

Consumer Debt Litigation Index

Top Recommendations for Reform in Kentucky

Kentucky's Score: 17/100

Kentucky's National Rank: 33rd

Consumer debt lawsuits dominate civil court dockets across the country. In an overwhelming number of cases—more than 70% in many places—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 Consumer Debt Litigation Index 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. Kentucky does not meet the benchmark because it does not require complaints in consumer debt claims to include (a) the name of the original creditor, (b) the basis of the plaintiff's claim, or (c) an itemization of the amount sought.

How: Kentucky should adopt a law or practice that requires plaintiffs in consumer debt cases to allege: (a) the name of the original creditor; (b) the plaintiff's standing (e.g. the chain of ownership of the debt); and (c) an itemization of the amount sought, including debt principal, interest, fees, costs, and other charges to date. If it does so, the state's score would increase 10 points.

2. Require Authenticated Business Records for A Default (Benchmark 7)

Why: Creditors too often bring legally insufficient cases, relying on the likelihood that many defendants will not respond (or “default”) and that the merits of the creditors’ claims will never be assessed by a court. Requiring creditors to establish -- before a default judgment may be entered -- (a) proof of service, (b) validity of the debt using authenticated business records, and (c) itemized amounts sought, also with authenticated business records, promotes fairness, as these elements deter lawsuits that lack merit and lower the number of unjust default judgments. Illinois does not meet the benchmark because it does not require proof of service of the underlying complaint as a condition for securing entry of a default judgment. 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. Kentucky does not require any of these three elements as a condition for obtaining a default judgment in all consumer debt collection cases.

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

How: Kentucky should make bank account exemptions self-executing. Further, the state should update and expand on garnishment and attachment provisions so that they protect at minimum: (a) Income of at least \$576.92 per week, the minimum to keep a family of four above the federal poverty level, as defined by the U.S. Federal Poverty Guidelines in 2023; (b) a home, regardless of value, or at least the median price of a home in the state; and (c) a car valued up to at least \$15,000. If it does so, the state's score would increase 7 points.

What Would Happen if Kentucky were to Implement these Recommendations?

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

Complete Consumer Debt Litigation Index Findings for Kentucky

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

Kentucky does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. Kentucky does not meet sub-benchmark 1a because Kentucky permits the plaintiff to elect between service by the court clerk via registered or certified mail, return receipt requested, or any authorized individual. See Ky. R. Civ. P. 4.01(1)(a)-(c). Kentucky does not meet sub-benchmark 1b because Kentucky does not require that the court provide supplemental notice of a consumer debt lawsuit, and that default judgment be denied 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

Kentucky does not meet this benchmark because Kentucky does not require that notice in a consumer debt lawsuit provide guidance for defendants on where to find help. See Ky. R. Civ. P. 4.02.

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

Kentucky 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 generally Ky. Ct. of Just., Legal Forms, available at <https://kycourts.gov/Legal-Forms/Pages/default.aspx>.

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

Kentucky meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See Ky. R. Civ. P. 11. 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

Kentucky meets the benchmark because there is no fee disclosed to file an answer, although there is a fee for filing a counterclaim or cross-claim that requires transfer to circuit court when that claim exceeds \$2,500 (the maximum amount in controversy in small claims court). See Ky. R. Civ. P. 3.03 (1978).

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

Kentucky 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 the plaintiff's claim, or (c) an itemization of the amount sought. See Ky. R. Civ. P. 8.01 (establishing the pleading requirements in Kentucky).

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

Kentucky does not meet the benchmark or any sub-benchmarks. Kentucky courts are permitted to grant default judgments pursuant to Ky. R. Civ. P. 55.01, and this rule does not impose any of the requirements in sub-benchmarks (a) to (c). There is also no Kentucky 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

Kentucky does not meet the benchmark because it does not require a consumer debt complaint to include (a) the applicable statute of limitations, (b) the date the claim accrued, or (c) the date the statute of limitations expired. See Ky. R. Civ. P. 8.03 (establishing the statute of limitations as an affirmative defense).

9 - Four Year Statute of Limitations

Score: 0/5

Does the state require 4-year (or shorter) statute of limitations for the causes of action most commonly used to pursue consumer debt collection: breach of contract (written or oral), open account, account stated, unjust enrichment, conversion, bad check?

No

Kentucky 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, Kentucky has the following limitations periods: • breach of written contract: 10-year limitations period (KRS 413.160); • breach of oral contract: 5-year limitations period (KRS 413.120(1)); • open account: 5-year limitations period (KRS 413.130(1)); • account stated: 5-year limitations period (KRS 413.120(9)-(10)); • unjust enrichment: 5-year limitations period (see *Degener v. Hall Contracting Corp.*, 27 S.W.3d 775, 782 (Ky. 2000) (relying upon KRS 413.120(6))); • conversion: 3-year limitations period (KRS 355.3-118(7)(a)); and • passing a bad check: 5-year limitations period (KRS 413.120(7)).

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

Kentucky does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run when a debtor makes a partial payment of the debt or acknowledges the debt.

See *Tritschler v. Haire*, No. CIV.A.5:07-437-JMH, 2009 WL 1515763, at *3 (E.D. Ky. June 1, 2009); *Head's Ex'r v. Manners' Adm'rs*, 28 Ky. 255, 258 (1831); *Schonbachler v. Schonbachler*, 57 S.W. 232, 234 (Ky. 1900).

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

Kentucky does not meet the benchmark because it expressly allows for attorney fee shifting in debt contracts. The Kentucky statutory code states that attorney fee shifting provisions are enforceable, but only for fees actually paid, and not for expenses related to salaried employees of the creditor. Ky. Rev. Stat. Ann. § 411.195 (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

Kentucky does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Kentucky law states a judgment for prejudgment interest shall bear interest at the rate set forth in the debt contract. Ky. Rev. Stat. Ann. § 340.040(3). If no interest was set forth in the contract, the prejudgment interest rate shall be 6%. Ky. Rev. Stat. Ann. § 340.040. Thus, Kentucky does not limit prejudgment interest on debt to 7% or less (as is required to meet sub-benchmark (a)). Regarding post-judgment interest, Kentucky law states that when a rate of interest is specified in a contract, a judgment rendered on such contract bears interest at the same rate as the underlying contract. Ky. Rev. Stat. Ann. § 340.040(3). If no interest was set forth in the contract, the post-judgment interest rate shall be 6%. Ky. Rev. Stat. Ann. § 340.040. Thus, Kentucky does not limit post-judgment interest on debt 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

Kentucky meets the benchmark because garnishment and attachment require a court order. Ky. Rev. Stat. §§ 425.501; Ky. CR Rule 69.02.

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

Kentucky 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. See Ky. Rev. Stat. § 427.010.

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

Kentucky does not meet the benchmark because none of the sub-benchmarks are met. Kentucky law provides as follows: (a) Income: Kentucky does not meet sub-benchmark (a) because it exempts 75% of a person's weekly disposable earnings or 30 times the federal hourly minimum wage in effect when a person is paid, whichever is greater. Ky. Rev. Stat. Ann. § 427.010(2). 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: Kentucky does not meet sub-benchmark (b) because a person's or the dependent of a person's aggregate interest in their permanent residence is exempt only up to a value of \$5,000. Ky. Rev. Stat. Ann. § 427.060. (c) Car: Kentucky does not meet sub-benchmark (c) because a person's interest in one car and its necessary accessories, including one spare tire, is exempt only up to an aggregate value of \$2,500 subject to a certain limited exception. Ky. Rev. Stat. Ann. § 427.010(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.

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

Kentucky does not meet this benchmark because the notice of the garnishment is only required to be sent to the judgment debtor's last known address (or delivered to the judgment debtor) by the garnishee after the garnishee receives an order of garnishment. See Ky. Rev. Stat. Ann. § 425.501 (West 2023). Additionally, even if Kentucky required notice prior to garnishment, the state would not meet sub-benchmark (a) (potential exemptions) because the notice does not list potential exemptions; sub-benchmark (b) (how to challenge the order), because the notice does not explain how to challenge the order; or sub-benchmark (c) (how to assert exemptions) because the notice to the judgment debtor does explain how to assert exemptions. See *id.*

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

Kentucky does not meet the benchmark because the Kentucky Constitution permits imprisonment for debt under certain circumstances. See Ky. Const. § 18 ("The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.") Kentucky courts have held that a person may not be imprisoned for failure to pay a debt when they are unable to pay at no fault of their own. *Rudd v. Rudd*, 214 S.W. 791, 496 (Ky. 1919) ("The rule is general, that the chancellor will not grant process of contempt to require the doing of an impossible thing, and if it is an order to pay money, and the contemnor is not able to do so, because of no fault of his, the process of attachment and imprisonment will not be granted.") Further, the law provides that "The court shall enforce the surrender of the money or securities therefore, or of any other property of the defendant in the execution, which may be discovered in the action; and the court may use its contempt power in enforcing surrender of the property." Ky. Rev. Stat. § 426.384.

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

Kentucky does not meet the benchmark because the law provides that if a person fails to appear at a debtor's examination, "the court may as in cases of contempt punish a disobedience." Ky. Rev. Stat. Ann. § 425.316.

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

Kentucky meets the benchmark because it provides a right to counsel in civil contempt cases in which incarceration is possible. Kentucky law provides that "A needy person who is being detained by a law enforcement officer ... or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime is entitled" to appointed counsel. Ky. Rev. Stat. § 31.110. It defines "serious crime" as "[a]ny legal action which could result in the detainment of a defendant." Ky. Rev. Stat. § 31.100(8)(c). The Kentucky Supreme Court has held that, taken together, "the statutes of the Commonwealth require that an indigent person has a right to appointed counsel in civil contempt proceedings prior to the execution of an order of incarceration." *Lewis v. Lewis*, 875 S.W.2d 862, 864 (Ky. 1993).

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

Kentucky does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See KRS § 514.040.

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

Kentucky 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 Ky. Rev. Stat. Ann. § 425.316.

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

Kentucky does not meet this benchmark because a judgment debtor may be required to appear before the court and be examined regarding the property in question. The law does not limit the frequency of the exams. Ky. Rev. Stat. Ann. § 425.316

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

Kentucky does not meet the benchmark because Kentucky does not collect and publish statewide data on the number of consumer debt lawsuits or on the types of dispositions of consumer debt lawsuits. The Administrative Office of the Courts is required by state law to issue an annual report. KRS 27A.460 (2022), KRS 27A.470 (2022) and KRS 27A.440 (2022). However, these statutes only require the Administrative Office of the Courts to publish data with respect to criminal felony cases in the circuit courts in each county. The annual reports do not give any detail with respect to consumer debt collection lawsuit statistics. See <https://kycourts.gov/AOC/Overview/Pages/default.aspx>.

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

Kentucky does not meet the benchmark because Kentucky does not collect and publish statewide data on the number of consumer debt lawsuits or on the types of dispositions of consumer debt lawsuits. The Administrative Office of the Courts is required by state law to issue an annual report. KRS 27A.460 (2022), KRS 27A.470 (2022) and KRS 27A.440 (2022). However, these statutes only require the Administrative Office of the Courts to publish data with respect to criminal felony cases in the circuit courts in each county. The annual reports do not give any detail with respect to consumer debt collection lawsuit statistics. See <https://kycourts.gov/AOC/Overview/Pages/default.aspx>.

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