 861 (S.C. Ct. App. 1994).

73 *Id.* at 862.

74 McCurry v. Keith, 481 S.E.2d 166 (S.C. Ct. App. 1997) (setting off the plaintiff's recovery by $5,000, from $8,560 to $3,560).

75 State v. Hair, 442 S.E.2d 163, 166 (N.C. Ct. App. 1994) ("Furthermore, one who pays a gambling debt owed to another, may not subsequently attempt to recover that which he has paid.").

76 *Id*. at 163.

olina Court of Appeals overturned a portion of a criminal judgment requiring a defendant convicted of bribery to make restitution in the amount of a gambling debt.[77] The court noted that because North Carolina had no provision for civil recovery, a restitution order was inappropriate.[78]

B. States with State-Licensed Casinos

Nevada, New Jersey, Michigan, and Puerto Rico have large, land-based casinos,[79] while Colorado and South Dakota have small-scale, land-based casino operations.[80] Iowa, Indiana, Illinois, Mississippi, and Missouri have legalized riverboat gambling.[81] Louisiana has both land-based and riverboat casinos.[82] Every state has developed its own body of law to balance the historical public policy against gambling with the practical need for legal businesses to be able to recover on credit instruments. This section discusses the bodies of law that have developed in several of the states that have legalized casino gambling.

1. States With Large Land-Based Casinos

a. Nevada

Nevada legalized gambling in 1931,[83] but it did not legalize the enforcement of gambling debts until 1983.[84] During the intervening fifty-two years, its courts wrestled with issues related to the *Statute of Anne*. For instance, in 1950, a casino sued a debtor's estate to collect eighty-six thousand dollars in unpaid checks relating to gambling debts.[85] The court considered whether the affirmative defense of unenforceability of gambling debts was still valid in light of the case law since 1872.[86] The court recognized that gambling conditions in Nevada had changed,[87] and analyzed the relevance of the *Statute of Anne* to Nevada law.[88] It noted that while portions of the *Statute of Anne* were clearly inap-

77 *Id.* at 164.

78 *Id.* at 165-66.

79 AM. GAMING ASS'N, STATE OF THE STATES: THE AGA SURVEY OF CASINO ENTERTAINMENT, *Economic Impact*, *available at* http://www.americangaming.org/survey2001/economic_impact/TMP971869896.htm [hereinafter AGA SURVEY]; Welcome to Puerto Rico, *Tourist Information*, *at* http://welcome.topuertorico.org/tinfo.shtml (last visited Mar. 22, 2002).

80 AGA SURVEY, *supra* note 79.

81 NGISC FINAL REPORT, *supra* note 12, at 2-7. Although Michigan, Indiana, and Illinois have casinos, the author could not find any reported litigation concerning the enforcement of gambling debts in these states.

82 AGA SURVEY, *supra* note 79.

83 *Id.*

84 1983 NEV. STAT. § 335, now codified as NEV. REV. STAT. § 463.368 (2001).

85 West Indies, Inc. v. First Nat'l Bank of Nev., 214 P.2d 144, 145 (Nev. 1950).

86 *Id.* at 146 (citing Scott v. Courtney, 7 Nev. 419 (Nev. 1872)).

87 *West Indies*, 214 P.2d at 149.

88 *Id*. at 151-54.

plicable to contemporary Nevada law, this did not necessitate invalidating the entire statute unless the provisions were nonseverable.[89] Prior case law had deemed section 1 of the *Statute of Anne* the law of Nevada,[90] and the court concluded that this section could be severed from the other outdated portions of the *Statute of Anne*.[91] Furthermore, the legalization of gaming in 1931, and subsequent legislation, did not repeal by implication the first section of the *Statute of Anne*.[92]

Today, Nevada enforces gambling debts when credit instruments, such as markers or checks, are cashed at a casino.[93] The Nevada legislature made this change for two reasons. First, the gaming collection rate, generally about ninety-five percent, had "dipped below 90% for the first time in history."[94] Second, Nevada lost a major case regarding taxation of gaming debts "removing [the] benefit of having gaming debts remain unenforceable."[95] The Ninth Circuit ruled that unpaid casino receivables should be treated and taxed as income, even though the debts were legally unenforceable.[96]

Under recent laws, a casino may enforce gambling debts by immediately filing suit on any enforceable credit instrument and the underlying debt.[97] While regulations for the issuing of credit to a patron are stringent, failure to follow the regulations does not invalidate the credit instrument.[98] Rather, such violations result in disciplinary action by the Gaming Control Board.[99] An example of a credit instrument is a marker signed by the patron, which may be undated and issued to a nonaffiliated company "so that the

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89 *Id.*

90 *Id.*

91 *Id.*

92 *Id.*

93 LIONEL SAWYER & COLLINS, NEVADA GAMING LAW 245 (Anthony N. Cabot ed., 2d ed. 1995) [hereinafter NEVADA GAMING LAW].

94 *Id.* at 246.

95 Flamingo Resort, Inc. v. United States, 664 F.2d 1387, 1390-91 (9th Cir. 1982).

96 *Id*.

97 NEVADA GAMING LAW, *supra* note 93, at 248.

98 Anthony N. Cabot, *Casino Collection Lawsuits: The Basics*, GAMING LAW REVIEW vol. 4 No. 4, at 325 (2000).

99 *Id*. Violation of the laws or regulations concerning debt collection practices are taken very seriously by the Nevada Gaming Control Board. In August 1998, the Board fined the Mirage Hotel and Casino, alleging that it violated South Korean law. The Mirage collected over five hundred thousand dollars from Korean gamblers in violation of a Korean law which required government permission to take over ten thousand dollars from South Korea. *Mirage, Tropicana Pay Off Fines*, LAS VEGAS REV.-J., Aug. 21, 1998, at 2D. The Mirage paid a $350,000 fine and agreed to "develop written policies on the collection of Korean debts, in consultation with lawyers in that country." *Id*. Litigation by the woman who collected the money, and who claims she was wrongfully terminated by the Mirage, was not settled until August 2001. Dave Berns, *Fired Marketing Executive Settles with MGM Mirage*, LAS VEGAS REV.-J., Aug. 8, 2001, at 1D.

patron does not have to expose his gaming to his banker or spouse."[100]

The casinos have an additional weapon to use against patrons who refuse to pay their debts: the unpaid markers may be handed over to the district attorney for possible criminal prosecution.[101] One Illinois debtor, who owed fifty thousand dollars in markers, pled guilty after being extradited to Nevada and "agreed to make restitution."[102] Another gambler from Texas escaped prosecution only by filing bankruptcy.[103]

In *Nguyen v. State*,[104] the Nevada Supreme Court denied relief to a gambling debtor accused of criminal conduct for violating Nevada's bad check law.[105] Nguyen signed markers at three casinos, then left Nevada without paying the debts incurred.[106] Eventually, he entered a plea agreement whereby he pled guilty to passing a bad check, but reserved the right to appeal the issue of whether Nevada's bad check law applied to casino markers.[107] The appellate court had little difficulty concluding that the marker was the equivalent of a check.[108] It rejected Nguyen's contention that a marker was not a check, but instead, a written reflection of a loan agreement.[109] The court also found that "intent to defraud was circumstantially demonstrated by his failure to pay the full amount due within the statutory period, and by the return of the instruments from his bank with the notation 'Account Closed.'"[110]

Eight months prior to *Nguyen*, a federal district court reached the same result. In *Fleeger v. Bell*,[111] a gambler accumulated a Nevada debt of over $180,000 in unpaid markers, and was eventu-

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100 *See* NEVADA GAMING LAW, *supra* note 93, at 252.

101 In Clark County, Nevada, a casino can refer "dishonored Markers" to the "Bad Check Collections Unit ('BCU') of the District Attorney's Office in Clark County, Nevada. The BCU is a diversionary program, designed to encourage individuals who wrote bad checks to pay them because of the threat of prosecution without actually incarcerating them." Desert Palace, Inc. v. Baumblit, Nos. 00-5058, 00-5064, 2001 U.S. App. LEXIS 17683, at *6 (2d Cir. Aug. 6, 2001). In *Desert Palace*, the casino referred the unpaid markers to the BCU after the debtor filed for bankruptcy. The United States Court of Appeals affirmed a district court order that Caesars had acted improperly and its "actions constituted a deliberate violation of the automatic stay, entitling Baumblit to actual damages." *Id*. at *14.

102 John G. Edwards, *Prosecutors Pursue Bad Casino Markers, Unpaid Gambling Debts Are the Same As Worthless Checks in the Eyes of the District Attorney's Office*, LAS VEGAS REV.-J., July 28, 1997, at 2D.

103 *Id.*

104 14 P.3d 515, 520 (Nev. 2000).

105 *Id.* at 516.

106 *Id*. at 517.

107 *Id.*

108 *Id.* at 518.

109 *Id.*

110 *Id.* at 519.

111 95 F. Supp. 2d 1126, 1128 (D. Nev. 2000).

ally arrested in Texas.[112] He later filed a class action complaint alleging that the markers were "IOUs," rather than negotiable checks.[113] The judge disagreed and granted the defendant's motion to dismiss.[114] On appeal, the Court of Appeals for the Ninth Circuit gave significant weight to the intervening Nevada Supreme Court conclusion in *Nguyen* that a marker is a check, and affirmed the district court decision.[115]

There is a major distinction between a casino suing on a credit instrument and a patron's contractual claim against a casino. Patrons who wish to file suit against a casino must first proceed via an administrative hearing.[116] This distinction is based on both practical and historical concerns. Should a patron claim that a casino owes him money, the Gaming Control Board "with its specialized knowledge of the gaming industry, can better judge the evidence."[117]

b. New Jersey

Prior to New Jersey's legalization of casinos in 1976,[118] its courts had to determine whether gambling debts legally incurred in another jurisdiction were enforceable. The New Jersey Supreme Court faced this question in *Caribe Hilton Hotel v. Toland*,[119] and held that gambling debts incurred at a licensed and regulated Puerto Rican casino could be enforced against a New Jersey resident.[120] The court recognized a long-standing hostility by New Jersey courts toward the enforcement of gambling debts.[121] However, it noted that the subsequent legalization of

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112 *Id.*

113 *Id.* at 1129.

114 *Id.* at 1133. Fleeger's complaint alleged violations of the Fair Debt Collection Practices Act, common law false arrest, and various civil rights violations, as well as violation of Nevada gaming regulations. *Id.* at 1129.

115 Fleeger v. Bell, No. 00-15942, 2001 U.S. App. LEXIS 25491, at *7 (9th Cir. Nov. 26, 2001).

116 *See* NEVADA GAMING LAW, *supra* note 93, at 245.

117 *Id.*

118 AGA SURVEY, *supra* note 79.

119 307 A.2d 85 (N.J. 1973).

120 *Id.* at 89.

121 *Id.* at 86. During the nineteenth and twentieth centuries, New Jersey public policy "condemned gambling." The court stated:

> By a comprehensive statute enacted February 8, 1797, gaming in all forms was declared to be an indictable offense; contracts and security arrangements having their origin in any form of gambling were declared void; money paid by a loser to a winner might be recovered in an action in debt and if the loser failed to sue, a third person might do so and if successful retain one-half the recovery, the balance to pass to the State. The plaintiff in such an action might have the aid of a court of equity to compel discovery under oath.

Id. (citations omitted). New Jersey law has retained both the provision voiding gambling debts and the debt recovery provision of the *Statute of Anne*. The code provides that, "[a]ll wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event" are unlawful in

bingo and lotteries, and sister-state judicial decisions, which recognize such debts, evidenced a change in New Jersey public policy that no longer allowed the state to bar recovery of a legal gambling debt incurred in another jurisdiction.[122] The court reasoned that differences in states' policies "should not be considered sufficient to lead a forum court to deny relief where a claim is based upon the divergent law of . . . [an]other jurisdiction."[123]

After the legalization of casinos, the New Jersey courts confronted questions related to the liability of casinos to patrons when a casino had breached a statutory duty. In *GNOC Corp. v. Aboud*,[124] the plaintiff casino sued a gambler for twenty-eight thousand dollars in unpaid gambling debts.[125] The gambler counterclaimed for losses of $250,000 plus punitive damages, alleging that the casino encouraged him to lose money by serving him alcohol.[126] New Jersey has a dram-shop statute, which imposes liability on certain entities that serve alcohol to intoxicated individuals.[127] The casino filed two summary judgment motions arguing that, as a matter of law, the casino is not responsible for the employees who served Aboud while he was intoxicated.[128] In denying summary judgment, the court stated:

> In sum, a casino has a duty to refrain from knowingly permitting an invitee to gamble where that patron is obviously and visibly intoxicated and/or under the influence of a narcotic substance. Here there are allegations of patent and overt inebriety coupled with the consumption of a powerful narcotic medication prescribed by physicians summoned by and paid for by the casino itself. While under the influence of drugs or alcohol, one suffers a deficit, to varying degrees, of cognitive faculties such as the power to reason sensibly, to appreciate the danger of activities engaged in, and/or to exercise sound judgment.[129]

One issue mentioned in a footnote in *Aboud*, but not fully discussed,[130] was whether a violation of the New Jersey Casino Control Act[131] by a casino should permit a private cause of action by a gambler. In *Miller v. Zoby*,[132] a debtor's estate sued a casino jun-

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New Jersey. N.J. STAT. § 2A:40-1 (2001). Furthermore, any person who loses any money or goods resulting from a violation of § 2A:40-1, may file a civil action and sue to recover the money or goods paid out to the winner within six months after payment. N.J. STAT. ANN. § 2A:40-5.

122 *Toland*, 307 A.2d at 89.

123 *Id.*

124 715 F. Supp. 644 (D.N.J. 1989).

125 *Id*. at 648.

126 *Id.*

127 *Id.* at 653-54 (citing N.J. ADMIN. CODE tit. 19, § 50-1 (1988)).

128 *Aboud*, 715 F. Supp. at 646.

129 *Id.* at 655.

130 *Id.* at 653 n.130.

131 N.J. STAT. §§ 5:12-1 to -190 (2001).

132 595 A.2d 1104 (N.J. Super. Ct. App. Div. 1991).

ket operator for having improperly extended credit, resulting in gambling losses totaling $267,000.[133] The court dismissed for failure to state a claim upon which relief could be granted.[134] Upon appellate review of the dismissal, the court concluded that "the Legislature was satisfied to rely on the elaborate regulatory sanctions provided in the Act and not on private enforcement to police the general credit practices of the casinos. 'The key to the inquiry is the intent of the Legislature.'"[135]

The decision in *Aboud*, which allowed a private right of action against a casino for the breach of a statute, and the decision in *Miller*, which did not allow a private right of action for the breach of a different statute, both required clarification regarding which statutes could give rise to a private right of action. *Greate Bay Hotel & Casino v. Tose*[136] explained and attempted to reconcile these two cases.

In *Tose*, the casino sued for unpaid gambling debts totaling over one million dollars, and Tose counterclaimed to recover over three million dollars which he claimed to have lost between 1983 and 1987, while gambling in Atlantic City.[137] The counterclaim relied on *Aboud*, alleging that the casino continued to serve him alcohol after he was clearly intoxicated.[138]

The district court granted the casino's motion for summary judgment, holding the casino could recover its damages in full.[139] On Tose's counterclaim, the court held that he could recover under his theory, but that he was limited to those losses that were incurred within the six-year statute of limitations.[140] In response, the casino argued that because Tose was an overall winner during those six years, he should be barred from recovering at all.[141] The court did not agree.[142] It concluded that the application of such a "net winner theory" would produce inequitable results.[143] As a result, only Tose's counterclaim remained for trial by a jury.[144] The jury was instructed "to make separate findings of liability for each

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133 *Id.*

134 *Id.* at 1106.

135 *Id.* at 1108 (quoting Middlesex City Sewerage Auth. v. Sea Clammers, 453 U.S. 1, 13 (1981)).

136 34 F.3d 1228 (3d Cir. 1994). At a congressional hearing, Tose estimated his gambling losses at between forty to fifty million dollars. Laurence Arnold, *Telling of $50M Losses, Ex-Eagles Owner Rocks Gambling Panel*, RECORD (Northern N.J.), July 1, 1999, at L7.

137 *Tose*, 34 F.3d at 1228.

138 *Id*.

139 *Id*. at 1229.

140 *Id.*

141 *Id.*

142 *Id.*

143 *Id.*

144 *Id.*

of seven dates on which Tose allegedly gambled while visibly intoxicated and lost money."[145]

At the first trial, the jury found for the casino on four dates, but it could not reach a unanimous verdict on the other three, and declared a mistrial regarding those dates.[146] At the second trial, the casino was successful.[147] Interestingly, the trial court hinted that, but for *Aboud*, it would have granted the casino's motion for summary judgment because New Jersey law did not permit a private cause of action for a gambler in this area.[148] Tose filed an appeal pro se.[149]

On appeal, the casino argued that in light of the decision in *Miller*, *Aboud* should be reexamined.[150] Nevertheless, the court determined that *Miller* and *Aboud* are not inconsistent; while *Miller* established that no private cause of action exists for violations of the Casino Control Act, *Aboud* established that a cause of action is permitted when there is another statute upon which to rely.[151] The intent of the legislature to impose liability in the latter case was clear because the legislature had addressed the issue specifically.[152]

Aboud, *Miller*, and *Tose* were also relied upon in a tort case. In *Hakimoglu v. Trump Taj Mahal Associates*,[153] the debtor sued in tort to recover over two million dollars in gambling debts, alleging he was visibly intoxicated at the time he gambled in the defendant's casino.[154] The defendant counterclaimed for seven hundred thousand dollars in unpaid counterchecks and moved to dismiss the plaintiff's claim, alleging that New Jersey law did not permit

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145 *Id.* (quoting Tose v. Greate Bay Hotel & Casino, Inc., 819 F. Supp 1312, 1314 (D.N.J. 1993)).

146 *Tose*, 34 F.3d at 1229.

147 *Id.*

148 *Tose*, 819 F. Supp. at 1316-1317. The court held that the case was controlled by *Aboud*, stating:

> The court acknowledges that *Aboud* is the law of this case and that pursuant to the law of the case doctrine the issue will not be relitigated . . . . To the extent that the *Aboud* cause of action is viewed as implied by the regulation limiting service of alcohol to inebriated patrons, or by any other statute or regulation governing casino operations, it runs afoul of the general notion that private causes of action are not ordinarily implied from regulatory enactments absent some indication of legislative intent . . . . The New Jersey Appellate Division has already ruled that even a direct casino violation of the Casino Control Act does not create a private right of action The case for an implied cause of action is even weaker where, as here, there is no direct regulation barring the conduct which is alleged to create liability – permitting an inebriated patron to gamble.

Id. at 1316 n.8 (citations omitted).

149 *Tose*, 34 F.3d at 1235 n.13.

150 *Id*. at 1232 n.7.

151 *Id*.

152 *Tose*, 819 F. Supp. at 1316 n.8.

153 876 F. Supp. 625, 627 (D.N.J. 1994), *aff'd*, 70 F.3d 291 (3d Cir. 1995). The complaint alleged negligence, intentional or malicious conduct, and unjust enrichment which the "plaintiff . . . [had] collapsed . . . into a single theory of dram-shop liability." *Id*. at 629.

154 *Id*. at 627.

such a cause of action.[155] The defendant also moved to strike the plaintiff's affirmative defense of intoxication.[156] After considering the cases discussed above, the court stated that neither dram-shop liability, nor the Casino Control Act, supported an implied tort law cause of action for recovery of gambling losses incurred while intoxicated.[157] The Court of Appeals for the Third Circuit affirmed the dismissal and stated, "[W]e predict that the New Jersey Supreme Court would not permit recovery on claims such as those asserted by the plaintiff . . . . "[158]

c. Puerto Rico

Like Nevada and New Jersey, Puerto Rico has legal, regulated casinos.[159] Puerto Rico is also similar to Nevada and New Jersey in that it allows the enforcement of legally incurred gambling debts through court actions. In Puerto Rico, a "person who loses in a game or a bet which is not prohibited is civilly liable."[160] Civil recovery of a gambling debt is limited in Puerto Rico by the "good father" principle, which was originally found in the Spanish Code.[161] Puerto Rico does not allow any type of action to recover winnings or debts in games of chance that are not legal within the territory.[162] Nevertheless, a person may recover bets on illegal games if there is evidence of fraud or the debtor is a minor or incapacitated.[163]

In *Posadas de Puerto Rico, Inc. v. Radin*,[164] a gambler appealed from summary judgments entered against him in two legally and factually similar cases. The gambler received fifteen thousand dollars in credit from each of two hotel casinos, and the casinos sued when the gambler refused to pay the debts.[165] The court affirmed the lower court decision, which awarded the two casinos thirty thousand dollars plus collection expenses.[166]

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155 *Id*. at 627, 629.

156 *Id*. at 637.

157 *Id.* at 631. Judge Rodriguez issued an order denying motion for reargument on May 11, 1992. *Id.* at n.4.

158 *Hakimoglu*, 70 F.3d at 294. The dissent argued, "From New Jersey's perspective, requiring casinos to protect gamblers from losses flowing from their excessive service of alcohol would probably also be in the public interest." *Id.* at 298. New Jersey would likely recognize a cause of action against a casino. *Id.* at 299.

159 Welcome to Puerto Rico!, *Tourist Information*, *at* http://welcome.topuertorico.org/tinfo.shtml (last visited Mar. 22, 2002).

160 31 P.R. LAWS ANN. § 4774 (1991).

161 *Id*. The "good father" principle allows a trial court to reduce or eliminate the debt if it is more than a good father could pay. *Id.*

162 *Id*. § 4771.

163 *Id*.

164 856 F.2d 399, 400 (1st Cir. 1988).

165 *Id.*

166 *Id.*

In his appeal, the gambler advanced two arguments. First, he argued the judgments should be overturned because the trial court judge did not conduct evidentiary hearings to determine whether the gambler's debts should be reduced under the good father defense.[167] The court concluded that the appellant did not present any issues at the summary judgment hearing that were not considered by the trial court, and an evidentiary hearing is not mandated when the only remaining issue is an issue of law for the court to decide.[168] The court also pointed out that the parties brought the good father defense to the trial judge's attention on two different occasions, and the judge had expressly rejected the defense as meritless.[169]

The gambler's second argument was that genuine issues of material fact existed as to whether the gambler was under duress when he signed the markers.[170] The court rejected this argument because the only evidence supporting it was an affidavit stating that the gambler was forced to sign the credit agreements.[171] The court held that the language of the affidavit was too vague and conclusory to successfully oppose the motions for summary judgment.[172] Therefore, it appears that Puerto Rico will enforce legally incurred gambling debts, and the Court of Appeals for the First Circuit will uphold state or territorial laws that allow for the enforcement of gambling debts.

2. States With Small Scale, Land-Based Casinos

a. Colorado

Colorado allows gambling in three historic mining towns.[173] The amount of any single wager, however, is limited to five dollars, and it only allows three types of casino games: poker, blackjack, and slot machines.[174] This limited gambling was authorized by the voters in a constitutional amendment initiated and passed by Colorado citizens.[175] Other forms of limited gambling are also permitted, including charitable bingo games or raffles,[176] a state

167 *Id.*
168 *Id.*
169 *Id.*
170 *Id.* at 401.
171 *Id.*
172 *Id.*
173 The Colorado Division of Gaming, Colorado Department of Revenue, Colorado Gaming Questions and Answers, *at* http://www.gaming.state.co.us/dogfaq.htm (last visited Mar. 22, 2002).
174 *Id.*
175 INTERNATIONAL CASINO LAW 17 (Anthony N. Cabot et al. eds., 3d ed. 1999) [hereinafter INT'L CASINO LAW].
176 COLO. REV. STAT. § 12-9-105 to -107 (2001); Colorado Department of Revenue, Other Colorado Wagering Activities, *at* http://www.gaming.state.co.us/ (last visited Mar. 26, 2002).

lottery,[177] and horse and dog racing.[178] Colorado prohibits casinos from extending credit to players.[179]

Unlike many states that invalidate gaming debts pursuant to the *Statute of Anne*, Colorado depends on nineteenth century case law that prohibits enforcement actions because they are a waste of judicial resources.[180] Nevertheless, more recent case law indicates that enforcement may be possible for legally incurred "social" gaming debts. In *Houston v. Younghans*,[181] the Colorado Supreme Court was asked to enforce a debt arising from a poker game between friends.[182] Such social gambling is specifically excluded from Colorado's gambling prohibition.[183] The court found that, because the debt was not incurred as part of "professional" gambling under Colorado law, the debt was enforceable.[184]

b. South Dakota

South Dakota began allowing limited casino gaming in the town of Deadwood in November 1989; by 2001, there were forty operating casinos.[185] Blackjack, poker, and slot machines are the only forms of gaming that are legal,[186] and the state limits the amount of any single bet to one hundred dollars.[187] South Dakota also established strict controls on check cashing at casinos,[188] and does not allow casinos or casino employees to extend credit for gambling.[189]

With the exception of debts incurred for authorized gaming and lotteries, gambling debts remain void.[190] In *Bayer v. Burke*,[191] the court interpreted the statute narrowly when it granted summary judgment on behalf of a bettor who signed promissory notes

177 The Colorado Lottery, *at* www.coloradolottery.com/home.cfm (last visited Mar. 26, 2002).

178 COLO. REV. STAT. § 12-47.1-815 (2002); COLO. REV. STAT. § 12-60-510 (1996); Colorado Division of Racing Events, Colorado Department of Revenue, *at* http://www.state.co.us/gov_dir/revenue_dir/racing_dir/coracing.html (last visited Mar. 26, 2002).

179 INT'L CASINO LAW, *supra* note 175.

180 Eldred v. Malloy, 2 Colo. 320, 321-22 (1874) ("The courts of this territory have enough to do without devoting their time to the solution of questions arising out of idle bets made on dog and cock fights, horse races, the speed of ox trains, the construction of railroads, the number on a dice or the character of a card that may be turned up.").

181 580 P.2d 801 (Colo. 1978).

182 *Id*.

183 COLO. REV. STAT. § 18-10-102(2)(d); *Younghans*, 580 P.2d at 802-03.

184 *Younghans*, 580 P.2d at 803.

185 AGA SURVEY, *supra* note 79.

186 Commission on Gaming, South Dakota Department of Commerce and Regulation, Frequently Asked Questions, *at* http://www.state.sd.us/dcr/gaming/frequent.htm (last visited Mar. 22, 2002). This restriction also applies to the state's nine Native American casinos. *Id*.

187 S.D. CODIFIED LAWS § 42-7B-14 (Michie 2001).

188 S.D. ADMIN. R. 20:18 app. A § 525 (2002).

189 S.D. CODIFIED LAWS § 42-7B-45.

190 *Id*. §§ 42-7B-47, 53-9-2.

191 338 N.W.2d 293, 293-94 (S.D. 1983).

for over two hundred thousand dollars.[192] The creditor argued that the consideration for the notes was not a wager, but instead was an agreement not to sue the bettor on outstanding debts for other losses; the court did not agree.[193] The court reasoned that, while forbearance of suit is adequate consideration, the threatened suit concerned a contract that was void because the sole basis of the contract was gambling.[194]

Along with voiding all gambling debts, South Dakota law also continues to retain recovery provisions similar to section 2 of the *Statute of Anne*. Gamblers can recover gambling losses from the person with whom the bet was made, or from the proprietor of the place where the bet was made, if the gambler pursues a cause of action within six months.[195] If the gambler does not pursue an action within six months, the state's attorney will pursue an action for the benefit of the gambler's spouse and children, or if the gambler is not married, for the benefit of the public schools.[196] These recovery provisions do not apply to losses incurred in authorized casinos.[197]

3. States With Casinos Connected to Water

a. Iowa

In 1989, Iowa legalized riverboat casinos on navigable waters,[198] and now has ten riverboat casinos.[199] Although personal checks are lawful for certain forms of gambling, casinos cannot accept credit cards in exchange for coins, tokens, or any other form of credit.[200] In fact, Iowa law criminalizes the collection of gambling debts.[201] Currently, there are no cases in Iowa where attempts have been made to collect gambling debts. Nevertheless, it is interesting to examine the treatment of credit cards and cash machines in or near casinos.

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192 *Id*. at 293.

193 *Id*. at 294.

194 *Id*.

195 S.D. CODIFIED LAWS § 21-6-1 (Michie 2001).

196 *Id.* § 21-6-2.

197 *Id.* § 42-7B-55.

198 Trudy D. Fountain, *Rolling Down the Mississippi From Minnesota to Louisiana and out the High Seas - Riverboat Gambling and Cruise Ship Gambling*, 89 ALI-ABA 79, 82 (2001).

199 Iowa Racing and Gaming Commission, State of Iowa Licensed Facilities, *at* http://www3.state.ia.us/irgc/licensees_map2.htm (last modified Dec. 31, 2001). Iowa also has two greyhound dog racing facilities, one horse racing facility, and three Native American casinos. *Id*.; Iowa Racing and Gaming Commission, Indian Gaming, *at* www3.state.ia.us/irgc/Indian.htm (last visited Mar. 21, 2002).

200 IOWA CODE § 99B.17 (2002); *Id*. § 99F.9(6).

201 IOWA CODE § 725.18. This section states, "Any person who knowingly offers, gives or sells the person's services for use in collecting or enforcing any debt arising from gambling, whether or not lawful gambling, commits an aggravated misdemeanor." *Id*.

In November 1998, the Iowa Racing and Gaming Commission (IRGC) began eliminating cash dispensing credit card machines in casinos.[202] Previously, the legislature had debated a ban on the machines, but never finalized its decision.[203] In order to effectuate its ruling, the IRGC denied new credit card cash machine contracts and declined to renew existing contracts.[204] In January 1999, the IRCG accelerated the process by requiring the removal of all credit card machines by the end of February 1999.[205] Included in this ban were Com-Check machines.[206] At that time, the regulation did not affect Automated Teller Machines in casinos because they gave access to only limited amounts of cash.[207]

The IRGC's decision was overturned by a trial judge in January 2000, because "'This court remains convinced the IRGC exceeded its authority by enacting a rule that amended existing Iowa law . . . .' The Iowa Legislature had already spoken on the issue of casino credit and chose to stop short of banning such cash advances."[208] The judge also noted that the IRGC's rule would discourage Iowa tourism because gamblers would choose to visit states with less stringent gambling credit rules.[209]

b. Mississippi

Mississippi legalized dockside casino gambling in 1990.[210] At common law, all gambling debts were unenforceable.[211] However, Mississippi has passed laws creating two exceptions: patron claims against casinos and enforcement of proper credit instruments.

Mississippi has passed laws allowing patrons of licensed casinos to enforce claims against the casino.[212] Like Nevada, Mississippi requires the exhaustion of administrative remedies in virtually every contractual claim by a patron against a casino.[213]

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202 Robert Dorr, *Panel Curtails Cash Advances in Iowa Casinos*, OMAHA WORLD-HERALD, Nov. 20, 1998, at 1, *available at* 1998 WL 5527299.

203 *Id.*

204 *Id.*

205 Greg Smith, *Regulators Restrict Use of Credit at Casinos*, ASSOCIATED PRESS, Jan. 22, 1999.

206 *Id.* These machines scan the gambler's credit card, the gambler inputs how much money he or she wanted to spend on gambling tokens, the gambler receives a receipt, and the receipt could be taken to the teller to receive cash. *Id.*

207 Dorr, *supra* note 202.

208 *Judge Throws Out ATM Ban in Casinos*, ASSOCIATED PRESS NEWSWIRES, Jan. 20, 2000 (quoting Polk County District Judge Robert Hutchinson).

209 *Id.*

210 Mississippi Gaming Commission, About MGC, History, *at* http://www.mgc.state.ms.us/main-about.html (last visited Mar. 22, 2002).

211 Grand Casino Tunica v. Shindler, 772 So. 2d 1036, 1038 (Miss. 2000).

212 MISS. CODE ANN. § 75-76-157 to -165 (2002).

213 Thomas v. Isle of Capri Casino, 781 So. 2d. 125, 127 (Miss. 2001) (upholding, albeit "reluctantly," a trial court's denial of relief to a player who claimed a jackpot); NEVADA GAMING LAW, *supra* note 93, at 252.

Patrons must first litigate their claims before the Mississippi Gaming Commission, whose decisions are appeallable to Mississippi state courts.[214] Judicial review of Commission decisions is highly deferential. Courts will uphold any Mississippi Gaming Commission decision unless: it violates a constitutional provision; it is outside the Commission's jurisdiction; it was rendered using unlawful procedures; no evidence supports the decision; or the decision was arbitrary or capricious.[215] The Commission's violation of one of these factors must also prejudice a petitioner's substantial rights.[216]

Gambling debts evidenced by credit instruments are excluded from the general unenforceability rule.[217] These debts may be enforced directly through Mississippi's legal process.[218] However, Mississippi courts will only enforce gaming credit instruments if the extension of credit was proper under the Mississippi Gaming Commission rules.[219] Another interesting feature of Mississippi law is the "Exclusion List." This exclusion list is not voluntary, and the regulations put an affirmative duty on a casino to report and exclude any person on the list. Thus, a question of casino liability arises when a casino fails to fulfill its statutory duties. All licensed casinos have a duty "to inform the Executive Director in writing of the names of the persons such licensee reasonably believes meet the criteria for placement on an Exclusion List."[220] When it is determined that the person is a candidate for exclusion, a petition is filed.[221] Notice must be given to the person to be excluded, who has the opportunity to refute the allegations at a hearing conducted by the Commission and reviewable by the courts.[222] This list is distributed to all licensed gambling estab-

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214 MISS. CODE ANN. § 75-76-167 to -173.

215 *Grand Casino Tunica*, 772 So. 2d at 1040.

216 *Id*.

217 MISS. CODE ANN. § 75-76-157 ("gaming debts not evidenced by a credit instrument are void and unenforceable . . . .").

218 *Id*. § 75-76-175.

219 INT'L CASINO LAW, *supra* note 175, at 88.

220 MISS. GAMING COMM'N REG. III(V)(1). The regulation states:

> The Executive Director may place a person on the exclusion list pending a hearing if such person has:
>
> (a) Been convicted of a felony in any jurisdiction, of any crime of moral turpitude or of a crime involving Gaming;
>
> (b) Violated or conspired to violate the provisions of the Act relating to involvement in gaming without required licenses, or willful evasion of fees or taxes;
>
> (c) A notorious or unsavory reputation which would adversely affect public confidence and trust in gaming; or
>
> (d) His name [is] on any valid and current exclusion list from another jurisdiction in the United States.

Id.

221 *Id*. III(V)(4).

222 *Id*.

lishments, which then have an affirmative duty to eject or exclude all persons on the list.[223]

c. Missouri

Missouri voters approved a referendum to legalize riverboat gambling by a sixty-three percent majority in 1992.[224] However, implementation of the new law was not a smooth process. Critics pointed out that the new law did not exclude convicted felons from obtaining gaming licenses, and argued that the Tourism Commission was not the proper agency to promulgate regulations simply because gambling would presumably be a significant tourist attraction.[225] The Missouri Gaming Commission was created in 1993 to address these concerns. After several challenges arising from the Missouri constitution, Missouri now permits riverboat gambling, including gambling at casinos built in artificial basins located within one thousand feet of the Mississippi or Missouri rivers.[226]

The original Missouri referendum placed a loss limit of five hundred dollars per person, per excursion, on wagers placed at riverboat casinos.[227] This provision was codified by the state legislature and became part of the riverboat casino regulations promulgated by the Missouri Gaming Commission.[228] However, a problem arose with the definition of "excursion," which was defined as any time "gambling games may be operated on an excursion gambling boat whether docked or during a cruise."[229] Under this definition, games can be operated continuously on boats that are permanently docked, circumventing the five hundred dollar per excursion loss-limit.[230] The Commission's solution was to put the responsibility back on casinos by requiring licensees to ensure that gamblers do not lose more than the five hundred dollar limit.[231]

Missouri law also allows a person to permanently exclude oneself from casino gambling.[232] If the excluded person enters a

223 *Id*. III(V)(1).

224 Mo. Gaming Comm'n, *The History of Riverboat Gambling*, *at* http://www.mgc.state.mo.us/history.htm (last visited Mar. 22, 2002).

225 *Id*.

226 *Id*. (detailing the history of gambling legalization in Missouri, including constitutional challenges, voter referenda, and the development of the "boat in a basin" laws).

227 *Id*.

228 MO. ANN. STAT. § 313.805 (West 2001); MO. CODE REGS. ANN. tit. 11, § 45-6.040 (2002).

229 Mo. Gaming Comm'n, *supra* note 224.

230 *Id*.

231 MO. CODE REGS. ANN. tit. 11, § 45-6.040.

232 MO. ANN. STAT. § 313.813; *see also* Stephanie S. Maniscalco, *Gambling Addict Suits vs. Casinos Are Foreseen: 'Self-Exclusion' Program May Create Duty*, 15 MO. LAW. WKLY. 1409 (Dec. 17, 2001) ("The List of Disassociated Persons . . . includes more than 3,500 names.").

casino, that person may be subject to criminal trespass charges.[233] Plaintiffs' lawyers have suggested that if a casino does not catch a self-excluded person, they may be subject to liability, but this concept has not been tested in Missouri courts.[234]

Missouri has a modern version of the *Statute of Anne* whereby gamblers may recover wagering losses.[235] However, there have been no reported cases in which a gambler has attempted to recover wagers since the legalization of riverboat gambling in 1992, so it is not clear whether a court will continue to apply the statute to legal gambling within the state.[236] It is clear from the riverboat gaming statutes that casinos cannot extend credit for the purpose of gambling. Casinos are not permitted to take anything of value other than money in exchange for gambling tokens or chips.[237] Violation of this provision subjects the casino to a misdemeanor.[238]

4. Louisiana: The State With Both Land-Based and Water-Related Casinos

Louisiana law retains elements of Roman law. Specifically, Louisiana law provides as follows: "The law grants no action for the payment of what has been won at gaming or by a bet, except for games tending to promote skill in the use of arms, such as the exercise of the gun and foot, horse and chariot racing."[239] The Louisiana statute goes on to say, "In all cases in which the law refuses an action to the winner, it also refuses to suffer the loser to reclaim what he has voluntarily paid, unless there has been, on the part of the winner, fraud, deceit, or swindling."[240]

Despite these laws, Louisiana courts allow casinos and their assigns to recover what other jurisdictions would consider to be gambling debts. In *TeleRecovery of Louisiana., Inc. v. Major*,[241] a Louisiana appeals court held that as assignee for two casinos, a collection agency could bring an action to recover sixty-five thousand dollars from six checks received in exchange for the

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233 MO. ANN. STAT. § 313.813.

234 Maniscalco, *supra* note 232. Plaintiffs' lawyers have raised this question, "If gambling debts are not enforceable in Missouri and someone is advanced money by an ATM, is there a challenge to enforceability of these transactions?" *Id*.

235 MO. ANN. STAT. § 434.030 (West 1992). This section states, "Any person who shall lose any money or property at any game, gambling device or by any bet or wager whatever, may recover the same by a civil action." *Id*.

236 In *State v. Small*, 24 S.W.3d 60, 66-67 (Mo. Ct. App. 2000), the Missouri Appellate Court denied relief to an attorney who sued casinos under section 434.030. *Id.* However, the court did not address section 434.030 because it was able to dispose of the case on other grounds. *Id.*

237 MO. ANN. STAT. § 313.830(6).

238 *Id.*

239 LA. CIV. CODE ANN. art. 2983 (West 2001). The amount may be reduced if the trial judge finds it excessive. *Id*.

240 *Id.* art. 2984.

241 734 So. 2d 947 (La. Ct. App. 1999).

equivalent value of chips because the transaction did not create a gambling debt.[242] The court reasoned that the statutes were irrelevant because no debt was incurred.[243] The court went so far as to state that whether the subsequent use of the chips was legal was irrelevant because, after receiving the chips, the defendant could have immediately cashed them.[244] The purchase of chips was a separate transaction that was legal and enforceable.[245]

Like Nevada, in Louisiana the State may prosecute a gambler for writing a bad check. In *State v. Dean*,[246] the defendant wrote twenty-one thousand dollars worth of bad checks, and the State charged him with writing worthless checks.[247] In a motion to quash, the defendant argued that because public policy prohibited civil enforcement of gambling debts, it also prohibited criminal punishment for the same conduct.[248] When the trial court denied his motion, the defendant pled guilty, but reserved the right to appeal the denial of the motion to quash.[249] The appellate court had little difficulty affirming the conviction, even though it was a case of first impression.[250] The court emphasized that the riverboat casino was a legitimate business allowed by the legislature.[251] It opined that it would be an absurd result to say that a patron of a legal business was free to defraud it, and then rely on the nature of the business to escape punishment.[252] The court also noted that concerns underlying the prohibition of civil enforcement—for example, the protection of habitual gamblers—did not apply in the criminal context because addicts of all kinds are criminally punished for the illegal acts that they commit.[253]

A debtor was also unsuccessful in *Players Lake Charles, LLC, v. Tribble*,[254] where the casino allegedly threatened criminal prosecution unless she signed a promissory note for six payments totaling over thirty thousand dollars.[255] The court held the markers

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242 *Id.* at 948, 951.

243 *Id.* at 950-51.

244 *Id.* at 950.

245 *Id.*

246 748 So. 2d 57 (La. Ct. App. 1999).

247 *Id.* at 58.

248 *Id.*

249 *Id*.

250 *Id*. at 59.

251 *Id*. at 60.

252 *Id*.

253 *Id*. at 59-60. The defendant was sentenced to two years of hard labor (suspended), five years of probation, restitution of nine thousand dollars, and other penalties. *Id*. at 58-61. For a critical analysis of the Louisiana decision, see Tiffany Cashwell, Casenote, *A Continuing Debate: Public Policy and Welfare Versus Economic Interests Regarding Enforcement of Gambling Debts in* State v. Dean, 46 LOY. L. REV. 299 (2000).

254 779 So. 2d 1058, 1059 (La. Ct. App. 2001).

255 *Id*.

that the defendant signed were not gambling debts because she could have used the chips for non-gambling purposes.[256]

C. States with Native American Casinos

In any debt collection matter involving a Native American casino it is essential to first examine the terms of the relevant Tribal-State compact; a compact is mandatory for any Class III gaming.[257] In 1995, the Mashantucket Pequots passed the "Debt Collection Law," which established procedures for payment of casino debts.[258] Pursuant to the procedures, if the debtor does not pay the marker, the marker is presented to the bank.[259] If the bank account has insufficient funds, the debtor is contacted.[260] If the debtor refuses to pay, litigation will be initiated in the tribal court.[261] Once a tribal court judgment is entered, often by default, enforcement is sought by bringing suit in the state where the debtor resides.[262] An emerging issue in tribal gaming is whether gambling debts incurred at reservations are enforceable in state courts; such judgments have been enforced in Connecticut and New York.[263]

Connecticut has allowed enforcement of tribal gaming debts in its state courts. In *Mashantucket Pequot Gaming Enterprises v. Kennedy*,[264] a Connecticut court concluded that the provisions of the tribal-state compact took precedence over Connecticut statutes that did not allow the enforcement of gambling debts.[265] More specifically, the court focused on the issue of whether federal law should preempt state law in the context of Indian Gaming.[266] The court determined that the issue should be resolved according to "principles of federal preemption under the Supremacy Clause of the United States Constitution."[267] In finding that the gaming debts are enforceable despite state law to the contrary, the court

256 *Id*. at 1060.

257 25 U.S.C. § 2710(d)(1)(C) (2001). Class III gaming is defined in the negative as "all forms of gaming that are not class I gaming or class II gaming." *Id.* § 2703(8). However, subsection (7)(B) explains that class II gaming does *not* include "any banking card games" or slot machines, thus by implication, these types of games would qualify as class III gaming. *Id*. § 2703(7)(B).

258 Patrice H. Kunesh, *Enforcement of Gaming Debts Beyond Tribal Court*, LEGAL NEWS (Mashantucket Pequot Tribal Nation), June 2001, at 1.

259 *Id*. at 1-2.

260 *Id*.

261 *Id*. at 2.

262 *Id*.

263 The Pequots claim they have also been successful in enforcing gambling debts with judicial decisions in Massachusetts, Rhode Island, Maine, Florida, Pennsylvania, and New Jersey. Kunesh, *supra* note 258, at 1.

264 No. 116860, 2000 Conn. Super. LEXIS 679 (Conn. Super. Ct. Mar. 14, 2000).

265 *Id.* at *19.

266 *Id*. at *12.

267 *Id*.

favored a liberal reading of Connecticut law so as to enhance tribal sovereignty.[268] Accordingly, the court held that a state policy against gaming cannot preempt an act of Congress.[269]

In *Mashantucket Pequot Gaming Enterprise v. DiMasi*,[270] a Connecticut court recognized a tribal gaming judgment under the principle of comity.[271] Then, in *Mashantucket Pequot Gaming Enterprise v. Renzulli*,[272] the defendant was issued two markers totaling five thousand dollars.[273] When the markers were returned for insufficient funds, the tribe attempted to contact the defendant in order to collect upon the debt, however, the defendant refused to respond to any correspondence.[274] Persuaded by the fact that the Connecticut courts, pursuant to that state's compact with the Pequots, enforced tribal court decisions "under the principle of comity,"[275] the New York trial court enforced the tribal court judgment.[276]

In *CBA Credit Services v. Azar*,[277] Native American casino employees encouraged casino patron Azar, who had already lost fourteen thousand dollars, to accept four thousand dollars in black jack chips on credit.[278] After losing these additional chips, Azar was asked by the casino to complete a credit document and write a check to pay for the chips.[279] The check was returned due to insufficient funds and the casino assigned its collection claim to a collection agency.[280] Minnesota law, which the parties agreed was controlling, provides a specific exception from its general prohibition on the collection of gambling debts pursuant to gaming conducted under the Indian Gaming Regulatory Act.[281] The specific exception provides that a "holder in due course [with] no notice of the illegality of the obligation," is not barred from collecting on the debt.[282] Because the court found that the assignee was aware that

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268 *Id.* at *14-15.

269 *Id.* at *13, 22-23. "The legislative history of IGRA reveals that Congress intended the Tribal-State compact to be *the exclusive means* for states to exercise regulatory control and jurisdiction over gaming activities on Indian lands." *Id*. at *19 (emphasis added).

270 CV 990117677S, 1999 Conn. Super. LEXIS 2584, *1 (Conn. Super. Ct. Sept. 23, 1999).

271 *Id.* at *2, 14.

272 188 Misc. 2d 710 (N.Y. Sup. Ct. 2001).

273 *Id.* at 711.

274 *Id.*

275 *Id*. at 712-13.

276 *Id*. at 710-11.

277 551 N.W.2d 787 (N.D. 1996).

278 *Id*. at 788.

279 *Id*. at 790.

280 *Id*.

281 *Id*. at 789; *see also* Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-21 (2001); MINN. STAT. ANN. § 541.21 (West 2000).

282 551 N.W.2d at 790 (citing State v. Stevens, 459 N.W.2d 513, 514-15 (Minn. Ct. App. 1990)).

Azar's checks had been dishonored, it held the debt was unenforceable.[283]

III. Registration of a Sister-State Judgment

The Full Faith and Credit Clause of the U.S. Constitution requires that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."[284] In *Fauntleroy v. Lum,*[285] the U.S. Supreme Court interpreted the Full Faith and Credit Clause as restricting a state's examination of a sister state judgment to whether the sister state had jurisdiction over either the person or the subject matter at issue.[286] In other words, a court cannot revisit the merits of the substantive issues of the underlying case.[287] Therefore, while public policy in many U.S. jurisdictions prohibits the enforcement of gambling debts, these jurisdictions have uniformly concluded that once a sister state has rendered judgment on a gambling debt, the Full Faith and Credit Clause mandates enforcement of that judgment.[288]

In a gaming debt collection case much depends, of course, on which state's law applies. In *Harrah's Club v. Van Blitter,*[289] a

283 *Azar*, 551 N.W.2d at 790.

284 U.S. Const., art. IV, § 1.

285 210 U.S. 230 (1908).

286 *Id*. at 237.

287 *Id.*

288 *See, e.g.*, Hilton Int'l Co. v. Arace, 394 A.2d 739, 744 (Conn. Super. Ct. 1977) ("The public policy of Connecticut cannot prevail against the command of the federal constitution."); Boardwalk Regency Corp. v. Hornstein, 695 So. 2d 471 (Fla. Dist. Ct. App. 1997) ("Florida courts are obligated by the Full Faith and Credit Clause to recognize judgments which have been validly rendered in the courts of sister states, including those based on gambling debts."); Kramer v. Bally's Park Place, Inc., 535 A.2d 466, 469 (Md. App. 1988) ("[T]he relevant judicial opinions and statutes do not represent a public policy so strongly opposed to gambling or gambling debts that it overrides the *lex loci contractus* principle."); Claridge at Park Place, Inc. v. Matellian, No. 95-1748, 1996 Mass. Super. LEXIS 540, at *4 (Mass. Super. Ct. Apr. 22, 1996) (holding that although Massachusetts law did not allow the enforcement of legal gambling debts, Massachusetts must recognize sister-state judgments concerning gambling debts); Int'l Recovery Sys., Inc. v. Gabler, 527 N.W.2d 20, 22 (Ct. App. Mich. 1995) (holding that state public policy was irrelevant to the registration of sister-state judgments due to the Full Faith and Credit Clause); San Juan Hotel Corp. v. Greenberg, 502 F. Supp. 34, 36 (E.D.N.Y. 1980) (allowing New York enforcement of a Puerto Rican judgment); MGM Desert Inn, Inc. v. Holz, 411 S.E.2d 399, 402 (N.C. Ct. App. 1991) (concluding that although enforcement of gambling debts is clearly against North Carolina public policy, U.S. Supreme Court precedent rendered the Full Faith and Credit Clause virtually free from exceptions); Hotel Ramada of Nev., Inc., v. Thakkar, No. 03A019103CV00113, 1991 WL 135471, at *3 (Tenn. Ct. App. July 25, 1991) (stating that there are only three exceptions to the requirement of registering sister-state judgments: lack of jurisdiction, fraud upon the foreign court, and violation of state public policy, however, Tennessee public policy does not preclude the enforcement of gambling debts incurred in a jurisdiction where gaming is legal); Coghill v. Boardwalk Regency Corp., 396 S.E.2d 838, 839 (Va. 1990) (holding that after the United States Supreme Court decision in *Fauntleroy v. Lum*, Virgina could not reexamine the judgment of a sister state).

289 No. Civil R-86-21 BRT, 1988 U.S. Dist. LEXIS 18348 (D. Nev. Feb. 16, 1988), *aff'd*, 902 F.2d 774 (9th Cir. 1990).

gambler tried to make California the forum state because gambling debts are not enforceable under California law.[290] Van Blitter had lost approximately $265,000 on a gambling spree, which she claimed was the result of her husband's affairs with geishas.[291] First, Van Blitter argued that Harrah's breached its duty of fairness when it failed to control her gambling, and then exacerbated this breach by providing her with complimentary accommodations encouraging her to gamble further, after it became clear that she was an unsuccessful player.[292] Second, Van Blitter argued that Harrah's collection attempts were a breach of its contractual obligations because an unidentified Harrah's employee had orally agreed that the casino would not collect the debts.[293]

Van Blitter commenced litigation in federal district court in California, requesting a declaration that her gambling debts were unenforceable.[294] In response, Harrah's filed a complaint in federal court in Nevada to enforce Van Blitter's debts.[295] The California action was subsequently transferred to the Nevada federal court.[296] Although the two actions were consolidated for trial, they remained separate in identity.[297] The Nevada federal District Court granted both Van Blitter's and Harrah's motions for summary judgment.[298] The final order stated:

> (1) Toshi Van Blitter is given and granted judgment against Harrah's club [in the California action], a corporation, with the force and effect that the negotiable instruments which are the subject matter of this action (the twenty instruments drawn upon Van Blitter's checking account number . . . are not enforceable *in the State of California*).
> (2) Harrah's Club, a corporation, is given and granted judgment against Toshi Van Blitter [in the Nevada action] for the sum of Two Hundred Sixty Five Thousand Dollars ($265,000), together with interest thereon at the rate of twelve percent (12%) per annum from April 25, 1984. . . .[299]

The Court of Appeals explained that the summary judgment in favor of Van Blitter did "not address the enforceability in California of a Nevada judgment on the instruments or on the obligation they represent under the principles of full faith and credit."[300]

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290 Harrah's Club v. Van Blitter, 902 F.2d 774, 776 (9th Cir. 1990).
291 1988 U.S. Dist. LEXIS, at *2.
292 *Id*. at *4.
293 *Id*. at *4-5.
294 *Van Blitter*, 902 F.2d at 775.
295 *Id*.
296 *Id.*
297 *Id.*
298 *Id.* at 775-76.
299 *Id.* at 776 (quoting the Nevada District Court's final order of judgment).
300 *Van Blitter*, 902 F.2d at 776 (emphasis removed).

Thus, Harrah's registered the Nevada judgment for enforcement in the U.S. District Court for the Eastern District of California.[301]

Van Blitter then filed a motion in that court to bar enforcement of the Nevada judgment, claiming that it contradicted the previous summary judgment, which held that her gambling debts were unenforceable in California.[302] When the federal court in California rejected her argument, Van Blitter appealed to the Court of Appeals for the Ninth Circuit.[303] She argued that because she had obtained a judgment, which held that her debts were unenforceable in California, enforcement of a Nevada judgment on those debts was also barred.[304] The court found this argument "wholly without merit," and awarded Harrah's double costs and attorney fees as a penalty for the "frivolous appeal."[305]

Regardless of whether the state's public policy prohibits the enforcement of gambling debts, the Full Faith and Credit Clause of the U.S. Constitution requires all states to enforce judgments from sister states so long as the state had proper personal jurisdiction over the defendant. Thus, it seems that one seeking to enforce a gambling debt should first obtain a judgment in the state where the debt was legally incurred, and then seek to enforce that judgment in the debtor's state.

IV. Direct Litigation

In some circumstances, courts may enforce a gambling debt when a casino brings an action directly in the debtor's home state, instead of first obtaining a judgment in the state where the gambling debt was legally incurred. In *Intercontinental Hotels v. Golden,*[306] the defendant incurred twelve thousand dollars in gambling debts at a Puerto Rican casino where gambling was legal.[307] The casino sued the defendant in New York.[308] The appellate court reversed the trial court judgment allowing recovery, holding that state public policy prohibited the enforcement of gambling debts, even those incurred legally.[309] The dissent argued for the enforcement of the debt, reasoning that judicial process should not be denied to one seeking to enforce a gambling debt when the debt was valid where incurred. The dissent opined that state public

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301 *Id.*
302 *Id.*
303 *Id.*
304 *Id.*
305 *Id.* at 776-77.
306 233 N.Y.S.2d 96 (N.Y. Sup. Ct. 1962), *rev'd*, 238 N.Y.S.2d 33 (N.Y. App. Div. 1963), *rev'd*, 203 N.E.2d 210 (N.Y. 1964).
307 *Intercontinental Hotels*, 233 N.Y.2d at 97.
308 *Id.*
309 *Intercontinental Hotels*, 238 N.Y.S.2d at 38-39.

policy does not absolutely prohibit gaming, as evinced by the existence of legal horse racing and bingo.[310]

The highest court of New York reversed the appellate court, and reinstated the decision of the trial court.[311] The court's decision emphasized the evolving opinion in New York which "indicate[s] that the New York public does not consider authorized gambling a violation of 'some prevalent conception of good morals [or], some deep-rooted tradition of the common weal.'"[312] The court further opined that this changing attitude was particularly true of legal gambling, where enforcement would not create moral problems because the state still prohibited gambling.[313] Moreover, the court held that it could apply Puerto Rican law, which allows a court to use its discretion to reduce excessive gambling debts.[314] Finally, the court emphasized the immorality of allowing New York citizens to keep their winnings from legal gambling, but avoid responsibility should they lose.[315]

Other courts have adopted the reasoning of *Intercontinental Hotels*. For example, in *Robinson Property Group v. Russell,*[316] the Tennessee appellate court reversed a trial court summary judgment on behalf of the debtor, who allegedly owed over twenty-three thousand dollars to a casino in Mississippi where gambling is legal.[317] The appellate court determined that the cash advancements were for gambling purposes rather than a loan.[318] The court further noted that in Mississippi, gambling debts are enforceable if incurred legally.[319] The court cited the Full Faith and Credit Clause of the U.S. Constitution, and stressed that full faith and credit should be given not only to sister-state judgments, but also to the public acts of each state.[320] Adopting the reasoning of *Intercontinental Hotels*, the court stated:

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310 *Id*. at 42 (Stevens, J., dissenting).

311 *Intercontinental Hotels*, 203 N.E.2d at 214.

312 *Id*. at 213 (quoting Loucks v. Standard Oil Co., 120 N.E. 198, 202 (1918)) (alteration in original).

313 *Id*. Occasionally, a New York decision will erroneously cite the intermediate appellate reasoning in *Intercontinental Hotels,* and ignore the reasoning of New York's highest court. For example, in *People v. World Interactive Gaming Corp*., 185 Misc. 2d 852 (N.Y. 1999), the state obtained an injunction against a New York Internet gambling company, essentially for stock fraud and related matters. In dicta, the court stated that New York's constitution "contains an express prohibition against any kind of gambling not authorized by the state legislature. The prohibition represents a deep-rooted policy of the state against unauthorized gambling." *Id*. at 846 (citations omitted). This comment ignored the reasoning by New York's highest court on public policy.

314 *Intercontinental Hotels*, 203 N.E.2d at 213.

315 *Id*.

316 No. W2000-00331-COA-R3-CV, 2000 WL 3313137 (Tenn. Ct. App. Nov. 22, 2000).

317 *Id*. at *1.

318 *Id*. at *2.

319 *Id*. at *3.

320 *Id*. at *4.

> We too find that it would be a great injustice if Tennesseans could reap the benefits of gambling in states where it is legal when they are successful, but seek shelter in Tennessee courts when they lose. As a result, we conclude that there is nothing in the Mississippi laws in question that outrages the public policy of Tennessee. Therefore, the gaming contract between the parties is enforceable in Tennessee.[321]

The reasoning of *Intercontinental Hotels* has also been applied to the registration of judgments from foreign countries. In *Aspinall's Club Ltd. v. Aryeh,*[322] a licensed London casino obtained a default judgment against a New York debtor.[323] When the casino attempted to collect on the judgment in a New York Court, Aryeh argued that New York public policy prohibited enforcement of the debt.[324] Even though the court was not compelled to enforce the judgment under the Full Faith and Credit Clause, the court granted the club's motion, in part, based on the reasoning of *Intercontinental Hotels*.[325] The court explained, "Gambling in legalized and appropriately supervised forms is not against this state's public policy."[326]

Some states, however, have not extended the reasoning of *Intercontinental Hotels* and *Arace* to the direct litigation of a foreign debt. In *Casanova Club v. Bisharat*,[327] the Connecticut Supreme Court affirmed summary judgment for a bettor who failed to pay a gambling debt incurred while wagering at a licensed London casino.[328] The casino argued that Connecticut should reexamine its public policy in light of its state-sanctioned lottery and judicial decisions in other states allowing the enforcement of legal out-of-state gambling debts.[329] While the court recognized that the state had legalized some forms of gambling, none of theses statutes al-

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321 *Id*.

322 86 A.D.2d 428 (N.Y. App. Div. 1982).

323 *Id*. at 431.

324 *Id*.

325 *Id*. at 433.

326 *Id*.

327 458 A.2d 1 (Conn. 1983).

328 *Id*. at 1-2. A similar result was reached in *Condado Aruba Caribbean Hotel, N.V. v. Tickel*, 561 P.2d 23 (Colo. Ct. App. 1977), where the Colorado Appellate Court refused to enforce a $14,500 gambling debt incurred in Aruba, where gambling is legal. *Id.* at 24.

329 The court said the result would have been different had the casino sought to enforce a British judgment for the gambling debt. *Casanova Club*, 458 A.2d at 4 (citing Hilton International Co. v. Arace, 394 A.2d 739, 742-44 (Conn. Super. Ct. 1977)). In addition, the court indicated that the result in *Casanova Club* may have been different:

> [If the casino had] properly invoked the statutory proviso that protects the validity of any negotiable instrument held by any person who acquired the same for value and in good faith without notice of illegality in the consideration. Although in its appellate brief the plaintiff maintains that there could be no notice of illegality to taint the negotiability and enforceability of the checks, the [plaintiff did not raise absence of notice in any of its pleadings] in the trial court.

Casanova Club, 458 A.2d at 3 (internal quotations omitted).

lowed the extension of credit; thus, the state public policy had not truly changed.[330] In addition, the court acknowledged that the Second Restatement on the Conflict of Laws could support the enforcement of legally obtained gambling debts.[331] However, the court indicated that it lacked the factual basis to apply the criteria in the Restatement.[332] Thus, the court held that gambling debts, however obtained, are unenforceable in Connecticut.[333]

Likewise, the Virginia courts have refused to allow suits to recover gambling debts, even if incurred in a state where such gambling is legal. In *Resorts International Hotel, Inc. v. Agresta*,[334] the plaintiff sued on a ten thousand dollar note resulting from a failure to pay legal New Jersey gambling debts.[335] The court concluded that even though the gambler did not attempt to defend the action, the laws and public policy of Virginia will not permit suits to recover gambling debts.[336]

In Texas, gambling debts remain unenforceable.[337] Texas has also refused to allow direct litigation of a gambling debt, even though the debt was legally incurred in another jurisdiction. One Texas gambler, George J. Aubin, appears to have learned to use his state's unwillingness to enforce gambling debts to his advantage. In 1969, Aubin was sued for failure to pay on promissory notes issued to him by Louis Hunsucker.[338] Viewing the promissory notes as gambling debts, the court ruled that they were unen-

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330 *Id*. at 4.

331 *Id*. The Restatement Second of Conflict of Laws provides:

> Law Governing in Absence of Effective Choice by the Parties
> (1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in § 6.
> (2) In the absence of an effective choice of law by the parties (see § 187), the contracts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
> (a) the place of contracting,
> (b) the place of negotiation of the contract,
> (c) the place of performance,
> (d) the location of the subject matter of the contract, and
> (e) the domicil, residence, nationality, place of incorporation and place of business of the parties. "These contracts are to be evaluated according to their relative importance with respect to the particular issue."
> (3) If the place of negotiating the contract and the place of performance are in the same state, the local law of this state will usually be applied, except as otherwise provided in §§ 189-199 and 203.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 188 (1971).

332 *Casanova Club*, 458 A.2d at 5.

333 *Id.* The court noted, however, that if the casino had first obtained a judgment in Great Britain, the court would have permitted recovery based on *Arace*. *Id.* at 4.

334 Resorts Int'l Hotel, Inc. v. Agresta, 569 F. Supp. 24 (E.D. Va. 1983).

335 *Id*. at 25.

336 *Id*. at 26.

337 Carnival Leisure Indus., Ltd. v. Aubin, 938 F.2d 624 (5th Cir. 1991), *remanded to* 830 F. Supp. 371 (S.D. Tex. 1993); *rev'd*, 53 F.3d 716 (5th Cir. 1995).

338 Aubin v. Hunsucker, 481 S.W.2d 952, 953 (Tex. App. 1972).

forceable under Texas law.[339] Then, in 1987, Aubin accrued twenty-five thousand dollars in gambling debts while vacationing in the Bahamas.[340] When he refused to honor the drafts, the casino commenced litigation in the U.S. District Court for the Southern District of Texas.[341]

While granting the casino's summary judgment motion,[342] the trial court did not make a determination as to whether the debts were legal under Bahamian law.[343] The Court of Appeals for the Fifth Circuit reversed the trial court.[344] The court stated that Texas statutes permitting some forms of gambling would "hardly introduce a judicially cognizable change in public policy with respect to gambling generally."[345] Furthermore, even if legislation had changed, "such a shift would not be inconsistent with a continued public policy disfavoring gambling on credit."[346]

On remand, the trial court opined that public policy against enforcing the debt, relied on by the appellate court, had changed. The court stated, "Asserting a sweeping public policy against gambling is anachronistic. If there really was a policy, it is totally defunct."[347] The trial court then employed a different strategy to find Aubin liable for the debts. Determining that the instruments issued by the casino were negotiable instruments and not gambling debts, the court found Aubin liable under a theory of fraud because he "never intended to honor the drafts."[348]

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339 *Id*. at 957.

340 *Carnival*, 938 F.2d at 624.

341 *Id*.

342 *Id*.

343 *Id*. at 625 n.2. The Court of Appeal stated:

> The district court looked solely to Texas law and made no determination of Bahamian law. Neither party challenges the district court's choice of Texas law in this case. We therefore do not rule on the question of whether the law of the Bahamas should have been applied or whether its application would require enforcement of Aubin's debt. Neither party has provided evidence (or requested judicial notice) as to Bahamian law or as to whether gambling is legal or whether gambling debts are legally enforceable in the Bahamas. It is noteworthy, however, that the Texas Supreme Court has stated that where collection of the gambling debt entails the cashing of a check (inferentially of a Texas resident) on a Texas bank, Texas courts apply Texas law.

Id. (citations omitted).

344 *Id*. at 626.

345 *Id*. at 625.

346 *Id*. at 626. Judge Vela concurred in what he considered a most inequitable result, stating, "The result here may be legally justified, however it sends out a poor message to would be gamblers. Go on credit and the House takes the risk. Aubin had profited from a similar exception in *Aubin v. Hunsucker*, and once again avoids an obligation which was knowingly made." *Id.* at 627 (Vela, J., concurring) (citation omitted).

347 Carnival Leisure Indus., Ltd. v. Aubin, 830 F. Supp. 371, 374 (S.D. Tex. 1993).

348 *Id.* at 375-77. The court added:

> Seasoned gamblers are shrewd manipulators. They know which debts are enforceable. An anachronistic public policy and misguided case law that forbid legal casinos from lawfully collecting commercial instruments and the debts arising from them will eventually force collection efforts underground. While it may save moralistic posturing, it may cost knee-caps.

Once again, the Court of Appeals reversed,[349] stating:

> For us to allow recovery against Aubin on an otherwise unenforceable gambling debt under a theory of fraud, when in fact the only real allegation of misrepresentation was that Aubin signed the markers knowing they were unenforceable in his home state (by operation of law), would require that we recognize an exception to Texas public policy that does not exist.[350]

In Illinois, the law is unclear whether a legal gambling debt incurred in another state can be directly sued upon within the state. In *Resorts International, Inc., v. Zonis,*[351] a federal court sitting in diversity refused to allow recovery of a twenty-five thousand dollar gambling debt in an action brought by a New Jersey casino, irrespective of whether Illinois or New Jersey law was applicable.[352] The court held that Illinois public policy precluded recovery regardless of which state's law was applicable.[353]

The federal court's reasoning in *Zonis* was criticized by the Illinois Appellate Court in *Cie v. Comdata Network, Inc.*[354] In *Cie*, the plaintiff used the defendant's services for cash advances on a credit card to bet on races at Illinois race tracks and to gamble at a Nevada casino.[355] The court held that the cash advance was not an unlawful gambling enterprise because the transaction between the plaintiff and defendant was not a wager.[356] The court found further support for its holding in a 1991 statutory change that eliminated previous lender liability for loan money that the lender knew would be used for gambling.[357] While the court specifically rejected the analysis in *Zonis*,[358] the Illinois Supreme Court has not yet addressed the question.

Unlike the mere registration of sister-state judgments, recovery through direct lawsuits on out-of-state gambling debts is less certain. Some states clearly allow direct lawsuits, some clearly do not, and in at least one there is no clear answer. Because of this uncertainty, it is safer for a creditor—looking to recover on a debt incurred in another state—to first seek a judgment in the state where the debt was incurred.

Id. at 377-78.

349 Carnival Leisure Indus., Ltd. v. Aubin, 53 F.3d 716, 720 (5th Cir. 1995).

350 *Id*. at 719.

351 577 F. Supp. 876 (N.D. Ill. 1984).

352 *Id*. at 877.

353 *Id*.

354 656 N.E.2d 123 (Ill. App. Ct. 1995).

355 *Id*. at 125.

356 *Id*.

357 *Id*. at 126 (citing 720 ILL. COMP. STAT. 5/28-7(a) (1994)).

358 *Id*. at 129.

V. Conclusion

The enforceability of a gambling debt depends on the laws of the particular state in which one is attempting to enforce the debt. All states in the Union, influenced by the historical traditions against gambling, have started from the premise that gambling debts are unenforceable. Nevertheless, over time states have begun a slow process of legalizing gambling, which will eventually lead to the enforcement of gambling-related debts. In general, it appears that the greater the extent of legalized gambling in a state, the more likely it is that the state has changed its laws to allow enforcement. Each state has found different ways to handle the costs and benefits of legalized gambling. Additionally, the Full Faith and Credit Clause of the U.S. Constitution requires every state to enforce a judgment from a sister state, regardless of the underlying merits of the case. Thus, as long as the gambling debt was legally made and the proper procedures were used, every state in the Union should enforce the debt.

The appendix to this article provides an international survey of gambling debt enforcement law, which is interesting to compare and contrast to the U.S. system. Other countries have found different solutions to the problem of gambling related debts, and have confronted issues that have yet to be litigated in the United States.