

Consumer Debt Litigation Index

Top Recommendations for Reform in Mississippi

Mississippi's Score: 19/100

Mississippi's National Rank: 27th

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 break out the specific amounts sought can deter meritless filings and enable defendants to assert legitimate defenses, promoting fairness. Delaware, New Mexico, New York, and Washington, D.C. all require complaints to include these key elements. Mississippi, however, does not yet have these key pleading requirements in place.

How: Mississippi should adopt a law or practice that requires all consumer debt complaints to allege the basis for plaintiff’s standing and 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 using authenticated business records, promotes fairness, as these required elements deter lawsuits that lack merit and lower the number of unwarranted 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. Mississippi, however, does not yet have these key requirements in place.

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

How: Mississippi 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 Mississippi were to Implement these Recommendations?

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

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

Mississippi does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. Mississippi does not meet sub-benchmark 1a because it authorizes anyone 18 years or older who is not a party to serve process. Mississippi does not meet sub-benchmark 1b because the state does not require the court to send supplemental notice of a consumer debt lawsuit to the defendant 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

Mississippi does not meet this benchmark because Mississippi does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Miss. R. Civ. P. 4 (b).

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

Mississippi does not meet this benchmark because Mississippi does not provide a form Answer for use by consumer debt defendants.

4 - No Notarization Requirement to Answer

Score: 2/2

Does the state make it easier to respond to consumer debt lawsuits by never requiring defendants to have an Answer notarized before filing?

Yes

Mississippi meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See Miss. 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

Mississippi meets the benchmark, because there is no law establishes a filing fee, and NCAJ was unable to locate a court that required a fee to file an answer. See MS Code § 25-7-25(1)(a) (2020); see e.g., Chancery Court Filing Fees, Oktibbeha County, MS; Circuit Court Fees, Monroe County.

<https://www.oktibbehacountymms.org/161/Chancery-Court-Filing-Fees> (last visited April 4, 2023)

https://www.monroems.com/circuitclerk/circuit_fees.html (last visited April 4, 2023).

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

Mississippi does not meet the benchmark because it does not have special pleading requirements for consumer debt complaints and thus does not require a consumer debt complaint 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 Miss. R. Civ. P. 8 (establishing the pleading requirements for civil complaints, which do not contain special requirements for consumer debt actions).

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

Mississippi does not meet the benchmark or any of the sub-benchmarks. Mississippi courts may grant default judgments pursuant to Mississippi Rule of Civil Procedure 55, and that rule does not impose any of the requirements from the sub-benchmarks. With respect to sub-benchmark (a), before a default judgment can be entered, the court must have jurisdiction over the party against whom the judgment is sought, which also means the party must have been effectively served with process. Miss. R. Civ. P. 55. However, this rule does not require authenticated business records to support validity of service. For small claims courts, Mississippi's Rules of Justice Court Rule 23 does not impose any of the requirements in the sub-benchmarks. Thus, there is also no Mississippi statute that separately imposes requirements regarding 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

Mississippi 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 of the default. See Miss. R. Civ. P. 8(c) (establishing the statute of limitations as an affirmative defense that must be included in an answer to a complaint).

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

Mississippi 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, Mississippi has the following limitations periods: • breach of written contract: 6-year limitations period (Miss. Code Ann. § 75-2-725(1) (1968)); • breach of oral contract: 3-year limitations period (Miss. Code Ann. § 15-1-29 (1976)); • open account: 3-year limitations period (Miss. Code Ann. § 15-1-29 (1976)); • account stated: 3-year limitations period (Miss. Code Ann. § 15-1-29 (1976)); • unjust enrichment: 3-year limitations period (Miss. Code Ann. § 15-1-49 (1990), see *Anderson v. LaVere*, 136 So.3d 404 (Feb. 20, 2014) (noting that the 3-year limitations period in 15-1-49 applies to claims such as unjust enrichment, among others)); • conversion: 3-year limitations period (Miss. Code Ann. § 75-3-118(g) (1993)); and • passing a bad check: must be commenced 3 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first limitations period) (Miss. Code Ann. § 75-3-118(c) (1993)).

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

Mississippi meets this Benchmark because, once the statute of limitations has run on a consumer debt collection action, Mississippi does not permit revival of expired claims, even by subsequent payment toward debt, written or oral affirmation of the debt, or any other activity that occurs after the expiration of the statute of limitations. The Mississippi code states that “[t]he completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy.” MS Code § 15-1-3 (2020).

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

Mississippi does not meet benchmark 12 because its courts do not prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provisions and its code and case law are silent with respect to 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

Mississippi does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Mississippi law allows prejudgment interest when the amount due is liquidated at the time the claim is originally made, or when the denial of a claim is frivolous or in bad faith. *Preferred Risk Mut. Ins. Co. v. Johnson*, 730 S.2d 574 (Miss. 1998). All judgments founded on any contract shall have the same interest rate as the contract evidencing the debt. Miss. Code Ann. § 75-17-7. All other judgments shall bear interest at an annual rate set by the judge hearing the complaint. *Id.* However, the maximum legal rate of interest on all prejudgment contracts is 8% annually. Miss Code Ann. § 75-17-1. Contracts under which the principal balance is more than \$2,000 are exempt from Mississippi's maximum interest rate requirements. Miss Code Ann. § 75-17-1(5). Thus, Mississippi does not limit prejudgment interest on debt to 7% or less, as is required to meet sub-benchmark (a). Regarding post-judgment interest, Mississippi imposes the same interest rate restrictions as the prejudgment interest rate restrictions. All judgments founded on any contract shall have the same interest rate as the contract evidencing the debt on which the judgment was rendered. Miss. Code Ann. § 75-17-7. All other judgments shall bear interest at an annual rate set by the judge hearing the complaint. *Id.* However, the legal rate of interest on all post-judgment contracts is 8% annually. Miss Code Ann. § 75-17-1. Contracts under which the principal balance is more than \$2,000 are exempt from Mississippi's usury law restrictions, including the maximum interest rate. Miss Code Ann. § 75-17-1(5). Thus, Mississippi does not limit prejudgment interest on debt to 5% or less, 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

Mississippi meets the benchmark because the clerk of the court must issue writs of garnishment and attachment. Miss. Code § 11-35-1. Attachment and garnishment procedures do not differ in small claim actions. Miss. Code § 11-33-105.

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

Mississippi 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. Miss. Code Ann. § 85-3-1(a)(iv) specifies the amount that may be exempted with respect to cash on hand.

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

Mississippi does not meet the benchmark because none of the sub-benchmarks are met. Mississippi law provides as follows: (a) Income: Mississippi does not meet sub-benchmark (a) because it exempts 75% of a person's weekly disposable earnings or 30 times the federal minimum hourly wage in effect when the person is paid, whichever is more, subject to certain limited exceptions. Miss. Code Ann. § 85-3-4(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: Mississippi does not meet sub-benchmark (b) because a home that is a person's residence, including its land of not more than 160 acres, is exempt only up to a value of \$75,000 or \$30,000 if a person's primary residence is a mobile home, trailer, manufactured housing or a similar type of dwelling. Miss. Code Ann. §§ 85-3-21, 85-3-1(d). (c) Car: Mississippi does not meet sub-benchmark (c) because cars, the total of which are added with other types of tangible personal property such as tools of trade, are exempt only up to a cumulative value of \$10,000. Miss. Code Ann. § 85-3-1(a)(ii). 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

Mississippi does not meet this benchmark because it does not require that a judgment debtor receive notice of garnishment or exemptions or how to assert them at any time. See Miss. Code Ann. § 11-35 (West 2023). Note: Mississippi has a 30 day waiting period for wage garnishment, so after an employer has been served with a writ of garnishment it is required to wait 30 days before commencing wage garnishment. *Id.* at § 11-35-23(3)(b). There is no requirement, however, for the employer to provide notice to the judgment debtor of such writ of garnishment. See *id.* at 11-35-23.

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

Mississippi meets the benchmark because the Mississippi Supreme Court has held that the constitutional prohibition on imprisonment for debt means that a court may not order incarceration for failure to make payments ordered in a judgment. In *re Nichols*, 749 So. 2d 68, 72 (Miss. 1999) (holding that creditors "are free to collect the judgment by execution, garnishment, or any other available means so long as it does not include imprisonment.")

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

Mississippi does not meet the benchmark because a person's failure to appear for a debtor's examination need not be willful to constitute contempt. If a person fails to appear for a debtor's examination, the court may hold the person in contempt, which is punishable by incarceration. Miss. R. Civ. P. 37(d); Miss. Code Ann. § 9-1-17.

19 - Provide Right to Counsel

Score: 0/5

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?

No

Mississippi does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See Miss. Code §§ 25-32-9(1); 95-3-19.

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

Mississippi does not meet this benchmark because it explicitly allows prosecutors to lend authority to private entities in "bad check" collection cases. Miss. Code. Ann. § 97-19-73; Fortenberry, Feb. 14, 1996, Miss. A.G. Op. #96-0020.

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

Mississippi 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 Miss. R. Civ. P. 37.

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

Mississippi does not meet the benchmark because the law provides that "to aid in the satisfaction of a judgment of more than One Hundred Dollars (\$ 100.00), the judgment creditor may examine the judgment debtor, his books, papers or documents...except that no single judgment creditor may cause a judgment debtor to submit to examination under this section more than once in a period of six (6) months." Miss. Code Ann. § 13-1-261(1).

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

Mississippi does not meet the benchmark because Mississippi state courts do not collect and publish statewide data on the number of consumer debt lawsuits nor the types of dispositions of consumer debt lawsuits. The Mississippi Supreme Court Annual Report - 2021 reports civil and criminal cases and dispositions in the respective counties and circuit courts. See Mississippi Supreme Court Annual Report - 2021. See <https://courts.ms.gov/research/reports/SCTAnnRep2021.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

Mississippi does not meet the benchmark because Mississippi state courts do not collect and publish statewide data on the number of consumer debt lawsuits nor the types of dispositions of consumer debt lawsuits. The Mississippi Supreme Court Annual Report - 2021 reports civil and criminal cases and dispositions in the respective counties and circuit courts. See Mississippi Supreme Court Annual Report - 2021. See <https://courts.ms.gov/research/reports/SCTAnnRep2021.pdf>.

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