

Consumer Debt Litigation Index

Top Recommendations for Reform in Louisiana

Louisiana's Score: 7/100

Louisiana's National Rank: 49th

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 break out the 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 complaints to include these key elements. Louisiana, however, does not yet have these key pleading requirements in place.

How: Louisiana should adopt a law or practice that requires plaintiffs in 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 using authenticated business records, promotes fairness, as these required elements deter lawsuits that lack merit and lower the number of unwarranted 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. Louisiana, however, does not yet have these key requirements in place.

How: Louisiana 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. Louisiana, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

How: Louisiana 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, the state's score would increase 7 points.

What Would Happen if Louisiana were to Implement these Recommendations?

These three recommendations, if adopted by the state, would substantially increase Louisiana's score and ranking. For more on how Louisiana 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 Louisiana

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

Louisiana meets does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. Although its rules for service of process in courts of general jurisdiction require that first attempts at service must be made by a sheriff, La. Code Civ. Proc. Ann. art. 1291, Louisiana small claims court does not require service by the sheriff, but rather, authorizes initial service by certified mail (La. Stat. Ann. § 13:5204(A)). If no return receipt is provided plaintiff must serve pleadings in accordance with the Louisiana Code of Civil procedure, which requires a first attempt by the sheriff. (La. Code Civ. Proc. Ann. art. 1231; La. Code Civ. Proc. Ann. art. 1234; La. Code Civ. Proc. Ann. art. 1291; La. Code Civ. Proc. Ann. art. 1293. Louisiana does not meet sub-benchmark 1b because Louisiana does not require that the court provide supplemental notice of a consumer debt lawsuit, and that default judgment be denied 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

Louisiana does not meet this benchmark because Louisiana does not require that notice in a consumer debt lawsuit provide guidance for defendants on where to find help.

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

Louisiana does not meet this benchmark because, although one small claims court (the City Court of Baton Rouge, see <https://www.brla.gov/DocumentCenter/View/563/Defendants-Answer-PDF>; <https://www.brla.gov/DocumentCenter/View/3893/How-to-Use-Small-Claims-PDF>) does provide a form Answer, form Answers are not available for consumer debt defendants in other courts in the State.

4 - No Notarization Requirement to Answer

Score: 2/2

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

Yes

Louisiana meets this benchmark because it does not require that a pleading be verified except as otherwise provided by law. La. Code Civ. Proc. Ann. art. 863(B). No such law applies to an Answer in a consumer debt litigation.

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

Louisiana does not meet the benchmark because certain counties in Louisiana charge a fee to file an answer to complaints in both civil and small claims courts. See e.g., Civil Court Costs Schedule, Baton Rouge City Court, effective July 1, 2022 (setting forth a \$208 filing fee to file an answer to a civil claim and \$82.50 to file an answer to a small claim). <https://www.brla.gov/DocumentCenter/View/238/Civil-Court-Costs-Schedule-Pamphlet-PDF?bidId=>

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

Louisiana does not meet the benchmark because it does not have specific rules requiring a consumer debt complaint to include (a) the name of the original creditor, (b) the basis of plaintiffs' standing, or (c) an itemization of the amount sought. See La. Code Civ. P. art. 891(A) (establishing Louisiana pleading requirements); see also La. Code Civ. P. art. 853-54, 863.

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

Louisiana does not meet the benchmark or any of its sub-benchmarks. Louisiana courts may grant default judgments pursuant to Louisiana Code of Civil Procedure Article 4921, which permits a default judgment to be entered provided the plaintiff had established "a prima facie case by competent and admissible evidence." While the precise "prima facie case" will depend on the specific cause of action at issue, it would likely never require the plaintiff to affirmatively provide evidence to demonstrate the validity of service (sub-benchmark (a)) or address other sub-benchmarks.

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

Louisiana does not meet this benchmark because the statutes and rules of Louisiana 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 that the claim accrued, or (c) the date that the statute of limitations expires. See La. Code Civ. P. art. 927 (requiring that "prescription," Louisiana's terminology for statute of limitations, be raised by preemptory exception). Preemptory exceptions are raised by the defendant. See, e.g., *Scott v. Zaheri*, 157 So. 3d 779, 784-85 (La Ct. App. 2014) (describing procedure applicable to exceptions of prescription).

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

Louisiana 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, Louisiana has the following limitations periods: • breach of written contract: 10-year limitations period (*DePhillips v. Hospital Service District No. 1 of Tangipahoa Parish*, 19-01496, p. 6 (La. 7/9/20), 340 So.3d 817, 821 "Liberative prescription is 'a mode of barring of actions as a result of inaction for a period of time. All personal actions, including actions on a contract, are subject to a liberative prescription period of ten years, unless otherwise provided by legislation. Citing La. C.C. art. 3499)); • breach of oral contract: 10-year limitations period *DePhillips v. Hospital Service District No. 1 of Tangipahoa Parish*, 19-01496, p. 6 (La. 7/9/20), 340 So.3d 817, 821 "Liberative prescription is 'a mode of barring of actions as a result of inaction for a period of time. All personal actions, including actions on a contract, are subject to a liberative prescription period of ten years, unless otherwise provided by legislation. Citing La. C.C. art. 3499); • open account: 3-year limitations period (La. C.C. art. 3499(4)); • unjust enrichment: 10-year limitations period (La.

C.C. art. 3499 & Safeco Ins. Co. v. Farm Bureau Ins. Cos., 490 So.2d 565 (La. App. 3d Cir. 1986) “The action for unjust enrichment is prescribed by ten years.”); • conversion: 1-year limitations period (La. Civ. Code Ann. art. 3492; Bihm v. Deca Sys., Inc., 226 So. 3d 466, 480 (La. Ct. App. 2017)); and • passing a bad check: 5-year limitations period (La. R.S. 10:3-118(d)).

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

Louisiana does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run when a debtor makes a partial payment of the debt or acknowledges the debt. La. Civ. Code art. 3464; Bates v. City of Denham Springs, 2022-0853 (La.App. 1 Cir. 4/18/23, 6–7).

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

Louisiana does not meet the benchmark because it provides that consumer debt contracts may require the consumer to pay attorney's fees less than or equal to 25% of the amount of the remaining unpaid debt. La. Stat. Ann. § 9:3534.

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

Louisiana does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). With respect to prejudgment interest, Louisiana law states that “conventional” interest (i.e., interest that is not part of a legal action) is limited to an annual rate of 12 percent. La. Rev. Stat. § 9:3500 (2022). Thus, Louisiana does not limit prejudgment interest to 7% or less (as is required to meet sub-benchmark (a)). With respect to post-judgment interest 3.25 percentage points above the discount rate set by the Federal Reserve as of October 1 of each year. La. Rev. Stat. § 14:4202 (2022). Thus, while the interest rate might effectively be set as 5% or less when the Federal discount rate is low, there is nothing to ensure the rate remains at 5% or less of the judgment (as is required to meet sub-benchmark (b)).

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

Louisiana meets the benchmark because a court order is required before garnishment of wages is granted or property is subject to attachment. La. R.S. § 13:3921; *Alford v. Carmouche*, 2011 U.S. Dist. LEXIS 74167 (July 27, 2011); La. C.C.P. Art. 2253; La. C.C.P. Art. 3501.

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

Louisiana 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 La. Rev Stat § 13:3881.

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

Louisiana does not meet the benchmark because none of the sub-benchmarks are met. Louisiana law provides as follows: (a) Income: Louisiana does not meet sub-benchmark (a) because it exempts 75% of a person's weekly disposable earnings or 30 times the federal hourly minimum wage in effect when the person is paid, whichever is greater. La. Stat. Ann. § 13:3881(1)(a). Thirty times the federal minimum wage (\$7.25 per hour in 2023) is only \$217.50. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), <https://www.dol.gov/agencies/whd/minimum-wage/state>. (b) Home: Louisiana does not meet sub-benchmark (b) because one home is exempt only up to a value of \$35,000 subject to certain limited exceptions. La. Stat. Ann. § 20:1(A)(2) (also limiting the number of exempt acres to 200 or 5 if within a municipality). (c) Car: Louisiana does not meet sub-benchmark (c) because one car of a person or in a person's household is exempt only up to an equity value of \$7,500. La. Stat. Ann. § 13:3881(7). 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

Louisiana does not meet this benchmark because the state does not require notice of exemptions and how to assert them prior to garnishment. A judgment debtor is only required to receive notice of garnishment after an order of garnishment is served on a garnishee. See La. Code Civ. Proc. Ann. art. 2412 (2023). The garnishment takes effect upon service upon the garnishee. See *id.* at 2411. Additionally, even if notice was required to be

served prior to garnishment, Louisiana would not meet sub-benchmark (a) (potential exemptions), because the notice does not list potential exemptions; sub-benchmark (b) (how to challenge the order), because the notice does not explain how to challenge the order; or sub-benchmark (c) (how to assert exemptions) because the notice to the judgment debtor does explain how to assert exemptions.) Indeed there are no specific requirements for the notice to the judgment debtor. See *id.* at 2411.

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

Louisiana does not meet the benchmark because the Louisiana Supreme Court has held that a court may imprison a person for failing to obey a court order to pay a debt. As the court held, "The prevalent statutory and constitutional guaranties against imprisonment for debt are ordinarily held not to be infringed by the commitment to jail of such parties in contempt by reason of a disobedience of orders regarding the payment of money in their hands or the delivery over of property." *State ex rel. Heffner v. Judge of First Jud. Dist., Par. of Caddo*, 50 La. Ann. 552, 556, 23 So. 478, 479–80 (1898); *Johnson & Placke v. Norris*, 38,300 (La. App. 2 Cir. 5/12/04), 874 So. 2d 340, 350, writ denied sub nom. *Jackson & Placke v. Norris*, 2004-1478 (La. 9/24/04), 882 So. 2d 1137 (holding the two determinations "that are critical for the turnover proceeding are (i) the past existence of the property or money in the debtor's possession and (ii) the fact that it is 'yet within the power' of the debtor to produce the property to the court" when determining whether an individual can be held in contempt and imprisoned for failure to pay a debt).

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

Score: 0/5

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?

No

Louisiana does not meet the benchmark because the law provides that if a judgment debtor has been personally served "and the judgment debtor refuses to appear for the examination ...the judgment debtor may be punished for contempt." La. Code Civ. Proc. Ann. art. 2456. Courts have held that the fact that a person fails to appear at a debtor's examination after personal service is sufficient to hold them in contempt. See *Too Easy Entertainment v. Seven Arts Pictures*, 930 So.2d 1194, 1197 (La. App. 4 Cir. 2006) (holding that "because defendants failed to adhere to the orders and appear for the JD Exams, the trial court had full discretion to punish them.")

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

Louisiana does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See La. Rev. Stat. §§ 15:142; 13:4611.

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

Louisiana does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See La. R.S. § 14:71

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

Louisiana does not meet this benchmark because its laws do not include an express prohibition on the use of bail or bond to pay a creditor. See La. Code Civ. Proc. Ann. art. 2456.

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

Louisiana does not meet the benchmark because a judgment creditor may examine a judgment debtor regarding any matter relating to the debtor's property. The statute does not limit the frequency of such exams. La. Code Civ. Proc. Ann. art. 2451.

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

Louisiana does not meet the benchmark because Louisiana courts do not collect or publish any statewide data on number of consumer debt lawsuits or on the types of dispositions of consumer debt lawsuits. Louisiana state courts do not provide any data on consumer debt lawsuits, and are under no legal requirement to do so.

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

Louisiana does not meet the benchmark because Louisiana courts do not collect or publish any statewide data on number of consumer debt lawsuits or on the types of dispositions of consumer debt lawsuits. Louisiana state courts do not provide any data on consumer debt lawsuits, and are under no legal requirement to do so.

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