

Top Recommendations for Reform in Indiana

Indiana's Score: 27/100

Indiana's National Rank: 14th

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. Indiana requires debt buyers to include in their initial pleadings (a) the name of the original creditor, (b) the basis of plaintiffs' standing, but it does not require debt buyers to include an itemization of the specific amount sought, and it require original creditors to include any of the three key elements.

How: Indiana should adopt a law or practice that requires plaintiffs in all consumer debt cases including cases brought by original creditors 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. The state should make this law applicable not only to debt buyers, but to all consumer debt creditors.

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 all three essential elements before a court may enter a default judgment. Indiana requires debt buyers to include in their initial pleadings (a) the name of the original creditor, and (b) the basis of plaintiffs' standing, but it does not require debt buyers to include an itemization of the specific amount sought. Further, it does not require original creditors to include any of the three key elements.

How: Indiana should adopt a law or practice that requires plaintiffs in consumer debt cases including cases brought by original creditors 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 (Benchmark 15). For example, in consumer debt cases Texas has garnishment exemptions that protect 100% of a person's wages, and attachment exemptions that protect a home (of any value) and personal property (including a car) up to a value of \$100,000 for a family or \$50,000 for an individual. Indiana, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

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

What Would Happen if Indiana were to Implement these Recommendations?

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

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

Indiana does not meet this benchmark because it does not meet either sub-benchmark a or b. It does not meet sub-benchmark 1a because, in addition to service by the sheriff, Indiana authorizes service by "some other court appointed person." See Ind. R. Trial P. 4.12(a); IN ST SM CL Rule 3(B). Furthermore, "[s]ervice shall be effective if made by a person not otherwise authorized by these rules, but proof of service by such a person must be made by him as a witness or by deposition without allowance of expenses therefor as costs." Ind. R. Trial P. 4.12(a). Sub-benchmark 1b is not met because Indiana does not require that the court provide supplemental notice of a consumer debt lawsuit, and does not provide that default judgment be denied if mail 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

Indiana does not meet this benchmark because Indiana does not require that notice in a consumer debt lawsuit provide guidance for defendants on where to find help. See Ind. R. Trial P. 4(c)(5).

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

Indiana does not meet this benchmark because, although its court website includes some forms, it does not provide an Answer form that can be used by consumer debt defendants. See In. Jud. Branch, Civil & Criminal Forms, available at https://www.in.gov/courts/publications/forms/civil-criminal/

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

Indiana meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See Ind. R. Trial P. 11(a). 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

Indiana meets the benchmark because no filing fees are required to submit an answer in the Indiana Trial Court Fee Manual, which sets forth filing fees for civil cases and small claims cases. Indiana Supreme Court, Indiana Office of Court Services, Indiana Trial Court Fee Manual, at 8-10 (2022) (setting forth fees required to file a complaint but not to file an answer for both civil and small claims cases).

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

Indiana does not meet the benchmark because although it requires debt buyers to include in their initial pleadings (a) the name of the original creditor and (b) the basis of plaintiffs' standing, see IN ST 24-5-15.5-5(a) (2), it does not require (c) itemization of the amount sought. Further, it does not meet any of the subbenchmarks for consumer debt complaints brought by the original creditors.

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?

No

Score: 0/10

Indiana does not meet the benchmark because it does not meet sub-benchmarks (b) or (c), but it does meet sub-benchmark (a). Indiana courts may grant default judgments pursuant to Indiana Rule of Civil Procedure 55, and that rule does not impose the requirements of the sub-benchmarks (b) and (c). Indiana small claims courts may grant default judgments pursuant to Indiana Small Claims Rule 10(B), where the court makes an inquiry, under oath, to those present to assure the court that service of notice of the claim was valid. Ind. Small Claims Rule 10(B)(3) (Service of notice of claim was had under such circumstances as to establish a reasonable probability that the defendant received such notice).

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

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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?

Indiana 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 Ind. R. Trial. P. 8(C).

9 - Four Year Statute of Limitations

Score: 0/5

Score: 0/2

No

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

Indiana 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, Indiana has the following limitations periods: • breach of written contract: 10-year limitations period (Ind. Code § 34-11-2-11); • breach of oral contract: 6-year limitations period (Ind. Code § 34-11-2-7); • open account: 6-year limitations period (Smither v. Asset Acceptance, LLC, 919 N.E.2d 1153 (Ind. App. 2010) (finding that creditor's claim is governed by six-year statute of limitations applicable to actions on accounts and contracts not in writing)); • account stated: 6-year limitations period (Ind. Code § 34-11-2-7); • unjust enrichment: 2-year limitations period (Knutson v. UGS, 2007 WL 2122192, at *17 (S.D. Ind. 2007) (concluding that plaintiff's unjust enrichment claim was subject to a two-year statute of limitations under Ind. Code § 34-11-2-1)); • conversion: 3-year limitations period (Ind. Code § 34-11-2-7(g)); and • passing a bad check: 3-year limitations period for an action to enforce the obligation of a party to an unaccepted draft to pay the draft

after dishonor of the draft or 10-year limitations period after the date of the draft, whichever period expires first (Ind. Code § 26-1-3.1-118).

10 - Prohibit Revival of Time-Barred Claims

Score: 0/2

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

No

Indiana does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run, including when a debtor makes a subsequent payment toward the debt. See Bartle v. Jackson St. Inv'rs, LLC, 980 N.E.2d 448 (Ind. App. 2012) (finding long-established law of the State of Indiana holds for the premise that a single partial payment on a debt, even after the statute of limitations has passed, is sufficient to revive the debt and start the statute of limitations anew).

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

Indiana does not meet this benchmark because it does not prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provisions. Indiana adheres to the American rule that, in general, a party must pay his own attorneys' fees absent an agreement between the parties, a statute, or other rule to the contrary. R.L. Turner Corp. v. Town of Brownsburg, 963 N.E.2d 453, 458 (Ind. 2012). The code and case law are silent on reciprocal rights.

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

Indiana does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Indiana law states that the maximum lawful rate of interest for money, whenever rendered, shall be the rate agreed upon in the original contract, which may not exceed an annual rate of eight percent (8%), even if a higher rate of interest may have been charged according to the contract prior to judgment. If there was no contract between the parties, the annual rate of interest would be eight percent (8%). See Ind. Code § 24-4.6-1-101 (2017). Thus, Indiana does not limit prejudgment interest on debt to 7% or less (as is required to meet sub-benchmark (a)). Regarding post-judgment interest, Indiana law states that the interest rate shall be the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of 8%, even if a higher rate of interest was properly charged according to the contract prior to judgment. Alternatively, if there was no contract between the parties, the annual interest rate shall be 8%. See Ind. Code § 24-4.6-1-101 (2017). Thus, Indiana does not limit post-judgment interest to 5% or less of the judgment (as is required to meet sub-benchmark (b)).

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

Indiana meets the benchmark because the clerk of the court must issue a summons for garnishment or a writ of attachment. Burns Ind. Code Ann. § 34-25-3-2.

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

Indiana 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. Ind. Code Ann. § 34-55-10-2(c)(3) provides an exemption for "intangible personal property, including choses in action, deposit accounts, and cash...of three hundred dollars" 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?

No

Indiana does not meet this benchmark because none of the sub-benchmarks are met. Indiana law provides as follows: (a) Income: Indiana does not meet sub-benchmark (a) because it only exempts the greater of 75% of a person's weekly disposable earnings or 30 times the federal minimum hourly wage in effect when the person is paid, subject to certain limited exceptions. Ind. Code Ann. § 24-4.5-5-105(2) (West 2023). Thirty times the federal minimum wage (\$7.25 per hour in 2023) is only \$217.50. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), https://www.dol.gov/agencies/whd/minimum-wage/state. (b) Home: Indiana does not meet sub-benchmark (b) because a person's or the dependent of a person's personal or family residence is exempt only up to \$15,000, adjusted for inflation every six years. Ind. Code Ann. §§ 34-55-10-2(c)(1) (West 2023); 34-55-10-2.5 (West 2023). (c) Car: Indiana does not meet sub-benchmark (c) because Indiana does not offer any exemptions for a person's car(s), but litigants may use a wildcard exemption for a car. Ind. Code § 34-55-10-2(c) (2). 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: 5/5

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?

Yes

Indiana meets the benchmark because the state only permits garnishment following a hearing on notice, at which the judge may only order garnishment of non-exempt amounts or assets. The prior hearing meets the advanced notice requirement of the benchmark, and the active court supervision of garnishment provides some assurance that only non-exempt assets will be garnished and that the judgment debtor will have a sufficient opportunity to assert exemptions and challenge the order. See Ind. Code § 34-55-8-7 (2017).

VII. Issue Area: Eliminate debtors' prison.

17 - Prohibit Incarceration for Failure to Obey a Court Order to Pay Consumer Debt

Score: 5/5

Does the state prohibit incarceration for contempt for failure to obey a court order to pay all or part of a consumer debt judgment?

Yes

Indiana meets the benchmark because it prohibits incarceration for contempt for failure to obey a court order to pay all or part of a debt judgment. In Carter v. Grace Whitney Properties, 939 N.E.2d 630 (Ind. Ct. App. 2010), the court held that "except in the case of enforcement of child support orders, money judgments are not enforceable by contempt. . . Even the threat of imprisonment is improper." Id. at 635.

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

Indiana does not the benchmark because a court may hold a person in contempt for failure to appear at a debtor's examination. Ind. R. Trial P. 69(E). Although the failure to appear must be willful to constitute contempt, the law authorizes the court to issue a writ of attachment, fixing bail and ordering a sheriff to take the person into custody before a hearing. Ind. Code Ann. §§ 34-47-3-1; 34-47-4-2.

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

Indiana meets the benchmark because the courts have held that "where the possibility exists that an indigent defendant may be incarcerated for contempt," the person has a right to counsel. In re Marriage of Stariha, 509 N.E.2d 1117 (Ind. Ct. App. 1987). See also Moore v. Moore, 11 N.E.3d 980 (Ind. Ct. App. 2014); Marks v. Tolliver, 839 N.E.2d 703, 706 (Ind. Ct. App. 2005).

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

Indiana does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Ind. Code § 35-43-5-5.

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

Indiana 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 Ind. Code Ann. § 34-47-4-2.

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

Indiana does not meet the benchmark because, if a judgment is unsatisfied, the judgment creditor "is entitled to an order" issued by the court that "requires the judgment debtor to appear before the court to answer concerning the judgment debtor's property, income, and profits." The law does not limit the frequency of such examinations. Ind. Code Ann. § 34-55-8-1. Additionally, after a judgment that includes property, the plaintiff may file an affidavit alleging that the judgment debtor "has property, income or profits that the judgment debtor unjustly refuses to apply toward the satisfaction of the judgment." In such cases, "the court shall issue a subpoena requiring the judgment debtor to appear immediately before the court, at a specified time and place, to answer concerning the affidavit." The law does not limit the frequency of these examinations. Ind. Code Ann. § 34-55-8-2.

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

Indiana does not meet this benchmark because Indiana state courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. While Indiana

state courts have a fairly robust database for public access to court documents, there is no data published that would meet the requirements of the benchmark to track consumer debt data. See Public Records, Ind. Jud. Branch, https://www.in.gov/courts/public-records/ (last visited Nov. 10, 2023). Its dashboard of cases broken down by county provides data on "collection" cases generally, but it does not provide specific data on consumer debt cases. Indiana Trial Court Statistics By County, Ind. Jud. Branch, https://publicaccess.courts.in.gov/ICOR/ (last visited Jan. 31, 2024). Note: The state legislature does require high-level reporting by one county's small claims court. Ind. Code § 33-34-7-2 (2017).

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

Indiana does not meet the benchmark because Indiana state courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. While Indiana state courts have a fairly robust database for public access to court documents, there is no data published that would meet the requirements of the benchmark to track consumer debt data. (See Indiana Judicial Branch, Public Records (last visited Mar. 19, 2023)). Note: the state legislature does require high-level reporting by one county's small claims court (Ind. Code §33-34-7-2). See https://www.in.gov/courts/public-records/.

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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