

Consumer Debt Litigation Index

Top Recommendations for Reform in Georgia

Georgia's Score: 10/100

Georgia's National Rank: 47th

Consumer debt lawsuits dominate civil court dockets across the country. In an overwhelming number of cases—more than 70% in many places—the people sued do not respond or defend themselves. As a result, courts often enter default judgments without determining whether the defendant even knows about it, it is timely, or has merit. In turn, people face high fees and interest, onerous payment plans, seizure of wages and possessions, and potential imprisonment. States across the country have established laws and practices aimed at reducing unjust lawsuits and producing fairer outcomes. To support states in their respective efforts, the National Center for Access to Justice in 2024 created the Consumer Debt Litigation Index in consultation with a panel of experts. The Index ranks the states on their progress in adopting 24 best policies (“benchmarks”) for fairness. See our Top Recommendations and Complete Findings, below.

1. Establish Pleading Requirements (Benchmark 6)

Why: People facing debt collection lawsuits often have difficulty understanding the claim against them. Lax pleading requirements also invite illegitimate lawsuits. Requiring complaints to name the original creditor, demonstrate ownership of the debt, and itemize specific amounts sought can deter meritless filings and enable defendants to assert legitimate defenses, promoting fairness. Delaware, New Mexico, New York, and Washington, D.C. all require consumer debt complaints to include all three key elements. Georgia does not meet the benchmark because it does not have special pleading requirements for consumer debt claims to include (a) the name of the original creditor, (b) the basis of plaintiffs' standing, or (c) an itemization of the amount sought.

How: Georgia should adopt a law or practice that requires plaintiffs in all consumer debt cases to allege: (a) the name of the original creditor; (b) the plaintiff's standing (e.g. the chain of ownership of the debt); and (c) an itemization of the amount sought, including debt principal, interest, fees, costs, and other charges to date. If it does so, the state's score would increase 10 points.

2. Require Authenticated Business Records for A Default (Benchmark 7)

Why: Creditors too often bring legally insufficient cases, relying on the likelihood that many defendants will not respond (or “default”) and that the merits of the creditors’ claims will never be assessed by a court. Requiring creditors to establish -- before a default judgment may be entered -- (a) proof of service, (b) validity of the debt using authenticated business records, and (c) itemized amounts sought, also with authenticated business records, promotes fairness, as these elements deter lawsuits that lack merit and lower the number of unjust default judgments. Alaska, Maine, New York, Washington, D.C., Washington State, and Wisconsin all require creditors to prove these essential elements before a court may enter a default judgment. Georgia does not meet the benchmark or any sub-benchmarks. Georgia does not require creditors to establish any of these essential elements before a court may enter a default judgment.

How: Georgia should adopt a law or practice that requires plaintiffs in consumer debt cases to establish the following before a court may enter a default judgment: (a) proof of service; (b) validity of the debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and (c) amount of the judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest. If it does so, the state's score would increase 10 points.

3. Ensure that Garnishment Exemptions for Bank Accounts Are Self-Executing (Benchmark 14) and Update Garnishment and Attachment Exemptions (Benchmark 15)

Why: Without sufficient protections, garnishment and attachment orders to seize money or assets from a debtor to pay a creditor can leave people unhoused, unable to keep a car to drive to work, and stuck in cycles of poverty. Federal law exempts some funds from garnishment and some property from attachment, but debtors often do not learn what funds and property are exempt or how to assert exemptions. Further, the federal exemptions are out of date and inadequate to preserve even a very basic standard of living. Many states—including California, Idaho, Maryland and Wyoming—make some exemptions “self-executing”, meaning that a bank must protect exempt funds even when the debtor does not assert exemptions (Benchmark 14). Other states have increased garnishment and asset exemptions (Benchmark 15). For example, in consumer debt cases Texas has garnishment exemptions that protect 100% of a person's wages, and attachment exemptions that protect a home (of any value) and personal property (including a car) up to a value of \$100,000 for a family or \$50,000 for an individual. Georgia, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

How: Georgia should make bank account exemptions self-executing. Further, the state should update and expand on garnishment and attachment provisions so that they protect at minimum: (a) Income of at least \$576.92 per week, the minimum to keep a family of four above the federal poverty level, as defined by the U.S. Federal Poverty Guidelines in 2023; (b) a home, regardless of value, or at least the median price of a home in the state; and (c) a car valued up to at least \$15,000. If it does so, Georgia's score would increase 7 points.

What Would Happen if Georgia were to Implement these Recommendations?

These three recommendations, if adopted by the state, would substantially increase Georgia's score and ranking. For more on how Georgia can do better, see the complete findings below and visit NCAJ's [Consumer Debt Litigation Index](https://ncaj.org/state-rankings/consumer-debt) at <https://ncaj.org/state-rankings/consumer-debt> or reach out to NCAJ at NCAJ@fordham.edu.

Complete Consumer Debt Litigation Index Findings for Georgia

I. Issue Area: Help people know when they are being sued and where to find help.

1 - Government Notice of Lawsuits

Score: 0/5

Does the state respond to the problem of ineffective or fraudulent ("sewer") service in consumer debt lawsuits by: a. Public Official Service - requiring that a public official (e.g. the court or the sheriff) handle service? or, b. Court Supplemental Notice - requiring the court to send the defendant, by first class mail, supplemental notice of a new consumer debt lawsuit and deny default judgment if that notice is returned as undeliverable?

No

Georgia does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, Georgia does not meet benchmark 1a because O.C.G.A. § 9-11-4(c), allows service by a court-appointed process server in addition to the court or sheriff. Second, Georgia does not meet benchmark 1b because it does not require that the court send the defendant, by first class mail, supplemental notice of a new consumer debt lawsuit and deny default judgment if that notice is returned as undeliverable.

2 - Guidance on Finding Help

Score: 0/5

Does the state require that notice to the defendant in a consumer debt lawsuit include guidance on where to seek help, including free legal assistance?

No

Georgia does not meet this benchmark because Georgia does not require that notice in a consumer debt lawsuit provide guidance for defendants on where to find help. See OCGA 9-11-4.

II. Issue Area: Make it easier to respond to a lawsuit.

3 - Simplified Answer**Score: 0/2**

Does the state provide a simple Answer process by making available an Answer form for use by unrepresented persons in consumer debt lawsuits?

No

Georgia does not meet this benchmark because, although its Magistrate Court website has a form generator that a consumer debt defendant may use to formulate an Answer, its other courts do not provide Answer forms.

4 - No Notarization Requirement to Answer**Score: 0/2**

Does the state make it easier to respond to consumer debt lawsuits by never requiring defendants to have an Answer notarized before filing?

No

Georgia does not meet this benchmark because Georgia requires that where a Complaint is verified the Answer must also be verified. See Ga. Code Ann. § 9-10-111 (West 2023). "All affidavits, petitions, answers, defenses, or other proceedings required to be verified or sworn to under oath shall be held to be sufficient when the same are sworn to before any notary public, magistrate, judge of any court, or any other officer of the state or county where the oath is made who is authorized by the laws thereof to administer oaths." Ga. Code Ann. § 9-10-113 (West 2023); see also *SunTrust Bank, S. Ga., N.A. v. Perry*, 505 S.E.2d 230, 232 (Ga. 1998) ("[Defendant] filed an answer denying liability . . . [that] was not made under oath. [Defendant] attached to the answer a verification page stating that the allegations in the answer were true to the best of her knowledge. However, this purported verification does not contain the signature of a notary or any other indication that it was made under oath. In the absence of a valid jurat, the purported verification is without effect as an affidavit.").

5 - No Fee to Answer**Score: 0/5**

Does the state permit the filing of an Answer in consumer debt lawsuits without charging a filing fee?

No

Georgia does not meet the benchmark because each county sets its own filing fees and may require payment of a fee to file an answer. See, e.g., Magistrate Court, Fulton County, Small Claims, Answer ("A defendant may electronically file an answer from the 31st to the 45th day upon payment of court cost."), <http://www.magistratefulton.org/175/Small-Claims>. See Generally, George Simons, Solo Suit, "How to Answer a Summons for Debt Collection in Georgia" (2023 Guide), <https://www.solosuit.com/posts/answer-summons-debt-collection-Georgia>. Note: There is no universal requirement to submit a filing fee in either a magistrate court (for claims not exceeding \$15,000) or in a superior court (for claims exceeding \$15,000) under the applicable uniform court rules. See Ga. Unif. Super. Ct. R. 36.10. (1990) (requiring fees to file a complaint but not an answer); Ga. Unif. Mag. Ct. R. 34 (2001) (setting forth the rules governing how to answer a civil complaint, which do not include payment of a filing fee); *id.* R. 17 App. A. at B1a3, B1b1 (including an FAQ regarding filing fees to file a petition for a civil action but not including a similar FAQ in the section regarding filing an answer in a civil action).

III. Issue Area: Require the creditor to provide evidence of a valid debt claim.

6 - Pleading Requirement**Score: 0/10**

Does the state require consumer debt complaints to allege all of the following: a. Name of original creditor; b. Basis of plaintiff's standing (e.g. chain of ownership of debt); and c. Itemization of amount sought including debt principal, interest, fees, costs, and other charges to date?

No

Georgia does not meet the benchmark because it does not have special pleading requirements for consumer debt claims to include (a) the name of the original creditor, (b) the basis of plaintiffs' standing, or (c) an itemization of the amount sought. See Ga. Code sec. 9-11-8 (establishing general rules of pleading).

7 - Authenticated Records for Default**Score: 0/10**

Does the state require the following be established before a default judgment can be granted: a. Proof of Service b. Validity of debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and c. Amount of judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest?

No

Georgia does not meet the benchmark or any sub-benchmarks. Georgia courts may grant default judgments pursuant to GA Code § 9-11-55-a (2021), and this rule does not impose any of the requirements in sub-benchmarks (a) to (c). There is also no Georgia statute that separately imposes requirements regarding the entry of default judgments.

IV. Issue Area: Require consumer debt collection actions to be brought within a reasonable time of non-payment.

8 - Burden on Plaintiff to Allege Timeliness**Score: 0/2**

Does the state place the pleading burden on the consumer debt plaintiff to allege in the Complaint the timeliness of each claim, including each of the following: a. applicable statute of limitations; b. date that claim accrued; and c. date that statute of limitations expires?

No

Georgia does not meet this benchmark because the statutes and rules of Georgia do not place the burden of pleading timeliness on the plaintiff and do not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date the claim accrued, or (c) the date that the statute of limitations expires. See Ga. Code sec. 9-11-8(c) (establishing statute of limitations as an affirmative defense).

9 - Four Year Statute of Limitations**Score: 0/5**

Does the state require 4-year (or shorter) statute of limitations for the causes of action most commonly used to pursue consumer debt collection: breach of contract (written or oral), open account, account stated, unjust enrichment, conversion, bad check?

No

Georgia does not meet this Benchmark because it does not impose a 4-year (or shorter) statute of limitations for all consumer debt claims. In particular, Georgia has the following limitations periods: • breach of written

contract: 6-year limitations period (O.C.G.A. § 11-3-118 (2023)); • breach of oral contract: 4-year limitations period (O.C.G.A. § 9-3-25 (2023)); • open account: 4-year limitations period (O.C.G.A. § 9-3-25 (2023)); • account stated ("an action for any article charged on an account in a store"): 4-year limitations period (O.C.G.A. § 9-3-25 (2023)); • unjust enrichment: 4-year limitations period (O.C.G.A. § 9-3-26 (2023)); • conversion: 4-year limitations period (O.C.G.A. § 9-3-32 (2023)); and • passing a bad check: 3-year limitations after the dishonor of the check or 10-year limitations period after the date of the draft (O.C.G.A. § 11-3-118).

10 - Prohibit Revival of Time-Barred Claims

Score: 0/2

Does the state prohibit revival of time-barred consumer debt claims, even where defendant makes subsequent payment toward a debt?

No

Georgia does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run if there is a "new promise" to pay the debt "in writing" or if a "payment [is] entered upon a written evidence of debt ... or upon any other written acknowledgment of the existing liability[.]" O.C.G.A. § 9-3-110; O.C.G.A. § 9-3-112. See *Malak v. Unifund CCR, LLC*, 343 Ga. App. 314, 318 (2017) ("Under Georgia law, '[a] payment entered upon a written evidence of debt by the debtor or upon any other written acknowledgment of the existing liability shall be equivalent to a new promise to pay[.]' which functions 'to renew a right of action already barred.'"); *SKC, Inc. v. EMAG Sols., LLC*, 326 Ga. App. 798, 801–02 (2014) (finding that "wire transfer payments containing the notations regarding eMag's account with SKC constituted new promises by eMag to pay its debt to SKC, and sufficed to renew the running of the limitation period").

V. Issue Area: Prohibit attorneys' fee shifting, and cap interest.

11 - Prohibit Attorneys' Fees Shifting

Score: 0/3

Does the state prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provision or reciprocity in fee shifting?

No

Georgia does not meet this benchmark because it does not prohibit attorney fee shifting in consumer debt litigation regardless of contract. The Georgia code allows contract terms requiring payment of attorneys fees so long as they are "not in excess of 15 percent of the principle and interest" owing on the debt. Ga. Code Ann. § 13-1-11 (West).

12 - Interest Caps

Score: 0/3

Does the state cap interest in consumer debt lawsuits (regardless of any contractual provision) as follows: a. Pre-judgment interest for debt buyers capped at an annual rate of 7% (or less); and b. Post-judgment interest for all creditors capped at 5% (or less) of the judgment?

No

Georgia does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Georgia law states that (i) where the principal amount is \$3,000 or less, the interest rate of a loan shall not exceed 16%, GA Code § 7-4-2-a-2 (2021); (ii) where the principal amount is more than \$3,000, the interest rate of a loan shall be any rate as long as it is established by written contract, GA Code § 7-4-2.a.1A and B (2021); and (iii) where the principal amount is more than \$3,000 but less than \$250,000 and the rate is not established by written contract, the interest rate of a loan shall be 7%, GA Code § 7-4-2.a.1A

(2021). Thus, Georgia does not limit prejudgment interest to 7% or less. Regarding post-judgment interest, Georgia law states that, if the judgment is rendered on a written contract or obligation providing for interest at a specified rate, the interest rate on a judgment shall be as provided in the agreement. GA Code § 7-4-12-b (2021). Interest rate on other judgments shall be equal to the prime rate as published by the Board of Governors of the Federal Reserve System plus 3%. GA Code § 7-4-12.a (2021). Thus, Georgia does not limit post-judgment interest to 5% or less of the judgment.

VI. Issue Area: Reduce the likelihood that consumer debt collection actions leave people homeless, or perpetuate a cycle of debt.

13 - Require Court Order to Garnish or Attach

Score: 5/5

Does the state in consumer debt lawsuits require a court order for garnishment and attachment?

Yes

Georgia meets this benchmark because the law provides that a court clerk must issue judgment executions and summonses of garnishment. Ga. Code Ann. §§ 9-13-10; 18-4-3(b).

14 - Bank Account Garnishment Exemptions Are Self Executing

Score: 0/2

Does state law require in consumer debt lawsuits that garnishment exemptions for bank accounts are self-executing?

No

Georgia does not meet the benchmark because it does not require financial institutions to protect money deposited in bank accounts unless a judgment debtor asserts an exemption. See Ga. Code Ann. § 18-4-15.

15 - Essential Exemptions

Score: 0/5

Does the state prevent people from becoming impoverished, unhoused, or unable to work by exempting income and assets from attachment and garnishment, as follows: a. Income of at least \$576.92 per week, the minimum to keep a family of four above the federal poverty level, as defined by the U.S. Federal Poverty Guidelines in 2023; b. Home, regardless of value, or at least the median price of a home in the state; and c. Car value, state exemption for, at least, the first \$15,000 in value?

No

Georgia does not meet the benchmark because none of the sub-benchmarks are met. Georgia law provides as follows: (a) Income: Georgia does not meet sub-benchmark (a) because it exempts 75% of a person's weekly disposable earnings or \$217.50 of a person's weekly disposable earnings, whichever is more. Ga. Code Ann. § 18-4-5. (b) Home: Georgia does not meet sub-benchmark (b) because a person's primary residence is exempt only up to a value of \$21,500. Ga. Code Ann. § 44-13-1. (c) Car: Georgia does not meet sub-benchmark (c) because it does not offer any exemptions for a person's car(s). Ga. Code Ann. § 44-13-1 (although Georgia offers a wildcard exemption of \$5,000 for real or personal property that may be applied to a car). For more information on garnishment exemptions see Michael Best and Carolyn Carter, No Fresh Start 2023, National Consumer Law Center (Dec. 2023), https://www.nclc.org/wp-content/uploads/2023/12/2023_Report_No-Fresh-Start-3.pdf.

16 - Require Prior Notice of Garnishment**Score: 0/5**

Does the state require notice to debtor prior to actual garnishment that explains all of the following: a. potential exemptions? b. how to challenge the order? and c. how to assert exemptions?

No

Georgia does not meet the benchmark because the state does not provide prior notice of garnishment exemptions and how to assert them. Rather, notice to the judgment debtor must be provided within three business days after service on the garnishee of the affidavit of garnishment, summons of garnishment, notice to judgment debtor and judgment debtor claim form, and the garnishment period begins on the day of service of the summons of garnishment on the garnishee. See Ga. Code Ann. § 18-4-4 (West 2023). Additionally, if Georgia required that the debtor receive notice in advance of garnishment, the state would not meet sub-benchmark (a) (potential exemptions) because its notice contains only a non-comprehensive list of exemptions and suggests visiting the courthouse to obtain a comprehensive list. Id. at § 18-4-82. The state would meet sub-benchmark (b) (how to challenge the order) because its notice includes a space on the court form to assert that the plaintiff does not have a judgment against the creditor, Id.; and sub-benchmark (c) (how to assert exemptions) because its notice provides instructions on how to claim an exemption from garnishment. Id.

VII. Issue Area: Eliminate debtors' prison.**17 - Prohibit Incarceration for Failure to Obey a Court Order to Pay Consumer Debt****Score: 0/5**

Does the state prohibit incarceration for contempt for failure to obey a court order to pay all or part of a consumer debt judgment?

No

Georgia does not meet the benchmark because the law permits incarceration for contempt for failure to obey a court order to pay a debt judgment. Ga. Stat. Ann. § 15-1-4. Specifically, it states that "No person shall be imprisoned for contempt for failing or refusing to pay over money under any order, decree, or judgment of any court of law or any other court of this state when he denies that the money ordered or decreed to be paid over is in his power, custody, or control until he has a trial by jury in accordance with the following provisions:...." Id.

18 - Prohibit Incarceration for Failure to Obey a Court Order to Appear at a Debtor's Examination, Unless Nonappearance Was Willful**Score: 5/5**

Does the state prohibit arrest and/or incarceration for contempt for failure to appear at a debtor's examination (i.e. a judgment enforcement proceeding), unless the person's failure to appear was willful?

Yes

Georgia meets the benchmark because its laws provide that "the court may punish an adult for contempt of court by imprisonment for not more than 20 days or a fine not to exceed \$1,000.00 for willfully disobeying an order of the court." Ga. Code Ann. § 15-11-31.

19 - Provide Right to Counsel**Score: 0/5**

Does the state provide a lawyer without charge in any contempt or other proceeding in which incarceration is a potential outcome in a consumer debt lawsuit?

No

Georgia does not meet the benchmark because it does not provide a categorical right to counsel in civil contempt hearings when incarceration is possible. The Georgia Supreme Court has held that "due process sometimes may require the appointment of counsel" in civil contempt proceedings in which the person may face incarceration, but that "whether any particular [person] is entitled to a lawyer at government expense depends always, we think, on the particular and unique circumstances of his case, including the complexity of the case, as well as the extent to which alternative measures might be employed to ensure that the proceeding is fundamentally fair." *Miller v. Deal*, 259 Ga. 504, 510 (Ga. 2014).

VIII. Issue Area: Prevent government from undue intervention on behalf of creditor.

20 - Prohibit Collaboration Between Creditors and Prosecutors

Score: 0/2

Does the state prohibit relationships (including financial relationships) in which prosecutors lend the authority of their offices to facilitate the activities of debt collectors (e.g. payments by creditors to prosecutors who threaten or bring criminal prosecutions in bad check cases)?

No

Georgia does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Ga. Code Ann. § 16-9-20.

21 - Prohibit Paying Bail/Bond to Creditor

Score: 0/2

Does the state prohibit use of bail to pay the creditor in all contempt proceedings, or in other proceedings in a consumer debt lawsuit in which incarceration is a possible outcome?

No

Georgia does not meet the benchmark because its laws do not include an express prohibition on the use of bail or bond to pay a creditor. The law provides that in a hearing for contempt for failing or refusing to pay money ordered by the court, "a bond may be required in the discretion of the court for the appearance of the defendant for trial, which bond shall be of sufficient size to ensure the attendance of the defendant to appear and answer the final judgment or decree in the case and shall be approved by the judge. On failure of the defendant to appear, the bond shall be forfeited as in criminal cases." Ga. Code Ann. § 15-1-4(b).

22 - Limit Frequency of Examinations

Score: 0/5

Does the state in consumer debt litigation schedule or otherwise limit financial examinations to no more than once per year?

No

Georgia does not meet this benchmark because the statute provides that the judgment creditor may examine any person, including the judgment debtor, by taking depositions or propounding interrogatories. The law does not limit the frequency of such examinations. Ga. Code Ann. § 9-11-69.

IX. Issue Area: Collect data to improve the system.

23 - Data Collection: Number of Lawsuits

Score: 0/3

Do state courts at least annually collect and publish statewide data on number of consumer debt lawsuits?

No

Georgia does not meet the benchmark because it does not collect or publish statewide data on the number or disposition of consumer debt lawsuits. Note: Georgia state courts report limited statistics on caseload numbers by county, but it does not disclose data at the level suggested by the benchmark, except with respect to the number of garnishment orders. Judicial Council of Georgia Administrative Offices of the Courts, Data and Statistics (last visited Mar. 17, 2023). See <https://research.georgiacourts.gov/data-and-statistics//>.

24 - Data Collection: Disposition of Lawsuits

Score: 0/2

Do state courts at least annually collect and publish statewide data on types of dispositions of consumer debt lawsuits?

No

Georgia does not meet the benchmark because it does not collect or publish statewide data on the number or disposition of consumer debt lawsuits. Note: Georgia state courts report limited statistics on caseload numbers by county, but it does not disclose data at the level suggested by the benchmark, except with respect to the number of garnishment orders. Judicial Council of Georgia Administrative Offices of the Courts, Data and Statistics (last visited Mar. 17, 2023). See <https://research.georgiacourts.gov/data-and-statistics//>.

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