

Omissions and Mistakes in the CARES Act

It is appropriate for the New Jersey Supreme Court to act now and to announce that CARES Act funds shall be considered exempt and any restraint on said funds will violate the CARES Act and applicable New Jersey law.

By **Joshua W. Denbeaux, Marc Dann, Javier Merino and Ira Metrick** | April 02, 2020 at 12:30 PM



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Last week, the federal government enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and in speed there are omissions and mistakes. We would like to address the issue that countless individuals who

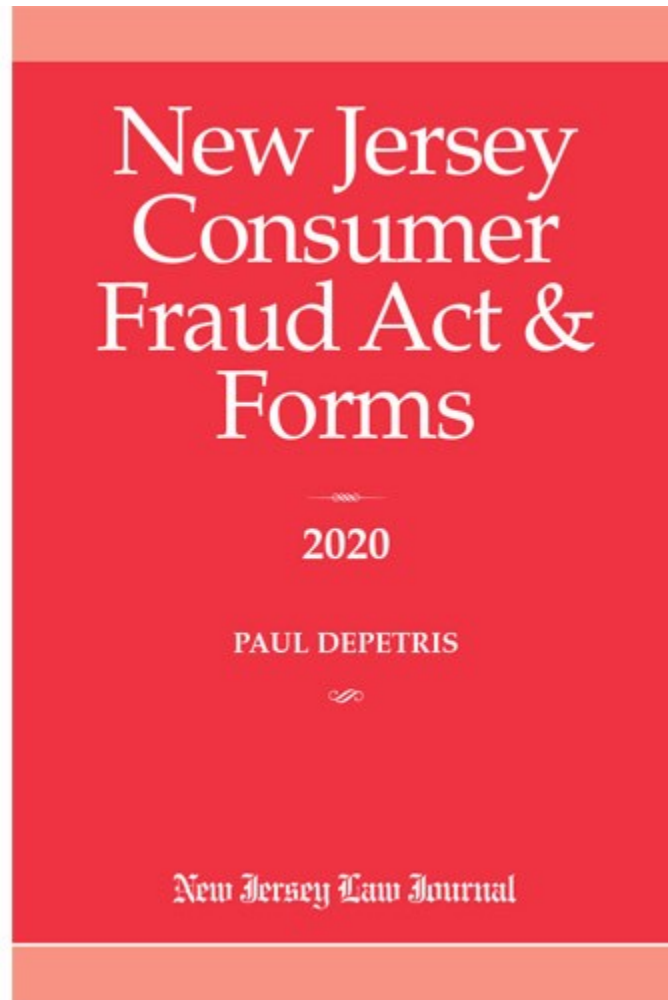
are subject to existing collection actions may lose these benefits to existing levies.

Tens of millions of people around the country are about to receive payments from the federal government, usually through automatic deposit. Many of these people, numbering in the hundreds of thousands if not the millions, are people on the economic edge who are already subject to debt collection actions and levies on bank accounts.

The debt collection industry is specifically *not* the intended repository of these public funds. The very first section of the Act, section 1, says as much, stating clearly the purpose of the Act: “Providing emergency assistance and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic.”

Congress intended this money to go to those most in need, as the mechanism it has decided to utilize to try to avoid the country heading deep into recession.

This type of problem—the collection industry seizing funds of debtors to the detriment of the society writ large—is not new. The federal courts and the courts and legislatures in every state, including New Jersey, have dealt with the seizure of certain funds from debtors as against public policy.



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In *Porter v. Aetna Cas. & Surety Co.*, 370 U.S. 159, 1962), the United States Supreme Court held that Social Security and public assistance benefits are exempt from creditors' remedies, and that exemption follows those funds into bank accounts.

In New Jersey, which obviously follows the federal law, the legislature enacted NJS 2A:17-19, which extended the exemptions to creditor's right of collection:

Goods and chattels, shares of stock or interests in any corporation and personal property of every kind, not exceeding in value, exclusive of wearing apparel, \$1,000.00, and all wearing apparel, the property of a debtor shall be reserved, both before and after his death, for his use or that of his family or his estate, and shall not be liable to be seized or taken by virtue of any execution or civil process whatever, issued out of any court of this State.

So this problem existed before, but has been exacerbated immensely by the existence of the new CARES Act, and all of the money to be paid to consumers within the next three weeks.

It is also not sufficient for the courts to simply say that the monies are not exempt themselves, because exempt monies commingled with non-exempt funds may still be restrained. The creditor imposes a levy on the joint funds, and the burden then shifts to the debtor—who has no assets and no ability to pay counsel—to challenge the seizure of the account. This, in practice, means that the collector seizes the funds intended for the public good.

The practice of seizing accounts of unsophisticated consumers which include exempt funds is an ongoing abuse by the collection industry. It has real world impact on the debtors and society. Public assistance is intended for those with needs. It is not intended as income for creditors.

There are over 70,000 complaints filed in the New Jersey Superior Court, Special Civil Part, every year. The vast majority of those lawsuits are collection actions. The judgments and levies that follow from those actions linger for years in the collection process and are absorbed by many struggling consumers who are expecting government CARES Act payments. There are, without a doubt, tens of thousands—and likely more than 100,000 credit

judgments—in the state. Many of these people will be receiving CARES Act funds.

If existing collection vehicles are permitted to snatch these benefits from hungry children, it will violate the clear intent of the CARES Act and the ideals the authors of this article seek to protect.

This is a time of emergency, nationally and in New Jersey. We are at the epicenter of the crisis right now. Under the circumstances, it is appropriate for the New Jersey Supreme Court to act now and to announce that CARES Act funds shall be considered *exempt* and any restraint on said funds will violate the CARES Act and applicable New Jersey law.

Let it be known that we three law firms; Denbeaux & Denbeaux, Dannlaw and Ira Metrick, Attorney at Law, are banding together on this. We are going to set up an 800 number to handle the incoming calls for information we expect from consumers affected by the seizure of their CARE Act funds. We are prepared to take appropriate actions to assist our community.

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