

Consumer Debt Litigation Index

Top Recommendations for Reform in Maine

Maine's Score: 22/100

Maine's National Rank: 23rd

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. Although Maine requires debt buyers to plead all these elements, it does not require original creditors to do so.

How: Maine should extend its pleading requirements to original creditors in addition to debt buyers. If it does so, the state's score would increase 10 points.

2. Require Government Notice of a Consumer Debt Lawsuit (Benchmark 1)

Why: All too often, process servers hired by debt collectors fail to serve a notice of a complaint to a defendant and then file a false affidavit claiming that the notice has been properly served. This practice—commonly referred to as "sewer service" because sometimes process servers literally throw the notice in the gutter—means that people never get notice that they are being sued. This makes it impossible to respond to the lawsuit and mount a defense. To address this issue, New York requires the court clerk to send to the defendant, by first class mail, an additional notice of a lawsuit arising out of a consumer credit transaction, and provides that default judgment will not be entered if the notice is returned as undeliverable. Maine, however, allows process by people authorized by law to do so and does not require supplemental notice from the courts.

How: Maine should fix the problem of ineffective or fraudulent ("sewer") service by adopting a law that either (a) requires a public official (such as a sheriff) to complete service; or (b) requires 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. If it does so, the state's score would increase 5 points.

3. Update Garnishment and Attachment Exemptions (Benchmark 15) and Require Prior Notice of Garnishment (Benchmark 16)

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. Some states have increased garnishment and asset exemptions (Benchmark 15). For example, in consumer debt cases Texas has adopted 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. Some states—including Indiana, Massachusetts, New Jersey, New Mexico, and Ohio—require that notice be sent to a debtor prior to actual garnishment that explains exemptions, how to challenge the garnishment or attachment, and how to assert the exemptions (Benchmark 16). Maine, however, has not yet increased its garnishment and attachment exemptions sufficiently. Maine also has not yet required that creditors send notice to the debtor of an impending garnishment or attachment before it begins.

How: Maine should update and expand on garnishment and attachment provisions so that it protects, 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. Further, it should require notice to a debtor before garnishment or attachment begins that explains (a) potential exemptions; (b) how to challenge the order; and (c) how to assert exemptions. If it does so, the state's score would increase 10 points.

What Would Happen if Maine were to Implement these Recommendations?

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

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

Maine does not meet this benchmark because it does not satisfy either sub-benchmark 1a or 1b. It does not satisfy sub-benchmark 1a because, in addition to the sheriff or deputy, it permits service by other persons authorized by law or appointed by the court. See Me. R. Civ. P. 4(c); see also *Baxter v. Myra*, No. CV-99-106, 2004 WL 237363, at *1 (Me. Super. Ct. Jan. 29, 2004) ("This court, in an order dated October 18, 1999 (Hjelm, J.) appointed Christopher Murdock [as a special process server] to serve the summons and complaint on defendant Ralph E. Myra, Jr."); 1990 Advisory Comm. Notes to Me. R. Civ. Proc. 4, https://www.courts.maine.gov/rules/text/MRCivPPlus/mr_civ_p_4_plus_2018-08-01.pdf [<https://perma.cc/8SHL-JP7S>] (While "Rule 4(c)(2) carries forward the language of former Rule 4(c) permitting service by a sheriff, a deputy, or 'other person authorized by law,' which includes constables and police and other governmental officers," "[t]he provisions of the present rule for special appointment for service remain in effect."). Maine does not meet sub-benchmark 1b because Maine 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

Maine does not meet this benchmark because even though Maine requires special notice provisions for consumer debt lawsuits arising from credit card and student loan debts, those provisions do not apply to all consumer debt lawsuits and do not include a requirement to provide guidance on where a defendant can find help. See Me. Rev. Stat. tit. 32, § 11020; <https://www.maine.gov/pfr/consumercredit/consumer/MJB-Form-bccp-2021.pdf>

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

Maine does not meet this benchmark, although it does provide a form Answer specific to consumer debt actions involving credit card and student loan debt in which the defendant may check a one sentence box that reads as follows: "I am the defendant in this case. I believe there are good reasons a judgment should not be entered against me on some or all of the claims raised by the plaintiff. I deny at least some of the plaintiff's statements in the complaint. I assert all affirmative defenses that apply to my case." However, this form is specific to credit card and student loan debt litigation and Maine does not make an Answer form available to other consumer debt defendants. See Me. Rev. Stat. tit. 32, § 11020.

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

Maine meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See Me. R. Civ. P. 11(a). No such law applies to an Answer in a consumer debt litigation.

5 - No Fee to Answer

Score: 5/5

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

Yes

Maine meets the benchmark because there is no law requiring a fee to file an answer to a civil claim. See ME R ADMIN ORDERS Order JB-05-26, § 1A2, effective June 1, 2022. <https://www.courts.maine.gov/adminorders/jb-05-26.pdf>

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

Maine does not meet the benchmark because although it requires a complaint brought by a debt buyer to allege (a) the name of the original creditor, (b) the basis of plaintiffs' standing, and (c) itemization of the

amount sought, it does not apply these requirements to debt collection complaints brought by original creditors. 32 M.R.S.A. secs. 11019(1)(A); 11013(9).

7 - Authenticated Records for Default

Score: 10/10

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?

Yes

Maine meets the benchmark because it meets the sub-benchmarks. Maine statutes and the Rules of Civil Procedure require that a debt buyer show validity of service, validity of debt, that the defendant is the debtor, the basis for the amount of judgment sought, plaintiff's ownership of the debt and standing to sue, and timeliness of the action. See Me. Rev. Stat. tit. 32, § 11019; Me. R. Civ. P. 55.

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

Maine does not meet the benchmark because it does not require a consumer debt Plaintiff to allege (a) the applicable statute of limitations, (b) the date the claim accrued, or (c) the date the statute of limitations expires. See 32 M.R.S.A. secs. 11019(1)(A), (E); 11013(7), (9).

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

Maine 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, Maine has the following limitations periods: • breach of written contract: 6-year limitations period (14 M.R.S.A. § 752); • breach of oral contract: 6-year limitations period (14 M.R.S.A. § 752); • breach of contract for sale: 4-year limitations period (M.R.S.A. 11 § 2-725); • unjust enrichment: 6-year limitations period (14 M.R.S.A. § 752; In re Estate of Miller, 960 A.2d 1140, 1146 (Me. 2008)). • conversion: 6-year limitations period (14 M.R.S.A. § 752; (Thurlow v. Connolly, 2005 WL 2722917, at *6 (Me. Super. July 11, 2005); Townsend v. Appel, 446 A.2d 1132, 1133 (Me. 1982)); and • passing a bad check: 3 or 10-year limitations period (M.R.S.A. 11, § 3-1118(3)).

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

Maine does not meet this Benchmark because, even though it bars revival of the statute of limitations on consumer debt claims asserted by debt collectors, (defined as “any person conducting business in this State, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another,” 32 Maine Rev. Stat. § 11002(6) (2022)), Maine does not apply this limitation to all consumer debt claims including those brought by conventional creditors. Specifically, 32 Maine Rev. Stat. § 11013(8) provides that for suits brought by debt collectors, “[n]otwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.” The failure to apply this limitation to creditors other than debt collectors means that Maine does not meet the Benchmark.

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

Maine does not meet the benchmark because, although it prohibits attorney fee shifting for consumer credit sales, leases, and supervised loans (thereby meeting Sub-Benchmark A for those types of debt), for any other type of consumer debt, fee shifting to the debtor is permitted up to 15% of the unpaid debt. Me. Rev. Stat. tit. 9-A, § 2-507.

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

Maine does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Maine law states that (i) in small claims actions, prejudgment interest is not recoverable unless the rate of interest is based on a contract or note, (ii) in all civil and small claims actions involving a contract or note that contains a provision relating to interest, prejudgment interest is allowed at the rate set forth in the contract or note, and (iii) in civil actions other than those set forth in clauses (i) or (ii), prejudgment interest is allowed at the one-year U.S. Treasury bill rate plus 3%. For any actions in which the interest began to accrue prior to July 1, 2003, then the rate of prejudgment interest is 8% for any judgment below \$30,000, or one-year U.S. Treasury bill rate plus 1% if the judgment exceeds \$30,000. Me. Stat. tit. 14 § 1602. Regarding post-judgment interest, Maine law provides that (i) in all civil and small claims actions, post-judgment interest is allowed at a rate equal to (A) in actions involving a contract or note that contains a provision relating to interest, the rate set forth in the contract or note or the rate in clause (ii), whichever is greater, and (B) in all other actions, the one-year U.S. Treasury bill rate plus 6%. Me. Stat. tit. 14 § 1602-C.

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: 0/5

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

No

Maine does not meet the benchmark because, after a judgment, a plaintiff may attach property by filing an attested copy of the court order awarding judgment with the registry of deeds or the Secretary of State's office. 14 Me. Rev. Stat. § 4151.

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

Maine 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. Me. Rev. Stat. tit. 14, § 4422(17) specifies the amount that may be exempted with respect to cash or deposit accounts.

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

Maine does not meet this benchmark because none of the sub-benchmarks are met. Maine law provides as follows: (a) Income: Maine does not meet sub-benchmark (a) because it exempts the lesser of 75% of a person's weekly disposable earnings or 40 times the federal or state minimum hourly wage, whichever is greater, in effect when the person is paid. Me. Rev. Stat. Ann. tit. 9, § 5-105(2) (2023). Forty times the state minimum wage (\$13.80 per hour in 2023) is only \$552. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), <https://www.dol.gov/agencies/whd/minimum-wage/state>. (b) Home: Maine does not meet sub-benchmark (b) because one home that is used by a person or a dependent of a person as a residence is exempt only up to a value of \$160,000 subject to certain limited exceptions. Me. Rev. Stat. Ann. tit. 14, § 4422(1)(A). (c) Car: Maine does not meet sub-benchmark (c) because a person's interest in one car is exempt only up to a value of \$10,000 subject to certain limited exceptions. Me. Rev. Stat. Ann. tit. 14, § 4422(2). 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

Maine does not meet this benchmark because the law does not require prior notice to a judgment debtor of garnishment exemptions and how to assert them. Instead, an employer or payor of earnings and the judgment debtor may be served concurrently with the garnishment order. See Me. Rev. Stat. Ann. tit. 14, §§ 3127-B.1, 3127-B.2. Additionally, even if Maine required prior notice to the judgment debtor, the state 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. See *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

Maine does not meet the benchmark because it allows for incarceration for failure to obey a court order to pay a debt in limited circumstances. The law provides that when a judgment debtor fails to comply with any order in a debt collections case, "the judgment creditor may file a motion with the court to hold that person in contempt." Me. Rev. Stat. Ann. § 3136. The Supreme Court has held that, "Prior to incarceration for failure to pay a money obligation as ordered by the court, there must be a hearing to inquire into whether nonpayment was the result of an honest inability to pay." *Wells v. State*, 474 A.2d 846, 852 (Me. 1984).

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

Maine meets the benchmark because a person may only be held in contempt and incarcerated after a hearing in which a judge finds that the person had the ability to comply with the order. If a judgment debtor fails to appear for a disclosure hearing, the creditor may request a civil order of arrest. The law provides that the judge shall order a civil order of arrest "upon the written request of the creditor stating that the creditor knows of no infirmity, disability or good cause preventing the appearance of the debtor." Me. Rev. Stat. Ann. § 3134. Alternately, the creditor "may proceed by way of a motion for contempt for failure to appear." *Id.* At a contempt hearing, the judge must find that the person disobeyed the court order "and that the person has the present ability to comply with the order." Me. Rev. Stat. Ann. § 3136.

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

Maine does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See 4 Me. Rev. Stat. § 1802(4); 14 Me. Rev. Stat. § 3136.

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

Maine does not meet this benchmark because its worthless check statute provides that "if a state or district attorney wants to be excluded from consideration as a debt collector...that state or district attorney shall establish... a pretrial diversion program for issuers of worthless checks who agree to participate voluntarily in that program to avoid criminal prosecution." Such diversion programs may be run by private entities. 32 M.R.S. § 11013-A

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

Maine 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. See Me Rev. Stat. tit. 14, § 3134.

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

Maine does not meet this benchmark because a debtor must appear before the court to determine their ability to pay the judgment. The debtor must disclose their income, assets and any other information that would help the judgment creditor enforce the judgment. A continuance of the disclosure hearing may be granted for good cause, but the law does not limit the frequency of such examinations. Me. Rev. Stat. Ann. tit. 14, §3125.

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

Maine does not meet the benchmark because it does not collect and publish data on the number of consumer debt lawsuits or on types of dispositions of consumer debt lawsuits. There are no statistics available on point, and no law requiring collection or publication. Maine courts do publish an annual report, which includes a total number of court filings by case type and court level, but which do not specify data on consumer debt lawsuits. These case types include small claims, other civil, contract and money judgments. MAINE JUDICIAL BRANCH, 2021 ANNUAL REPORT, (last visited Mar. 21, 2023). See

<https://www.courts.maine.gov/about/reports/ar2021.pdf>. In addition, Maine publishes a 5 year trend report with general details of different types of civil filings, but it does not contain information specific to consumer debt lawsuits. MAINE STATE COURT CASELOAD 5 YEAR TREND (last visited Mar. 21, 2023). See <https://www.courts.maine.gov/about/stats/statewide.pdf>.

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

Maine does not meet the benchmark because it does not collect and publish data on the number of consumer debt lawsuits or on types of dispositions of consumer debt lawsuits. There are no statistics available on point, and no law requiring collection or publication. Maine courts do publish an annual report, which includes a total number of court filings by case type and court level, but which do not specify data on consumer debt lawsuits. These case types include small claims, other civil, contract and money judgments. MAINE JUDICIAL BRANCH, 2021 ANNUAL REPORT, (last visited Mar. 21, 2023). See

<https://www.courts.maine.gov/about/reports/ar2021.pdf>. In addition, Maine publishes a 5 year trend report with general details of different types of civil filings, but it does not contain information specific to consumer debt lawsuits. MAINE STATE COURT CASELOAD 5 YEAR TREND (last visited Mar. 21, 2023). See <https://www.courts.maine.gov/about/stats/statewide.pdf>.

To learn more about the Consumer Debt Litigation Index, including how other states fared, visit <https://ncaj.org/state-rankings/consumer-debt>.

Download State Reports