

## Consumer Debt Litigation Index

### Top Recommendations for Reform in Washington

**Washington's Score: 36/100**

**Washington's National Rank: 7th**

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 Washington requires that complaints by debt buyers include the name of the original creditors, it does not require that consumer debt complaints include the basis of plaintiffs' standing, or an itemization of the amount sought. Further, it imposes no requirements on complaints filed by conventional creditors.

**How:** Washington should adopt a law or practice that requires plaintiffs in consumer debt cases to allege not only the name of the original creditor but also the plaintiff's standing (e.g. the chain of ownership of the debt), and 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 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. Washington, however, allows service by private persons and does not require supplemental notice from the courts.

**How:** Washington 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). Washington, however, has not yet increased its garnishment exemptions sufficiently. Washington also has not yet required that creditors send notice to the debtor of an impending garnishment or attachment before it begins.

**How:** Washington should update and expand on garnishment provisions so that it protects, at minimum, 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. 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 Washington were to Implement these Recommendations?

These three recommendations, if adopted by the state, would substantially increase Washington's score and ranking. For more on how Washington 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](mailto:NCAJ@fordham.edu).

## Complete Consumer Debt Litigation Index Findings for Washington

### 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**

Washington does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, Washington does not meet sub-benchmark 1a because it authorizes any person over 18 years of age who is competent to be a witness in the action to effect service. See generally CR4, and RCW 4.28.080; RCW 12.04.050. Washington does not meet sub-benchmark 1b because Washington does not require that the court send supplemental or new notice to a defendant who has not appeared and against whom a default judgment is being awarded.

#### 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**

Washington does not meet the benchmark because Washington does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Wash. Super. Ct. Civ. R. 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**

Washington does not meet this benchmark because, although the courts do provide certain forms for use by self-represented litigants, an Answer form is not among them. See <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=33>.

**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**

Washington meets this benchmark because it permits, but does not require, verification of pleadings and does not require that the Answer to a verified Complaint be verified. See Wash. Super. Ct. Civ. R. 11. Note: All pleadings must be signed. Wash. Super. Ct. Civ. R. 11.

**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**

Washington meets the benchmark because the state does not charge a fee for filing an answer. Note: the clerk of court can collect fees for any filing that includes a counterclaim, cross claim or third-party claims. See Wash. Rev. Code Ann. § 36.18.020(2)(a) (West) ("Clerks of superior courts shall collect the following fees for their official services . . . the party filing the first or initial document in any civil action . . . and any party filing a counterclaim, cross-claim, or third-party claim in any such 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**

Washington does not meet this benchmark because although it requires that complaints brought by debt buyers include (a) the name of the original creditor, it does not require that consumer debt complaints include (b) the basis of plaintiffs' standing, or (c) itemization of the amount sought, and imposes no requirements on complaints filed by conventional creditors. See Wash. Rev. Code Ann. § 19.16.260(2) (West 2023). See also general rule for pleadings, CR 8(a); CRLJ 8(a), which is not sufficiently specific to meet the benchmark.

**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**

Washington meets the benchmark because it meets the sub-benchmarks (a) to (c). Washington law provides that a debt buyer cannot request a default unless it supplies the court with a copy of a signed writing evidencing the debt—or the most recent billing statement—and, if the claim is based on breach of contract, a copy or electronic version of the contract terms at the time of the most recent statement. The debt buyer must also provide admissible evidence of the original account number at charge-off; the original creditor at charge-off; the amount due at charge-off or, if the balance has not been charged off, an itemization of the amount claimed to be owed—including the principal, interest, fees, and other charges or reductions from payment made or other credits; an itemization of post charge-off additions; the date of the last payment; and a copy of the assignment establishing that the debt buyer is the debt owner. Each assignment must be attached to establish an unbroken chain of ownership. Wash. Rev. Code § 19.16.260.

## 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**

Washington does not meet this benchmark because although it requires debt-buyer plaintiffs to allege in their complaint that the action is being commenced within, and is not barred by, an applicable statute of limitations, it does not expressly require them to plead (a) the applicable limitation period, the date the claim accrued, nor (c) when it expires. Nor do its affirmative requirements apply to conventional creditors who are not debt buyers. See Wash. Rev. Code Ann. § 19.16.260(2)(c)(vi) (LexisNexis 2023).

**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**

Washington 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, Washington has the following limitations periods: • breach of written contract: 6-year limitations period (RCW 4.16.040(1)); • breach of oral contract: 3-year limitations period (RCW 4.16.080(3)); • open account: 3-year limitations period (RCW 4.16.080(3)); • account stated: 3-year limitations period (RCW 4.16.080(3)); • unjust enrichment: 3-year limitations period (RCW 4.16.080(3)); • conversion: 3-year limitations period (RCW 4.16.080(2) & RCW 62A.3-118(g)); and • passing a bad

check: six years after dishonor of the draft or ten years after the date of the draft, whichever period expires (RCW 62A.3-118(c)).

### 10 - Prohibit Revival of Time-Barred Claims

Score: 2/2

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

Yes

Washington meets this benchmark because Washington does not permit revival of contractual claims after the statute has run. Wash. Rev. Code Ann. § 4.16.270 (LexisNexis 2023) ("Any payment on the contract made after the limitation period has expired shall not restart, revive, or extend the limitation period."); Wash. Rev. Code Ann. § 4.16.280 ("[A]n acknowledgment or promise made after the limitation period has expired shall not restart, revive, or extend 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

Washington does not meet this benchmark because it does not prohibit attorneys' fee shifting. Wash. Rev. Code Ann. § 4.84.330 (LexisNexis 2023). It provides that in any action on a contract or lease that provides for attorneys' fees or costs, "the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements." Id.

### 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

Washington does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Washington law states: "(1) Except as provided in subsection (4) of this section, any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate." RCW 19.52.020. Therefore, Washington does not limit prejudgment interest for debt buyers at an annual rate of 7% or less. Regarding post-judgment interest, Washington law states that "Interest on judgments shall accrue as follows: (1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment...(b) Except as provided in (a) of this subsection, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear

interest from the date of entry at two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered." RCW 4.56.110). Therefore, for post-judgment interest, Washington 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

Washington meets the benchmark because the court must issue a writ of garnishment or a writ of execution. Rev. Code Wash. §§ 6.27.060; 6.17.020; 6.17.100. In small claims actions, if a monetary judgment or order is entered, the judgment debtor has a duty to pay the judgment upon terms and conditions prescribed by the judge. Rev. Code Wash. § 12.40.100.

### 14 - Bank Account Garnishment Exemptions Are Self Executing

Score: 2/2

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

Yes

Washington meets the benchmark because Wash. Rev. Code Ann. § 6.15.010(d)(ii)(C) provides that for consumer debt, "\$1,000 shall be automatically protected" in "bank accounts, savings and loan accounts, stocks, bonds, or other securities."

### 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

Washington does not meet the benchmark because sub-benchmark (a) (income) is not met. Washington law provides as follows: (a) Income: Washington does not meet sub-benchmark (a) because it exempts the greater of 80% of a person's weekly disposable earnings or 35 times the state minimum hourly wage in effect when the person is paid, whichever is more, for consumer debt. Wash. Rev. Code Ann. § 6.27.150(4). Thirty-five times the state minimum wage (\$13.18 per hour in 2023) is only \$461.30. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), <https://www.dol.gov/agencies/whd/minimum-wage/state>. (b) Home: Washington meets sub-benchmark (b) because a home is exempt up to a value that is the county median price of a single-family home in the preceding calendar year or \$125,000, whichever is more, subject to a certain limited exception. Wash.



Rev. Code Ann. § 6.13.030 (using data from the Washington Center for Real Estate Research or, if unavailable, a similar entity chosen by the office of financial management to determine the price of the home). (c) Car: Washington meets sub-benchmark (c) because a car is exempt up to an aggregate value of \$15,000. Wash. Rev. Code Ann. § 6.15.010(1)(d)(iv). 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](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

Washington does not meet this benchmark because a judgment debtor is not entitled to notice prior to garnishment of their property (notice is required to be served prior to or on the date of service of the writ of garnishment on the garnishee). Wash. Rev. Code Ann. § 6.27.130 (LexisNexis 2023). Additionally, even if notice were required prior to garnishment, the state would not meet sub-benchmark (b) because the notice to the judgment debtor is not required to provide the manner in which to challenge the order, or sub-benchmark (c) because the notice is not required to explain how to assert the exemptions Id. at § 6.27.140.

## 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

Washington meets the benchmark because it prohibits incarceration for contempt for failure to obey a court order to pay all or part of a debt judgment. This prohibition is based on the state constitution, which provides that "no person shall be imprisoned for debt." In *Decker v. Decker*, 52 Wash.2d 456 (1958), the Washington Supreme Court held that the state constitution's prohibition on imprisonment for debt applies to contempt proceedings.

### 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

Washington does not meet this benchmark because Washington's contempt statute provides in pertinent part that "If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment for up to three hundred sixty-four days, or both." Wash. Rev. Code Ann. §7.21.040.



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

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?

**Yes**

Washington meets the benchmark because the Supreme Court has held that "wherever a contempt adjudication may result in incarceration, the person accused of contempt must be provided with state-paid counsel if he or she is unable to afford private representation." *Tetro v. Tetro*, 86 Wash.2d 252 (Wash. 1975).

## 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**

Washington does not meet the benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Wash. Rev. Code § 9A.56.060.

**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**

Washington does not meet this benchmark because its laws do not expressly prohibit the use of bail or bond to pay a creditor.

**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**

Washington does not meet this benchmark because, at any time within ten years of a judgment for more than twenty-five dollars, a judgment debtor may be required to appear at a specified time and place before a judge to answer questions regarding the debt. See Wash. Rev. Code Ann. § 6.32.010 (LexisNexis 2023). The law does not limit the frequency of such examinations. *Id.*

## 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**

Washington does not meet the benchmark because Washington state courts do not collect and publish statewide data on the number of consumer debt lawsuits nor on the types of dispositions of consumer debt lawsuits. In addition to a high-level State of the Judiciary Report, Washington publishes reports for each court level — the Courts of Limited Jurisdiction, Superior Court, Court of Appeals, Supreme Court. Consumer debt lawsuit data is not present in any of these reports. See generally Caseloads of the Courts of Washington: <https://www.courts.wa.gov/caseload/?fa=caseload.showArchived>.

**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**

Washington does not meet the benchmark because Washington state courts do not collect and publish statewide data on the number of consumer debt lawsuits nor on the types of dispositions of consumer debt lawsuits. In addition to a high-level State of the Judiciary Report, Washington publishes reports for each court level — the Courts of Limited Jurisdiction, Superior Court, Court of Appeals, Supreme Court. Consumer debt lawsuit data is not present in any of these reports. See generally Caseloads of the Courts of Washington: <https://www.courts.wa.gov/caseload/?fa=caseload.showArchived>.

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

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