

Consumer Debt Litigation Index

Top Recommendations for Reform in Hawaii

Hawaii's Score: 7/100

Hawaii's National Rank: 49th

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. Hawaii does not meet the benchmark because it does not have special pleading requirements for consumer debt claims to include (a) the name of the original creditor, (b) the basis of plaintiffs' standing, or (c) an itemization of the amount sought.

How: Hawaii 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. Hawaii does not require creditors to establish any of these essential elements before a court may enter a default judgment.

How: Hawaii should adopt a law or practice that requires plaintiffs in all 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. Hawaii, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

How: Hawaii should make bank account exemptions self-executing. Further, Hawaii 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, Hawaii's score would increase 7 points.

What Would Happen if Hawaii were to Implement these Recommendations?

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

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?

Hawaii does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, Hawaii does not meet sub-benchmark 1a because it permits service of process by anyone 18 years or older who is not a party to the action, in addition to service of process by public officials. Haw. R. Civ. P. 4. Second, Hawaii does not meet sub-benchmark 1b because it does not require that the court send the defendant, by first class mail, supplemental notice of a new consumer debt lawsuit and deny 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	
Hawaii does not meet this benchmark because Hawaii does not require that notice in a consumer debt lawsu provide guidance for defendants on where to find help. See Haw. R. Civ P. 4.	it	
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 unrepresente persons in consumer debt lawsuits?	ed No	

Score: 0/5

No

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

4 - No Notarization Requirement	to Answer S	Score: 2/2
Does the state make it easier to respond Answer notarized before filing?	l to consumer debt lawsuits by never requiring defendants to have an	Yes
	it does not require a pleading to be verified except when specifically Civ. P. 11(a). No such rule or statute applies to an Answer in a consumer	
5 - No Fee to Answer	8	Score: 5/5
Does the state permit the filing of an A	nswer in consumer debt lawsuits without charging a filing fee?	Yes
 (for damages not exceeding \$5,000). Set include a filing fee for filing an answer the First Circuit, Your Guide to the Smare verbally or in writing but only reporting Judiciary State of Hawai'i, Your Guide to complaint verbally or in writing but on counterclaim); The Judiciary State of F Court, 3, 7 (noting that a defendant may for plaintiffs and for defendants filing a are disclosed for district court (for dam Filing Fees and Costs (effective January answer); Hawai'i State Judiciary, List or reporting any fees to file an answer); set Guide to the Regular Claims Court, 3, 6 but only reporting a filing fee for plaint Hawai'i District Court of the Third Circumay answer a complaint verbally or in a counterclaim). https://www.courts.state.hi.us/docs/doc content/uploads/2019/09/Civil-Filing-Fees/1000/1000/1000/1000/1000/1000/1000/1	f_help_docs/regular_claims_brochure.pdf;	

III. Issue Area: Require the creditor to provide evidence of a valid debt claim.

6 - Pleading Requirement

Score: 0/10

NoBasis of plaintiff's standing (e.g. chain of ownership of debt); and c. Itemization of amount sought includingdebt principal, interest, fees, costs, and other charges to date?

Hawaii does not meet the benchmark because it does not have special pleading requirements for consumer debt claims to include (a) the name of the original creditor, (b) the basis of plaintiffs' standing, or (c) an itemization of the amount sought. See Haw. R. Civ. P. 8(a) (establishing general rules of pleading).

7 - Authenticated Records for Default

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?

Hawaii does not meet the benchmark or any sub-benchmarks. Hawaii courts may grant default judgments pursuant to Hawaii Rule of Civil Procedure 55, and this rule does not impose any of the requirements in sub-benchmarks (a) to (c). There is also no Hawaii 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
Hawaii does not meet this benchmark because the statutes and rules of Hawaii 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 the claim accrued, or (c) the date that the statute of limitations expires. See Haw. R. Civ. P. 8(c) (establishing statute of limitations as an affirmative defense).	
9 - Four Year Statute of Limitations	Score: 0/5
9 - Four Year Statute of Limitations 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?	Score: 0/5 No

Score: 0/10

No

period (HRS § 657-1(1) (2023); See First Hawaiian Bank v. Zukerkorn, 2 Haw. App. 383, 385 (1981) (relying on HRS § 657-1(1) to note that applicable statute of limitations for claim on account stated is six years)); • unjust enrichment: 6-year limitations period (HRS § 657-1(1) (2023); N.K. Collins, LLC v. William Grant & Sons, Inc., 472 F. Supp. 3d 806, 837 (D. Haw. 2020) ("In Hawaii, a 'claim for unjust enrichment is subject to a six-year limitations period under HRS § 657-1.")); • conversion: 3-year limitations period (HRS § 490:3-118(g) (2023)); and • passing a bad check: 3-year limitations after the dishonor of the check or 10-year limitations period after the date of the draft (HRS § 490:3-118(c) (2023)).

10 - Prohibit Revival of Time-Barred Claims

Score: 0/2

No

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

Hawaii does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run if there is a new promise to pay, including by part payment of the debt. See Bureaus Inv. Grp, No. 2, LLC v. Harris, 2013 WL 6231742, at *3 (Haw. App. Nov. 29, 2013) (part, quoting First Hawaiian Bank v. Zukerkorn, 2 Haw. App. 383, 385 (1981) ("A new promise by the debtor to pay his debt, whether then barred by the applicable statute of limitations or not, binds the debtor for a new limitations period. The promise may be express or implied. . . . part payment of the debt is prima facie evidence of a new promise to pay").

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
Hawaii does not meet this benchmark because it does not prohibit attorneys fee shifting regardless of contract provisions. The Hawaii code provides for "attorneys' fees, to be paid by the losing party" in "all actions on a promissory note," for reasonable fee levels that "shall not exceed twenty-five per cent of the judgment" or the percentage, if less than 25%, in the debt contract. Haw. Rev. Stat. Ann. § 607-14 (West).	
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

478-3. Thus, for post-judgment interest, Hawaii 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: 0/5
Does the state in consumer debt lawsuits require a court order for garnishment and attachment?	No
Hawaii does not meet the benchmark because it provides that to garnish wages the judgment cred a certified copy of the judgment and the creditor's affidavit as to the amount due and unpaid on ac judgment with the employer of the judgment debtor." Haw. Rev. Stat. §§ 652-1(b); 653-6(b).	-
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 executing?	are self- No
Hawaii does not meet the benchmark because it does not require financial institutions to protect r deposited in bank accounts unless a judgment debtor asserts an exemption. See Haw. Rev. Stat. §§ 2.	-
15 - Essential Exemptions	Score: 0/5
Does the state prevent people from becoming impoverished, unhoused, or unable to work by exen income and assets from attachment and garnishment, as follows: a. Income of at least \$576.92 per minimum to keep a family of four above the federal poverty level, as defined by the U.S. Federal Po Guidelines in 2023; b. Home, regardless of value, or at least the median price of a home in the state value, state exemption for, at least, the first \$15,000 in value?	week, the overty
Hawaii does not meet the benchmark because none of the sub-benchmarks are met. Hawaii law properties of the sub-benchmark (a) because it exempts 95% of the first \$ person's monthly wages, 90% of the next \$100 in wages, and 80% of the remainder of wages. Haw. Ann. §§ 652-1(a)(4), 652-1(b). (b) Home: Hawaii does not meet sub-benchmark (b) because a person exempt only up to a fair market value of \$20,000 subject to a limited exception. Haw. Rev. Stat. An (exemption of \$30,000 if a person is the head of a family or aged sixty-five or older). (c) Car: Hawaii meet sub-benchmark (c) because one car of a person is exempt only up to a value of \$2,575. Haw. R § 651-121(2). For more information on garnishment exemptions see Michael Best and Carolyn Cartor Start 2023, National Consumer Law Center (Dec. 2023), https://www.nclc.org/wp-content/uploads/2023/12/2023_Report_No-Fresh-Start-3.pdf.	\$100 in a . Rev. Stat. a's home is an. § 651-92 ii does not Rev. Stat. Ann.
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?

Hawaii does not meet this benchmark because it does not require prior notice to a judgment debtor of garnishment exemptions and how to assert them. Haw. Rev. Stat. Ann. §§ 652, 652-1, 652-1.5 (West 2023) (allowing garnishment without prior notice to the judgment debtor). See also https://www.courts.state.hi.us/docs/form/hawaii/3DC27.pdf Additionally, if Hawaii required prior notice of wage garnishment to the judgment debtor, the state would meet sub-benchmark (a) (potential exemptions) because its notice provides a detailed explanation of the federal and state limits on wage garnishment, https://www.courts.state.hi.us/docs/form/hawaii/3DC27.pdf. The state would not meet sub-benchmark (b) (how to challenge the order) because the required notice only references the statute setting forth the procedures for challenge wage garnishment, https://www.courts.state.hi.us/docs/form/hawaii/3DC27.pdf. Hawaii/3DC27.pdf; and would not meet sub-benchmark (c) (asserting exemptions) because the notice only references the statute setting forth the procedures for challenge wage garnishment, https://www.courts.state.hi.us/docs/form/hawaii/3DC27.pdf. Hawaii/3DC27.pdf. Hawaii does not appear to require any specific notice to the judgment debtor when property other than wages is being garnished.

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
Hawaii does not meet the benchmark because it does not prohibit incarceration for contempt for failure to obey a court order to pay a debt. Article 1, Section 19 of the Hawaii Constitution prohibits imprisonment for debt, but there is no statute, court rule, or case law specifically barring incarceration for contempt for failure to obey an order to pay a debt. In fact, court rules authorize the courts to hold a party in contempt "if a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified." Haw. R. Civ. P. 70.	
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
Hawaii does not meet the benchmark because failure to appear need not be willful to constitute contempt. Rather, Hawaii provides that a litigant is guilty of criminal contempt if "the person knowingly disobeys or resists the process, injunction, or other mandate of a court." Haw. Rev. Stat. Ann. § 710-1077.	
19 - Provide Right to Counsel	Score: 0/5

No

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?

Hawaii does not meet the benchmark because it does not provide a right to counsel in contempt cases, even when incarceration is possible. See Haw. Rev. Stat. §§ 802-1(a)(1); 710-1077.

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
	Hawaii does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Haw. Rev. Stat. § 708-857.	
	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
	Hawaii 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. See Haw. Rev. Stat. Ann. § 710-1077.	
	22 - Limit Frequency of Examinations	Score: 0/5
	22 - Limit Frequency of Examinations Does the state in consumer debt litigation schedule or otherwise limit financial examinations to no more than once per year?	Score: 0/5 No
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IX	Does the state in consumer debt litigation schedule or otherwise limit financial examinations to no more than once per year? Hawaii does not meet this benchmark because the law provides that a court may, upon a creditor's application, issue orders, summonses or subpoenas for the examination of the judgment debtor for the production of any	
IX	Does the state in consumer debt litigation schedule or otherwise limit financial examinations to no more than once per year? Hawaii does not meet this benchmark because the law provides that a court may, upon a creditor's application, issue orders, summonses or subpoenas for the examination of the judgment debtor for the production of any books or documents. The law does not limit the frequency of such examinations. Haw. Rev. Stat. § 636-4.	

Hawaii does not meet the benchmark because it does not collect or publish detailed data about the number of consumer debt lawsuits or types of dispositions of consumer debt lawsuits. Note: Hawaii Supreme Court Rules do require publication of annual reports, which include numbers and disposition of civil cases, but do not include detailed information on consumer debt lawsuits. Haw. Sup. Ct. R. 21(j); see also HAW. ACCESS TO JUST. COMM'N, Annual Report for 2021 (2022) and Annual Report Statistical Supplement (last visited Mar. 28, 2023). See https://www.hawaiijustice.org/wp-content/uploads/2023/01/ATJ-2022-Annual-Report.pdf and https://www.courts.state.hi.us/wp-content/uploads/2022/12/JUD_STATISTICAL-SUPPLEMENT-2022-Final.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
Hawaii does not meet the benchmark because it does not collect or publish detailed data about the number of consumer debt lawsuits or types of dispositions of consumer debt lawsuits. Note: Hawaii Supreme Court Rules do require publication of annual reports, which include numbers and disposition of civil cases, but do not include detailed information on consumer debt lawsuits. Haw. Sup. Ct. R. 21(j); see also HAW. ACCESS TO JUST. COMM'N, Annual Report for 2021 (2022) and Annual Report Statistical Supplement (last visited Mar. 28, 2023). See https://www.hawaiijustice.org/wp-content/uploads/2023/01/ATJ-2022-Annual-Report.pdf and https://www.courts.state.hi.us/wp-content/uploads/2022/12/JUD_STATISTICAL-SUPPLEMENT-2022-Final.pdf.	
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