

### **Consumer Debt Litigation Index**

## Top Recommendations for Reform in Alabama

### Alabama's Score: 32/100

### Alabama's National Rank: 9th

Consumer debt lawsuits <u>dominate civil court dockets</u> across the country. In an overwhelming number of cases—<u>more than 70% in many places</u>—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 <u>Consumer Debt Litigation Index</u> 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. Alabama, however, does not yet have these key pleading requirements in place.

**How:** Alabama 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. Alabama, however, does not yet have these key requirements in place.

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

**How:** Alabama 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 Alabama were to Implement these Recommendations?

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

### Complete Consumer Debt Litigation Index Findings for Alabama

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

#### **1 - Government Notice of Lawsuits**

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?

Alabama does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, Alabama does not meet sub-benchmark 1a because under Alabama law, the commencement of consumer debt lawsuits is indistinguishable from other types of civil actions where Alabama law permits service of process by delivery from a process server or by certified mail. See Ala. R. Civ. P. 4(i)(1) and (2). Second, Alabama does not meet sub-benchmark 1b because it does not require supplemental notice of a new consumer debt lawsuit and prohibit entry of default judgment if that notice is returned as undeliverable.

2 - Guidance on Finding Help	Score: 0/5
Does the state require that notice to the defendant in a consumer debt lawsuit include guidance on where to seek help, including free legal assistance?	No
Alabama does not meet this benchmark because Alabama does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Ala. 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

Score: 0/5

No

Alabama does not meet this benchmark because it does not provide an Answer form for use by defendants in consumer debt lawsuits.

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
Alabama meets this benchmark because it does not require a pleading to be verified except when specifically required by rule or statute. See Ala. R. Civ. P. 11(a). No such rule or statute applies to an Answer in a consumer debt litigation. Additionally, the answer forms available on Alabama's court websites for both small claims court and district court do not require notarization. See https://www.alabamaatj.org/wp-content/uploads/2013/10/Defendants-Answer-Form-SM-3.pdf; https://eforms.alacourt.gov/media/it2gwsy1/answer-to-complaint.pdf	
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
Alabama meets the benchmark because there is no fee to file an answer, although there is a fee for filing a	

counterclaim or cross-claim. Ala. Code § 12-19-71 (1975) (charging \$297 for counterclaims and cross-claims).

# 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
Alabama does not meet this benchmark because it does not have specific pleading requirements for consumer debt complaints and thus does not require a consumer debt complaint to include (a) the name of the original creditor, (b) the basis of the plaintiff's standing, or (c) an itemization of amount sought, including debt principal, interest, fees, costs, and other charges to date. See Ala. Code § 12-21-111 (LexisNexis 2023).	
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?	

Alabama does not meet the benchmark or any sub-benchmarks. Alabama courts may grant default judgments pursuant to the Alabama Rules of Civil Procedure Rule 55 and Alabama Small Claims Rule K, and neither of those rules impose any of the requirements in sub-benchmarks (a)(service), (b)(validity), (c)(amount). There is also no Alabama 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
Alabama does not meet this benchmark because the statutes and rules of Alabama do not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date of the claim accrued, or (c) the date that the statute of limitations expires. See Ala. R. Civ. P. 8(c) (establishing that the statute of limitations is an affirmative defense).	
9 - Four Year Statute of Limitations	Score: 0/5
Does the state require 4-year (or shorter) statute of limitations for the causes of action most commonly used to pursue consumer debt collection: breach of contract (written or oral), open account, account stated, unjust enrichment, conversion, bad check?	No
Alabama 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, Alabama has the following limitations periods: • breach of written contract: 6-year limitations period (Ala. Code § 6-2-34(4) (2022)); • breach of oral contract: 6-year limitations period (Ala. Code § 6-2-34(4)); • open account: 3-year limitations period (Ala. Code § 6-2-37(1)); • account stated: 6-year limitations period (Ala. Code § 6-2-34(5)); • unjust enrichment (on implied contract): 6-years (see Auburn Univ. v. International Bus. Machs. Corp., 716 F.Supp.2d 1114, 1118 (M.D.Ala.2010) (looking to Ala. Code § 6-2-34(4)); • conversion: 6-year limitations period (Ala. Code § 6-2-34(3)); and • passing a bad check: 3-years after dishonor of the draft or 10 years after the date of the draft, whichever expires first (Ala. Code § 7-3-118 (2022)); and	
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
Alabama meets this Benchmark because it does not allow for revival of consumer debt claims based on partial payment of the debt after the statute of limitations has run. In particular, the Alabama code states: "No act, promise, or acknowledgment is sufficient to remove the bar to an action created by the provisions of this chapter, nor is such evidence of a new and continuing contract, except a partial payment, made upon the contract by the party sought to be charged before the bar is complete or an unconditional promise in writing	

signed by the party to be charged thereby." Ala. Code § 6-2-16 (2022). Courts have interpreted this provision to mean that if a payment is made after the limitations period has run (and the bar to the action is complete), the partial payment will not revive the untimely action. See In re Templeton, 538 B.R. 578, 585–86 (Bankr. N.D. Ala. 2015) ("that partial payments made after the bar of the statute of limitations is in place do not remove the bar" (citing Chapman v. Barnes, 93 Ala. 433, 9 So. 589 (Ala.1891)).

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

11 - Prohibit Attorneys' Fees Shifting	Score: 3/3
Does the state prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provision or reciprocity in fee shifting?	Yes
Alabama meets this benchmark because it prohibits attorneys' fee shifting where the original debt is less than \$300, and also prohibits fee shifting in open credit arrangements where the amount unpaid is less than \$300. Ala. Code § 5-19-10.	
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
Alabama does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Alabama law sets different interest rates depending on the type of debt: (1) contractual debt, which applies the interest rate in the contract up to an 8% annual limit; and (2) all other forms of debt, which generally have a 6% annual interest rate applied. Ala. Code § 8-8-8 (2022). Thus, while Alabama does limit prejudgment on noncontractual debt to 7% or less, it does not limit contractual debt to 7% or less. Regarding post-judgment interest, Alabama law provides that all judgments for the payment of money (other than costs), if based on a contract action, will bear the same interest rate as in the contract, and all other judgments for payment of money will bear a 7.5% annual interest rate (the provisions of Ala. Code § 8-8-8 in the paragraph above notwithstanding). Ala. Code § 8-8-10 (2022). Thus, for post-judgment interest, Alabama does not limit either contractual or non-contractual debt to 5% or less of the judgment.	
. Issue Area: Reduce the likelihood that consumer debt collectio tions leave people homeless, or perpetuate a cycle of debt.	n
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
Alabama meets the benchmark because enforcement of a money judgment requires a writ of execution from a	

court clerk. Ala. R. Civ. P. Rule 69(a); Ala. § 6-9-1; Ala. Small Claims Ct. Rule L.

14 - Bank Account Garnishment Exemptions Are Self Executing	Score: 0/2
Does state law require in consumer debt lawsuits that garnishment exemptions for bank accoun executing?	ts are self- <b>No</b>
Alabama does not meet the benchmark because it does not require financial institutions to prote deposited in bank accounts unless a judgment debtor asserts an exemption. While Ala. Code § 6- the debtor with the right to select property to protect from garnishment, including personal pro \$7,500, it does not refer specifically to bank accounts, and the exemptions are not self-executing	-10-6 provides perty up to
15 - Essential Exemptions	Score: 0/5
Does the state prevent people from becoming impoverished, unhoused, or unable to work by examination and assets from attachment and garnishment, as follows: a. Income of at least \$576.92 perminimum to keep a family of four above the federal poverty level, as defined by the U.S. Federal Guidelines in 2023; b. Home, regardless of value, or at least the median price of a home in the star value, state exemption for, at least, the first \$15,000 in value? Alabama does not meet the benchmark because none of the sub-benchmarks are met. Alabama follows: (a) Income: Alabama does not meet sub-benchmark (a) because it exempts the greater of person's weekly disposable earnings or 30 times the federal minimum hourly wage in effect whe paid, subject to certain limited exceptions. Ala. Code §§ 6-10-6, 6-10-7, 5-19-15. Thirty times the federal minimum wage in 2023 is only \$217.50 per week. State Minimum Wage Laws, U.S. Dep't of Labor 2023), https://www.dol.gov/agencies/whd/minimum-wage/state. (b) Home: Alabama does not m benchmark (b) because a home, including its land of not more than 160 acres, is exempt only up \$15,000 subject to certain limited exceptions if a person is married or has children. Ala. Code §§ (c) Car: Alabama does not meet sub-benchmark (c) because it does not offer any exemptions for car(s). Alabama, however, provides an exemption for "the personal property of such resident, ex salaries, or other compensation, to the extent of the resident's interest therein, to the amount of thousand five hundred dollars (\$7,500) in value, to be selected by him or her." Ala. Code § 6-10-6 wildcard exemption and a person would, therefore, have to select a car in place of other possible For more information on garnishment exemptions see Michael Best and Carolyn Carter, No Fres National Consumer Law Center (Dec. 2023), https://www.nclc.org/wp-	er week, the Poverty ate; and c. Car law provides as f 75% of a en the person is ederal (Sept. 30, eet sub- to a value of 6-10-2, 6-10-9. a person's cept for wages, seven . This is a e exemptions.
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 follow potential exemptions? b. how to challenge the order? and c. how to assert exemptions? Alabama does not meet this benchmark because it does not meet sub-benchmark (a) or (b). Spec Alabama does not meet sub-benchmark (a) (potential exemptions) because the notice of potenti exemptions is incomplete (the law provides a few exemptions as "illustrations only" rather than available exemptions). See Ala. R. Civ. P. 64A. Alabama does not meet sub-benchmark (b) (how to order) because the required notice does not instruct the defendant on how to object to a court's of garnishment. See Ala. R. Civ. P. 64A. Alabama meets sub-benchmark (c) (how to assert exemption the notice guides the defendant on how to assert exemptions and Alabama requires that a judgn	rifically, ally available listing to challenge the order of ons) because

served "prior notice" of garnishment at least five days before the judgment is issued against the garnishee. See Ala. R. Civ. P. 64A.

VI	I. 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
	Alabama meets the benchmark because the Alabama Supreme Court has held that incarcerating a person for failure to comply with a court order to pay a debt violates the state constitution's prohibition on imprisonment for debt. See Ex parte Thompson, 210 So. 2d 808, 813 (Ala. 1968). See also Ala. Const. Art. I, § 20 ("That no person shall be imprisoned for debt.").	
	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
	Alabama meets the benchmark because a person may not be incarcerated for criminal or civil contempt unless and until the state proves that the person's failure to appear was willful. A judge may hold a person in criminal contempt for up to five days for "willful disobedience or resistanceto a court's lawful writ, subpoena, process, order, rule, or command, where the dominant purpose of the finding of contempt is to punish the contemnor." Ala. R. Civ. P. Rule 70A(C)(ii); Hill v. Hill, 637 So. 2d 1368, 1994 Ala. Civ. App. LEXIS 187 (Civ. App. 1994); remanded, 739 So. 2d 501, 1999 Ala. Civ. App. LEXIS 383 (Ala. Civ. App. 1999). A judge may hold a person in civil contempt for "willful, continuing failure or refusalto comply with a court's lawful writ, subpoena, process, order, rule, or command that by its nature is still capable of being complied with." Ala. R. Civ. P. Rule 70A(e)(1). In civil contempt, the person may be "committed to the custody of the sheriff until that person purges himself or herself of the contempt by complying with the court's writ, subpoena, process, order, rule, or command." Id. at (E)(ii).	
	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
	Alabama meets the benchmark because the law provides a right to counsel in actions involving criminal contempt, and the courts have held that litigants have a right to counsel in actions involving civil contempt. Ala. R. Civ. Pro. 70A; State ex rel. Payne v. Empire Life Insurance Co., 351 So. 2d 538, 542 (Ala. 1977); Wright v. Wright, 630 So. 2d 450, 452 (Ala. Civ. App. 1992).	

# 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
	Alabama does not meet this benchmark because its worthless check statute gives each district attorney discretion to establish and run a worthless check unit and to collect fees and restitution. There is no prohibition on contracting with private entities under such programs. Ala. Code § 12-17-224 (2022).	
	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
	Alabama does not meet the benchmark because its laws do not expressly prohibit the use of bail or bond to pay a creditor. See Ala. R. Civ. P. 70A.	
	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
	Alabama does not meet this benchmark because it provides that after a judgment, if an execution issued by a court returns "no property found," upon a creditor's request the court shall order the debtor to appear before the court and submit to oral examination under oath. The statute does not limit the frequency or timing of such examinations. Code of Ala. § 6-6-200; Code of Ala. § 6-6-201.	
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
	Alabama does not meet this benchmark because it does not require state courts to collect, make available, or publish annually any information specific to consumer debt lawsuits. Note: Alabama state courts do publish high level statistical court data. The Administrative Director of Courts is authorized to "require the filing of reports, the collection and compilation of statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the courts". In its annual report, the statistical data for Alabama courts is broken out by case type or "jurisdiction", including:	

criminal (felony or other); civil; domestic (original or modification); juvenile; and child support, but does not include detailed information about the type of civil matter. Ala. Code § 12-5-10 (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
<ul> <li>Alabama does not meet the benchmark because it does not require state courts to collect, make available, or publish annually any information specific to consumer debt lawsuits. Note: Alabama state courts do publish high level statistical court data. The Administrative Director of Courts is authorized to "require the filing of reports, the collection and compilation of statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the courts". In its annual report, the statistical data for Alabama courts is broken out by case type or "jurisdiction", including: criminal (felony or other); civil; domestic (original or modification); juvenile; and child support, but does not include detailed information about the type of civil matter. Ala. Code § 12-5-10 (2022).</li> <li>To learn more about the Consumer Debt Litigation Index, including how other states fared, visit <a href="https://ncaj.org/state-rankings/consumer-debt">https://ncaj.org/state-rankings/consumer-debt</a>.</li> </ul>	

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