

Consumer Debt Litigation Index

Top Recommendations for Reform in Florida

Florida's Score: 19/100

Florida's National Rank: 27th

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 itemize 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 consumer debt complaints to include all three key elements. Florida does not require a consumer debt complaint to allege (a) the original creditor's name, (b) the basis of the plaintiff's standing, or (c) itemization of the debt.

How: Florida should adopt a law or practice that requires plaintiffs in all 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 with authenticated business records, promotes fairness, as these elements deter lawsuits that lack merit and lower the number of unjust 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, however, Florida does not impose any of the three essential requirements before a court may enter a default judgment.

How: Florida 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. Florida, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions to protect a person's car of value up to \$15,000.

How: Florida should make bank account exemptions self-executing. Further, Florida should update and expand on garnishment and attachment provisions so that they include protection for a car of value up to at least \$15,000. If it does so, the Florida's score would increase 7 points.

What Would Happen if Florida were to Implement these Recommendations?

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

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
Florida does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, it does not meets sub-benchmark 1a because Florida law permits service of process by a process server or other individual appointed by the court. See Fla. R. Civ. P. 1.070(b) ("[s]service of process may be made by an officer authorized by law to serve process, but the court may appoint any competent person not interested in the action to serve the process.") Second, Florida does not meet sub-benchmark 1b because the court is not required to mail supplemental notice of a new consumer debt lawsuit to the defendant and deny default judgment if such notice is returned as undeliverable.	
2 - Guidance on Finding Help	Score: 0/5
2 - Guidance on Finding Help 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?	Score: 0/5 No
Does the state require that notice to the defendant in a consumer debt lawsuit include guidance on where to	

3 - Simplified Answer

Π

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? Florida does not meet this benchmark because it does not provide an Answer form for use by consumer debt defendants.	No
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
Florida meets this benchmark because it does not require a pleading to be verified except when specifically required by rule or statute. FL ST GEN PRAC AND J ADMIN Rule 2.515. 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
Florida meets the benchmark because the law prohibits charging a party a fee for responding to a complaint. Fla. Stat. Ann. § 34.041(6) (West 2022) ("A charge or a fee may not be imposed upon a party for responding by pleading, motion, or other paper to a civil or criminal action, suit, or proceeding in a county court or to an appeal to the circuit court."). The law allows a fee as an exception where that party is filing an original civil action such as a crossclaim, counterclaim or third-party claim. Id. § 34.041(1)(c).	
Issue Area: Require the creditor to provide evidence of a valid aim.	debt
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
Florida does not meet this benchmark because it does not require a consumer debt complaint to allege (a) the original creditor's name, (b) the basis of the plaintiff's standing, or (c) itemization of the debt. See Fla. R. Civ. P. 1.110(b).	
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 **No** 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?

Florida does not meet the benchmark or any sub-benchmarks. Florida courts may grant default judgments pursuant to the Florida Rule of Civil Procedure 1.500, which does not impose any of the requirements in the sub-benchmarks. Fla. R. Civ. P. 1.500

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
Florida does not meet this benchmark because the statutes and rules of Florida do not place the burden of pleading timeliness on the plaintiff and do 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 Fla.R.Civ.P. 1.110(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
Florida 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, Florida has the following limitations periods: • breach of written contract: 5-year limitations period (Fla. Stat. § 95.11(2)(a-b) (2023)); • breach of oral contract: 4-year limitations period (Fla. Stat. § 95.11(3)(g-h, j) (2023)); • open account: 4-year limitations period (Fla. Stat. § 95.11(3)(j) (2023)); • account stated ("an action for any article charged on an account in a store"): 4-year limitations period (Fla. Stat. § 95.11(3)(j) (2023)); • unjust enrichment: 4-year limitations period if the claim is not based on a written instrument or 5-year limitations period if the claim is based on a written instrument (Fla. Stat. §§ 95.11(2)(b), 95.11(3)(j) (2023)); • conversion: 4-year limitations period (Fla. Stat. § 95.11(3)(g) (2023)); and • passing a bad check: 5-year limitations period (Fla. Stat. §§ 95.11(2)(b), 673.1181 (2023)).	
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
Florida meets this Benchmark because it does not make consumer debt claims subject to revival based on partial payment of the debt after the statute of limitations has run. Claims may be revived where there is "[a]n acknowledgment of, or promise to pay" the debt "in writing and signed" by the debtor, Fla. Stat. Ann. § 95.04,	

Teage v. Credit Control, LLC, 2021 WL 3207599, at *1 (M.D. Fla. Jan. 29, 2021) ("Under Florida law, the statute of limitations on a lapsed debt may only be revived via a written statement signed by the debtor."), but "payment on a debt barred by the statute of limitations without an acknowledgment of the balance of the debt as existing and a willingness to pay the debt will not take it out of the statute." Madinya v. Portfolio Recovery Assocs., LLC, 2018 WL 4510151, at *5 (S.D. Fla. Sept. 20, 2018) (quoting Woodham v. Hill, 83 So. 517, 524 (Fla. 1919))).

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
Florida does not meet this benchmark because the law pertinent to attorneys fees, Fla. Stat. § 57.105(7), does not prohibit fee shifting regardless of contract provisions.	
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
Florida does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding (a)(pre-judgment interest), Florida law states that all contracts for the payment of interest upon any loan or forbearance to enforce the collection of any debt, or upon any obligation whatever cannot exceed 18% per annum. Fla. Stat. § 687.02. Thus, Florida does not cap the annual interest rate at 7% or less. Regarding (b)(post-judgment interest), Florida law allows the state's CFO to set the interest rate quarterly, and the current rate is 5.52% per annum. Therefore, the post-judgment interest rate is above 5%. Thus, Florida does not meet the benchmark. Fla. Stat. § 55.03.	
. 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
Florida meets the benchmark because it provides that courts shall issue executions on judgment, upon an oral request from the judgment creditor or their attorney. Fla. R. Civ. Pro. 1.550(a); Fla. Sm. Cl. R. 7.200. For a writ of garnishment, the judgment creditor or their attorney must file a motion stating the amount of the judgment. Fla. Stat. § 77.03. Attachments must also be issued by a judge. Fla. Stat. § 76.03.	

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? Florida does not meet the benchmark because it does not require financial institutions to protect money	No
deposited in bank accounts unless a judgment debtor asserts an exemption. Fla. Stat. Ann. § 222.25(3) specifies the amount that may be exempted with respect to a debtor's interest in a financial institution but it is not self-executing.	
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? Florida does not meet the benchmark because sub-benchmark (c) (car) is not met. Florida law provides as follows: (a) Income: Florida meets sub-benchmark (a) because the weekly disposable earnings of a person who is a head of a family is exempt up to \$750, subject to certain limited exceptions. Fla. Stat. Ann. § 222.11 (exempting 75% of a person's weekly disposable wages or 30 times the federal minimum wage, whichever is more, if the person is not the head of a family). (b) Home: Florida meets sub-benchmark (b) because a home that is a person's residence, including its land of not more than 160 acres or 0.5 acres within a municipality, is exempt regardless of value. Fla. Const. art. X, § 4(a). (c) Car: Florida does not meet sub-benchmark (c) because a person's interest in a car is exempt only up to a value of \$1,000. Fla. Stat. Ann. § 222.25(1). 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.	No
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? Florida does not meet this benchmark because the state does not require prior notice of garnishment exemptions or how to assert them. Rather, notice of the garnishment is only required to be mailed to an individual judgment debtor's last known address within five business days after the writ of garnishment is issued or three days after the writ is served on the garnishee (whichever is later). See Fla. Stat. Ann. § 77.041(2) (West 2023). If Florida required prior notice, the state would meet sub-benchmark (a) (potential exemptions) because its required notice contains a "partial" list that actually contains 12 "major" exemptions. It would not meet sub-benchmark (b) (how to challenge the order) because it does not provide the manner in which to contest the order, see id. at § 77.041(1). Also, it would meet sub-benchmark (c) (how to assert exemptions) because its required notice explains how to claim exemptions. Id.	No

VII. Issue Area: Eliminate debtors' prison.

	hibit Incarceration for Failure to Obey a Court Order to Pay ner Debt	Score: 5/5
	e state prohibit incarceration for contempt for failure to obey a court order to pay all or part of a er debt judgment?	Yes
(except i contemp prohibit would co	neets the benchmark because it prohibits incarceration for failure to obey a court order to pay a debt n case of fraud). Florida Const. Art. 1, § 11. Florida courts have held that "the enforcement through ot of debts not involving support violates Article I, section 11 of the Florida Constitution, the provision ing imprisonment for debt. We held that contempt was not an appropriate or available remedy as it onstitute imprisonment for debt. We still believe this to be true in the normal debtor-creditor n." See, e.g., Al Ghurair v. Zaczac, 255 So.3d 485 (Fla. 3d. DCA 2018).	
	hibit Incarceration for Failure to Obey a Court Order to Appear at a 's Examination, Unless Nonappearance Was Willful	Score: 0/5
	e state prohibit arrest and/or incarceration for contempt for failure to appear at a debtor's examination lgment enforcement proceeding), unless the person's failure to appear was willful?	No
constitu of court. mandate	does not meet the benchmark because failure to obey a court order to appear need not be willful to te contempt. A judgment debtor who fails to appear at a debtor's examination may be held in contempt Fla. Stat. Ann. § 56.29(7). Further, the law defines contempt as "a refusal to obey any legal order, e or decree, made or given by any judge relative to any of the business of the court, after due notice 'Fl. Stat. Ann. § 38.23.	
19 - Pro	vide Right to Counsel	Score: 0/5
	e state provide a lawyer without charge in any contempt or other proceeding in which incarceration is a l outcome in a consumer debt lawsuit?	No
	loes not meet the benchmark because it provides a public defender for cases of criminal contempt, but contempt. Fla. Stat. §27.51.	
VIII. Issu of credi	ue Area: Prevent government from undue intervention on l tor.	behalf
20 - Pro	bhibit Collaboration Between Creditors and Prosecutors	Score: 0/2
authorit	e state prohibit relationships (including financial relationships) in which prosecutors lend the y of their offices to facilitate the activities of debt collectors (e.g. payments by creditors to prosecutors eaten or bring criminal prosecutions in bad check cases)?	No

Florida does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Fla. Stat. §§ 832.05; 832.08; 832.10.

	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
	Florida does not meet the benchmark because its laws do not include an express prohibition on the use of bail or bond to pay a creditor. Further, the courts have held that "In an appropriate civil contempt case the court may compel performance of a required act by coercive imprisonment or in the event that the violation of the decree has resulted in damages to the injured party, there is adequate authority to support the assessment of a 'compensatory fine' to be paid by the wrongdoing party to the party injured." South Dade Farms v. Peters, 88 So.2d. 891, 899 (Fla. 1956).	
	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
	Florida does not meet this benchmark because the judgment creditor may file a motion to have the judgment debtor appear before a court or magistrate to be examined under oath concerning property of an execution at a time and place specified by the order. The statutes do not specify or limit the frequency of such examinations. Fla. Stat. § 56.30.	
IX	. Issue Area: Collect data to improve the system.	
IX	. Issue Area: Collect data to improve the system. 23 - Data Collection: Number of Lawsuits	Score: 0/3
IX		Score: 0/3 No
IX	23 - Data Collection: Number of Lawsuits	
IX	23 - Data Collection: Number of Lawsuits Do state courts at least annually collect and publish statewide data on number of consumer debt lawsuits? Florida does not meet the benchmark because Florida does not collect and publish statewide data on the number of consumer debt lawsuits and the dispositions of consumer debt lawsuits. Note: Florida is required to develop a uniform case reporting system (which is due to be implemented by the end of 2024) which includes a uniform means of reporting categories of cases, time required in the disposition of cases and manner of disposition of cases. FLA. STAT. §25.075 (2022). Each circuit court is required to report the activity of all cases before all courts to the supreme court in the manner and on the forms established by the office of the state courts administrator. Fla. R. Jud. Admin. 2.245 (2018). Florida publishes state court annual reports and includes state court statistics on its website, but the specifics of consumer debt collection cases are not included/published. The category closest to consumer debt collection available is "contract and indebtedness", but the website and reports don't give further detail as to what cases are included within "contract and indebtedness". See Florida Courts, STATISTICS (last visited July 28, 2023). See	

Do state courts at least annually collect and publish statewide data on types of dispositions of consumer debt lawsuits?

Florida does not meet the benchmark because Florida does not collect and publish statewide data on the number of consumer debt lawsuits and the dispositions of consumer debt lawsuits. Note: Florida is required to develop a uniform case reporting system (which is due to be implemented by the end of 2024) which includes a uniform means of reporting categories of cases, time required in the disposition of cases and manner of disposition of cases. FLA. STAT. §25.075 (2022). Each circuit court is required to report the activity of all cases before all courts to the supreme court in the manner and on the forms established by the office of the state courts administrator. Fla. R. Jud. Admin. 2.245 (2018). Florida publishes state court annual reports and includes state court statistics on its website, but the specifics of consumer debt collection cases are not included/published. The category closest to consumer debt collection available is "contract and indebtedness", but the website and reports don't give further detail as to what cases are included within "contract and indebtedness". See Florida Courts, STATISTICS (last visited July 28, 2023). See https://www.flcourts.gov/Publications-Statistics/Statistics.

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

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