

April 13, 2020

Governor Jim Justice
West Virginia State Capitol
1900 Kanawha Boulevard E, #1
Charleston, WV 25305

Chief Justice Tim Armstead
West Virginia State Capitol
1900 Kanawha Blvd E # E317
Charleston, WV 25305

Re: Protecting CARES Act Payments and Other Necessary Funds from Seizure

Dear Governor Justice and Chief Justice Armstead:

We, the undersigned, write to urge the Governor and the Supreme Court of Appeals of West Virginia to implement emergency protections against seizure or garnishment by debt collectors of the pandemic survival payments provided by the federal government beginning on April 11, 2020. The federal government is issuing pandemic survival payments to millions of income-qualified Americans. The purpose of the checks is to help people pay for food, utilities, rent, medicine, and other basic necessities at a time when they have been told to stay home and, as a result, have lost income. Therefore, we urge you to issue an order that these pandemic survival payments will not be subject to garnishment by judgment creditors. The lives of West Virginians are at stake.

The economic devastation wrought by the COVID-19 pandemic has brought tens of thousands of newly unemployed West Virginians to the brink of financial ruin. The federal CARES Act payments (\$1200 for most individuals) provide a vital lifeline in the midst of an economic crisis. It is essential that the Economic Impact Payments, which have already begun being electronically deposited into bank accounts, reach the people they are intended to help.

Most of the economically vulnerable residents of our state owe debts – even before the crisis, more than 40 percent of West Virginians had a debt in collections.¹ The majority of these debts are for hospital bills incurred when West Virginians seek necessary medical care. The increases in unemployment claims and general job loss due to COVID-19 exacerbates the problem, and the number of people with debts in collections will rise significantly in the coming months.

The Governor and Supreme Court have issued several necessary emergency orders to protect West Virginians. However, none of the COVID-19-related orders from the Governor or West Virginia Supreme Court of Appeals have stopped the filing of new debt collection lawsuits or collection on previously obtained judgments, including seizure of funds from bank accounts.

¹ Urban Institute, Debt Delinquency (2019), at https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=54

Without a moratorium on seizure of the federal pandemic survival payments, the purpose of these payments will be thwarted. There is a serious risk that the stimulus payments of tens of thousands of West Virginians will not reach the people who desperately need them. If collectors garnish the Economic Impact Payments, then an extraordinary effort designed to alleviate the suffering of individual West Virginians and support our local economies will end up in the pockets of creditors instead. Moreover, given the Shelter-in-Place order, individuals do not even have the ability to go to court to correct improper attachment orders. These attachment and garnishment orders may then be of questionably constitutional validity: when judgment debtors lack meaningful access to the courts to assert their rights to their assets and income, there is no due process.

Together, the Governor and the Supreme Court can prevent these dangerous outcomes, by ordering an immediate halt to the attachment of bank accounts, garnishment of income, and repossession of vehicles. We request that you immediately issue appropriate emergency orders to prohibit debt collectors from seizing the federal pandemic survival payments, and to require the creditors/debt collectors to immediately return all such payments that have already been seized. We further request that you stay any new collection actions or lawsuits, and halt all garnishment, seizures, attachments, repossessions, or withholdings until sixty days after the end of the state of emergency, to enable our State's residents to maintain their basic necessities of food, shelter, and utilities, during this unprecedented period of lost income. This emergency order should, of course, exempt attachment or garnishment related to payments for the support of a minor child. We do not intend such emergency measures to create any additional liability for banks operating in West Virginia, which are working hard under difficult circumstances, to serve their customers, and any such order should protect these institutions from liability from creditors and debtors alike. These measures are necessary for these unprecedented times in order to safeguard the integrity of taxpayer funds designated for individual West Virginians, not debt collectors.²

Thank you for your work in the face of this crisis. And thank you for protecting economically vulnerable West Virginians.

Sincerely,

West Virginia Bankers' Association

West Virginia Center for Budget and Policy Priorities

Mountain State Justice

ACLU-WV

National Consumer Law Center

³ Other jurisdictions, including Indiana, Texas, Massachusetts, and the District of Columbia, have taken similar steps to restrict debt collection actions pending the state of emergency.