

Consumer Debt Litigation Index

Top Recommendations for Reform in South Carolina

South Carolina's Score: 17/100

South Carolina's National Rank: 33rd

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. South Carolina, however, does not yet have these key pleading requirements in place.

How: South Carolina 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. South Carolina, however, does not yet have these key requirements in place.

How: South Carolina 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 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. South Carolina, however, does not have self-executing bank account exemptions, and it has not put in place sufficiently protective attachment exemptions.

How: South Carolina 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) a home, regardless of value, or at least the median price of a home in the state; and (b) 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 South Carolina were to Implement these Recommendations?

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

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

South Carolina does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First sub-benchmark 1a is not met as service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. See Rule S.C. R. Civ. P. 4. South Carolina 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 entry of default judgment such 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

South Carolina does not meet this benchmark because South Carolina does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See generally S.C. R. Civ. P. 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

South Carolina does not meet the benchmark because, although it provides an Answer form for use in its Magistrate (small claims) Courts see <https://www.sccourts.org/forms/pdf/SCCA703.pdf>, it does not provide a form Answer for use in its Circuit Court (court of general jurisdiction).

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

South Carolina meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See S. C. R. Civ. P 11(a). No such rule or statute 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

South Carolina meets the benchmark because there is no fee for filing an answer in any civil action. S.C. Code Ann. § 8-21-310 ("No fee may be charged to a defendant or respondent for filing an answer, return, or other papers in any civil action or proceeding in a court of record.").

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

South Carolina does not meet the benchmark because the South Carolina Consumer Protection Code contains no requirement that the plaintiff (a) indicate the name of the original creditor, (b) the basis of plaintiff's standing, or (c) an itemization of the amount sought. See S.C. Code Ann. § 37-5-114 (1982).

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

South Carolina does not meet the benchmark or any sub-benchmarks. South Carolina courts may grant default judgments pursuant to South Carolina Rule of Civil Procedure 55, which does not impose any of the

requirements in sub-benchmarks (a) through (c). There is also no South Carolina 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

South Carolina does not meet the benchmark because it does 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 S.C. Code Ann. § 37-5-114 (1982).

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

South Carolina 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, South Carolina has the following limitations periods: • breach of written contract: 3-year limitations period (S.C. Code §15-3-530); • breach of oral contract: 3-year limitations period (S.C. Code §15-3-530); • open account: 3-year limitations period (S.C. Code §15-3-530); • account stated ("an action for any article charged on an account in a store"): 3-year limitations period (S.C. Code §15-3-530); • unjust enrichment: 3-year limitations period (See *Graham v. Welch, Roberts and Amburn, LLP*, 743 S.E.2d 860, 861-62 (S.C. Ct. App. 2013); *Majstorich v. Gardner*, 604 S.E.2d 728, 730-31 (S.C. Ct. App. 2004); • conversion: 3-year limitations period (S.C. Code Ann. § 15-3-530(4), (5); *Walsh v. Woods*, 594 S.E.2d 548 (S.C. Ct. App. 2004)); and • passing a bad check: 6-year limitations period (S.C. Code 36-3-118).

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

South Carolina does not meet this benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run when, for instance, a debtor makes a subsequent payment toward the debt, explicitly acknowledges the debt, or expresses a new promise to pay the full debt. See, e.g., SC Code § 15-3-130 ("all actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.").

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

South Carolina does not meet the benchmark because it statutorily authorizes attorney fee shifting in most consumer debt agreements. See S.C. Code Ann. § 37-3-404. Note: South Carolina prohibits attorney fee shifting in supervised loans with an interest rate of over 18% annually where the principal is less than \$1,000, but allows them in all other instances. See S.C. Code Ann. § 37-3-514.

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

South Carolina does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, South Carolina law states: "In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." S.C. Code Ann. § 34-31-20(A). Thus, South Carolina does not limit prejudgment interest for debt buyers at an annual rate of 7% or less. Regarding post-judgment interest, South Carolina law states: "A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate." S.C. Code Ann. § 34-31-20(B). Therefore, for post-judgment interest, South Carolina does not limit post-judgment interest for all creditors at 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

South Carolina meets the benchmark because attachment requires a warrant of attachment issued by a judge, clerk of court, or magistrate prior to attachment of property. S.C. Code Ann. § 15-19-40. South Carolina generally prohibits garnishment of unpaid wages with respect to consumer debts, with limited exceptions. S.C. Code Ann. § 37-5-104.

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

South Carolina 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 S.C. Code Ann. § 15-41-30(A)(5) provides that, if debtors do not claim a homestead exemption, they may protect from attachment up to \$5,000 in cash and other liquid assets including "deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables."

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

South Carolina does not meet the benchmark because sub-benchmarks (b) (home) and (c) (car) are not met. South Carolina law provides as follows: (a) Income: South Carolina meets sub-benchmark (a) because it exempts 100% of a person's wages for consumer debt. S.C. Code Ann. § 37-5-104. (b) Home: South Carolina does not meet sub-benchmark (b) because a person's aggregate interest in a home that the person or a dependent of the person uses as a residence is exempt only up to a value of approximately \$50,000 subject to certain limited exceptions. S.C. Code Ann. § 15-41-30(A)(1)(a) (adjusted from time to time to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers). (c) Car: South Carolina does not meet sub-benchmark (c) because a person's interest in one car is exempt only up to a value of \$5,000. S.C. Code Ann. § 15-41-30(A)(2) (adjusted from time to time to reflect the change in the Southeastern Consumer Price Index for All Urban Consumers). 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

South Carolina does not meet this benchmark because a defendant is not entitled to notice prior to seizure of their property. See S.C. Code Ann. § 15-19-70 (1982). Additionally, even if notice were provided prior to garnishment, the state would not meet the sub-benchmarks because it does not designate any required form of notice to a judgment debtor, so notice to the judgment debtor is not required (a) to list exemptions, (b) provide the manner in which to challenge an order, or (c) describe the manner in which to assert exemptions. See *id.* at § 15-39-80. Notably, South Carolina does not permit in-state private creditors to garnish wages, although it does permit wage garnishment pursuant to a valid order from another state.

VII. Issue Area: Eliminate debtors' prison.

17 - Prohibit Incarceration for Failure to Obey a Court Order to Pay Consumer Debt

Score: 5/5

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

Yes

South Carolina meets the benchmark because it bars incarceration for failure to obey a court order to pay all or part of a debt judgment. The South Carolina Constitution provides: "No person shall be imprisoned for debt except in cases of fraud." S.C. Const. art. I § 19 (1970). South Carolina appellate courts have emphasized this constitutional provision and held that "Incarceration should never be imposed due to the simplistic failure of an individual to pay a civil debt. Imprisonment is not authorized for the failure to comply with a settlement agreement in the absence of fraud or bad faith." See, e.g., Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596 (S.C. Ct. App. 2002); Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171 (S.C. Ct. App. 2001) (holding that "South Carolina law does not permit a person to be held in contempt for failure to pay a civil debt, which has arisen solely out of a contractual obligation.")

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

South Carolina does not meet the benchmark because a judgment debtor's failure to appear need not be willful to constitute contempt, which is punishable by incarceration. S.C. Stat. §§ 15-39-490; 14-5-320.

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

South Carolina does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See S.C. Code §§ 17-3-10; 14-1-150.

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

South Carolina does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See S.C. Code Ann. § 34-11-60 & § 34-11-90(d).

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

South Carolina does not meet the benchmark because its laws do not expressly prohibit the use of bail or bond to pay a creditor. See S.C. Stat. § 15-39-490.

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

South Carolina does not meet the benchmark because a judge may require a judgment debtor to appear at a specified time and place to answer questions before the court regarding the debtor's property. The law does not limit the frequency of such examinations. S.C. Code Ann. § 15-39-350.

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

South Carolina does not meet the benchmark because South Carolina does not collect and publish statewide data on the number of consumer debt collection lawsuits nor on the types of dispositions of consumer debt collection lawsuits. South Carolina does not publish traditional annual reports, but it does publish statistics each year on the number of civil actions and specifically notes the number of "debt collection" cases. It does not, however, specify whether these cases are related to consumer debt collection, nor does it give any more specific information. See SOUTH CAROLINA JUDICIAL DEPARTMENT CIVIL NATURE OF ACTION FILINGS FOR 07/01/2021 THRU 06/30/2022 (last visited Apr. 2, 2023). See https://www.sccourts.org/annualReports/2021-2022/CPNOA_F.pdf. The South Carolina judicial council must "collect, compile, analyze and publish statistical and other information concerning the work of the courts of the State", but not any specific data about consumer debt collection. S.C. ST § 14-27-70 (2022).

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

South Carolina does not meet the benchmark because South Carolina does not collect and publish statewide data on the number of consumer debt collection lawsuits nor on the types of dispositions of consumer debt collection lawsuits. South Carolina does not publish traditional annual reports, but it does publish statistics each year on the number of civil actions and specifically notes the number of “debt collection” cases. It does not, however, specify whether these cases are related to consumer debt collection, nor does it give any more specific information. See SOUTH CAROLINA JUDICIAL DEPARTMENT CIVIL NATURE OF ACTION FILINGS FOR 07/01/2021 THRU 06/30/2022 (last visited Apr. 2, 2023). See https://www.sccourts.org/annualReports/2021-2022/CPNOA_F.pdf. The South Carolina judicial council must “collect, compile, analyze and publish statistical and other information concerning the work of the courts of the State”, but not any specific data about consumer debt collection. S.C. ST § 14-27-70 (2022).

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