

Top Recommendations for Reform in Arizona

Arizona's Score: 26/100

Arizona's National Rank: 18th

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

How: Arizona 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 prove -- before a default judgment may be entered – proof of service; validity of the debt based on authenticated business records; and, itemized amounts sought based on authenticated business records, promotes fairness as it deters lawsuits that lack merit and lowers the number of 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. Arizona does presently require proof of service. However, Arizona does not not yet require authenticated business records to establish proof of validity of debt, or, itemization of the amount sought.

How: Arizona should adopt a law or practice that requires plaintiffs in consumer debt cases to establish the following (in addition to requiring proof of service) before a court may enter a default judgment: validity of the debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and, amount of the judgment through authenticated business records, with itemized damages, court fees, attorneys' fees, and interest. If it does so, the state's score would increase 10 points.

3. 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. Arizona, however, allows service by private persons and does not require supplemental notice from the courts.

How: Arizona 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.

What Would Happen if Arizona were to Implement these Recommendations?

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

Complete Consumer Debt Litigation Index Findings for Arizona

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

Arizona does not meet this benchmark for two reasons. First, Arizona does not meet sub-benchmark 1(a) because it allows service to be delivered by private persons, although such persons must be certified under the Arizona Code Judicial Administration. Ariz. R. Civ. P. 4(d). Second, Arizona does not meet sub-benchmark 1(b) because it does not require supplemental notice of a new lawsuit or prohibit default judgment if notice is 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

Arizona does not meet the benchmark because Arizona does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Ariz. R. Civ. P. 4.

II. Issue Area: Make it easier to respond to a lawsuit.

3 - Simplified Answer

Score: 2/2

Does the state provide a simple Answer process by making available an Answer form for use by unrepresented persons in consumer debt lawsuits?

Yes

Arizona meets this benchmark because its courts (including small claims court) provide Answer forms which can be used by consumer debt defendants.

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

Arizona meets this benchmark because it does not require a pleading to be verified except when specifically required by rule or statute. See Ariz. R. Civ. P. 8. No such rule or statute applies to an Answer in a consumer debt litigation.

5 - No Fee to Answer Score: 0/5

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

No

Arizona does not meet the benchmark because there is a fee for filing answers in small claims court and civil court. Ariz. Rev. Stat. Ann. § 22-281 (1973) (charging \$15 for filing fees in small claims court); id. § 12-284 (1961) (charging fees of \$100 for filing answers in civil court).

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

Arizona does not meet the benchmark because it does not have specific pleading requirements applicable to consumer debt complaints and, therefore, does not require a consumer debt complaint to include (a) the name of the original creditor, (b) the basis of plaintiff's standing, or (c) an itemization of amount sought including debt principal, interest, fees, costs and other charges to date. See Ariz. R. Civ. P. 8(a).

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

Arizona does not meet the benchmark because it does not meet all of the sub-benchmarks. Arizona courts may grant default judgments pursuant to Ariz. R. Civ. P. 55(b), but a party seeking entry of default must file a written application. Ariz. R. Civ. P. 55(a)(2). The application needs to attach a copy of the Rule 4(g) proof of service, establishing the date and manner of service on the party claimed to be in default, but does not address sub-benchmarks (b) (validity of debt) or (c) (judgment amount).

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

Arizona does not meet the benchmark because it does not place the burden of pleading timeliness on the plaintiff and does not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date that the claim accrued, or (c) the date that the statute of limitations expires. See Ariz. R. Civ. P. 8(d).

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

Arizona 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, Arizona has the following limitations periods: • breach of written contract: 6-year limitations period (AZ Rev Stat § 12-548 (2022)); • breach of oral contract: 3-year limitations period (AZ Rev Stat § 12-543(1) (2022)); • open account: 3-year limitations period (AZ Rev Stat § 12-543(2) (2022)); • account stated ("an action for any article charged on an account in a store"): 3-year limitations period (AZ Rev Stat § 12-543(2) (2022)); • unjust enrichment: 3-year limitations period (AZ Rev Stat § 12-543(1) (2022)); • conversion: 3-year limitations period (AZ Rev Stat § 47-3118(G) (2022)); and • passing a bad check: 3-years after dishonor or 10 years after the of the draft, whichever expires first (AZ Rev Stat § 47-3118(C) (2022)).

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

Arizona meets this Benchmark because it does not make debt claims subject to revival even after the statute of limitations has run, based upon partial payment alone. Although AZ Rev Stat § 12-508 provides that "[w]hen an action is barred by limitation no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the action out of the operation of the law, unless the acknowledgment is in writing and signed by the party to be charged thereby," Arizona courts have held that "part payment alone cannot evidence an acknowledgment of a debt barred by the statute of limitations." Cheatham v. Sahuaro Collection Serv., Inc., 118 Ariz. 452, 455, 577 P.2d 738, 741 (App. 1978).

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

Arizona does not meet this benchmark because Ariz. Rev. Stat. Ann. \S 12-341.01(A) provides for shifting of fees to prevailing party, and also provides that it does not alter underlying contractual provision: "This section shall not be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees."

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

Arizona does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Arizona law states that the interest rate of a loan shall be 10% or any rate agreed and contracted upon. AZ Rev Stat \S 44-1201 (2022). Thus, Arizona does not limit prejudgment interest to 7% or less. Regarding post-judgment interest, Arizona law states that the interest rate on a judgment shall be as provided in the agreement and specified in the judgment as long as it does not exceed the maximum permitted by law. AZ Rev Stat \S 44-1201 (20AZ Rev Stat \S 44-1201 (2022). Thus, Arizona does not limit post-judgment interest to 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

Arizona meets the benchmark because the law provides that "all executions shall be issued in the name of the state, signed by the clerk and sealed with the seal of the court." Ariz. Rev. Stat. § 12-1552(B). It further provides that enforcement of a money judgment requires a writ of execution from the court. Ariz. Rev. Stat. § 12-1551. For garnishment, the law provides that "on application by the judgment creditor the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the writ be transferred to the judgment creditor who is entitled to such monies." Ariz. Rev. Stat. § 12-1598.10. A judgment from a small claims lawsuit may be enforced in accordance with Title 12, Chapter 9 and Ariz. Rev. Stat. §§ 22-243 through 22-246 (which provides that the execution or process involves commanding the sheriff or constable to execute the judgment according to its terms). Ariz. R. S.C.P. 18.

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

Arizona 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. Ariz. Rev. Stat. § 33-1126(A)(9) provides the exemption for a bank account but it is not self-executing.

15 - Essential Exemptions

Score: 5/5

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?

Yes

Arizona meets the benchmark. Arizona law provides as follows: (a) Income: Arizona meets sub-benchmark (a) because it exempts the greater of 90% of a person's weekly disposable earnings or 60 times the federal, state or local minimum hourly wage, whichever is lowest, in effect when the person is paid, subject to a certain limited exception. Ariz. Rev. Stat. § 33-1131(b); Proposition 209 Information Sheet, Ariz. Courts (2023), https://www.azcourts.gov/selfservicecenter/Garnishment/Proposition-209 (exemption of up to 95% of a person's weekly disposable earnings if 90% exemption causes "extreme economic hardship" on the person or the person's family). Sixty times Arizona's state minimum wage (\$13.85 in 2023) is \$831 per week. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), https://www.dol.gov/agencies/whd/minimumwage/state. (b) Home: Arizona meets sub-benchmark (b) because one home, including the land on which the home is located, is exempt up to a value that is at least the median price of a home in the state. Arizona exempts one home up to a value of \$400,000, adjusted annually by the increase in the cost of living. Ariz. Rev. Stat. § 33-1102. (c) Car: Arizona meets sub-benchmark (c) because one car is exempt up to a value of \$15,000, adjusted annually by the increase in the cost of living, subject to a certain limited exception. Ariz. Rev. Stat. § 33-1125 (exemption up to a value of \$25,000 if a person or a person's dependent has a physical disability). 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

Arizona does not meet this benchmark because it does not require prior notice of exemptions or how to assert them. A judgment debtor is only required to receive notice of garnishment within three days of the garnishee being served of the writ of garnishment. See Ariz. Rev. Stat. Ann §§ 12-1521 through 12-1539; 12-1574.D, 12-1598.04(D) (2022). If Arizona required that its notice be furnished prior to garnishment, the state would meet sub-benchmark (a) (potential exemptions); sub-benchmark (b) (how to challenge the order; and sub-benchmark (c) (how to assert exemptions) based on the rules governing the forms that must be delivered to judgment debtors in connection with a garnishment. See id. at § 12-1596 (setting forth list of potential exemptions, how to challenge order, and how to assert exemptions), 12-1598.16.

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

Arizona does not meet the benchmark because the court possesses the general authority under Az. Rev. Stat. § 12-1593 to hold a litigant in contempt for failure to comply with a court order, and there is no exception in the law that would protect a litigant from being incarcerated for failure to comply with a court order to pay consumer debt. The state does expressly prohibit incarceration for failure to pay consumer debt in Article 2, Section 18 of the state's constitution, but there is nothing in the law, including the caselaw, that would ensure this protection applies in the context of a holding of contempt for failure to comply with a court order to pay consumer 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

Arizona meets the benchmark because a litigant's failure to appear in court for a debtors' examination must be willful disobedience to be considered criminal contempt of court. Ariz. Rev. Stat. §§ 12-1631(A), 12-1556, 12-861; 12-864; Van Baalen v. Superior Court, 19 Ariz. App. 512, 508 P.2d 771, 1973 Ariz. App. LEXIS 579 (Ariz. Ct. App. 1973). Criminal contempt is a class 2 misdemeanor, which is subject to incarceration of up to four months. Ariz. Rev. Stat. § 12-863(B).

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

Arizona meets the benchmark because the public defender statute in the state provides for an attorney to anyone unable to afford one for "offenses triable in the superior court or justice courts at all stages of the proceedings." Ariz. Rev. Stat. § 11-584(1). The contempt statute in the state provides that people found guilty of contempt are guilty of a class 2 misdemeanor. Ariz. Rev. Stat. § 12-863(B). Furthermore, the Arizona Criminal Code defines an "offense" as "conduct for which a sentence to a term of imprisonment or of a fine is provided." Ariz. Rev. Stat. § 13-105(27).

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

Arizona does not meet this benchmark because its bad check statute explicitly allows each county attorney to contract with private entities to conduct bad check deferred prosecution programs. Ariz. Rev. Stat. § 13-1810.

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

Arizona does not meet the benchmark because the Arizona rules of civil procedure and small claims court rules do not include an express prohibition on the use of bail to pay a creditor. See Ariz. R. Civ. P. 64.1 Further, the ACLU has documented that in Arizona "in cases of warrants issued for failure to appear at a judgment debtor exam, bonds are typically set at \$250 or the amount of the judgment, depending on the court." American Civil Liberties Union, "A Pound of Flesh: The Criminalization of Private Debt," 60 (2018), available at: https://www.aclu.org/report/pound-flesh-criminalization-private-debt.

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

Arizona does not meet this benchmark because it provides that "the judgment creditor, at any time may: 1. Have an order from the court requiring the judgment debtor to appear and answer concerning his property before the court or a referee, at a time and place specified in the order. 2. Have a subpoena issued compelling the judgment debtor to appear for deposition upon oral examination and answer concerning his property at a time and place specified in the subpoena." Ariz. Rev. Stat. Ann. § 12-1631.

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

Arizona does not meet the benchmark because it does not collect and publish specific data on consumer debt lawsuits. Note: While Arizona state courts voluntarily report certain research results and statistical metrics in respect of cases before the courts, it does not disclose data at the level suggested by the benchmark (See, e.g., Arizona Supreme Court, Judicial Data Report (last visited Mar. 4, 2023)). In its recent Annual Reports, however, the judicial branch in Maricopa County has published the number of garnishment orders (See The Judicial Branch of Arizona -- Maricopa County, Annual Report (last visited Apr. 1, 2023)). See

https://www.azcourts.gov/Portals/38/FY2021JudicialDataReport.pdf and https://superiorcourt.maricopa.gov/media/7848/annual-report-of-operations-fiscal-year-2022.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

Arizona does not meet the benchmark because it does not collect and publish specific data on consumer debt lawsuits. Note: While Arizona state courts voluntarily report certain research results and statistical metrics in respect of cases before the courts, it does not disclose data at the level suggested by the benchmark (See, e.g., Arizona Supreme Court, Judicial Data Report (last visited Mar. 4, 2023)). In its recent Annual Reports, however, the judicial branch in Maricopa County has published the number of garnishment orders (See The Judicial Branch of Arizona -- Maricopa County, Annual Report (last visited Apr. 1, 2023)). See https://www.azcourts.gov/Portals/38/FY2021JudicialDataReport.pdf and https://superiorcourt.maricopa.gov/media/7848/annual-report-of-operations-fiscal-year-2022.pdf.

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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