

Top Recommendations for Reform in Missouri

Missouri's Score: 22/100

Missouri's National Rank: 23rd

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 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. Missouri, however, does not yet have these key pleading requirements in place.

How: Missouri 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. Missouri, however, does not yet have these key requirements in place.

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

How: Missouri 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 Missouri were to Implement these Recommendations?

These three recommendations, if adopted by the state, would substantially increase Missouri's score and ranking. For more on how Missouri can do better, see the complete findings below and visit NCAJ's <u>Consumer Debt Litigation</u> <u>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 Missouri

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

Missouri does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. Missouri does not meet sub-benchmark 1a because Missouri permits service by any person over 18 who is not a party. See Mo. Sup. Ct. R. 54.13(a). Missouri does not meet sub-benchmark 1b because the state does not require 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.

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

Missouri does not meet this benchmark because Missouri does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Mo. Sup. Ct. R. 54.02

II. Issue Area: Make it easier to respond to a lawsuit.

3 - Simplified Answer

5 - No Fee to 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

Missouri does not meet this benchmark because Missouri does not provide an 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

Missouri meets this benchmark because it does not require that pleadings be verified or notarized. See Mo. Sup. Ct. R. 55.03.

Score: 5/5

Does the state permit the filing of an Answer in consumer debt lawsuits without charging a filing fee?

Missouri meets the benchmark because no law requires a fee for filing answers. Mo. Ann. Stat. § 488.012 (West); 21.01 Amount of Costs, Fees, Miscellaneous Charges and Surcharges, Missouri Courts.

https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/e2aa3309ef5c449186256be20060c329/31f6aa3e2a2d1de986256c240071225b? OpenDocument#CostsFeesMisc

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

Missouri 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 Mo. Rev. Stat. Ann. § 509.050 (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

Missouri does not meet this benchmark or any of its sub-benchmarks. Missouri courts may grant default judgments pursuant to Missouri Rule of Civil Procedure 74.05 and Missouri Small Claims Rule 145.01. Although Rule 74.05 requires "proof of damages" prior to the entry of a default judgment, it does not impose any specific evidence that would satisfy any sub-benchmark. Thus, neither rule imposes any of the requirements in sub-benchmarks (a) to (c). In addition, there is also no Missouri 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

Missouri 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 Mo. Sup. Ct. R. 55.08 (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

Missouri 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, Missouri has the following limitations periods: • breach of written contract: 5-year (Mo. Rev. Stat. § 516.120) or 10-year (Mo. Rev. Stat. § 516.110) limitations period; • breach of oral contract: 5-year limitations period (Mo. Rev. Stat. § 516.120); • open account: 5-year limitations period (Mo. Rev. Stat. § 516.120); • account stated: 5-year limitations period (Mo. Rev. Stat. § 516.120); • unjust enrichment: 5-year limitations period (Mo. Rev. Stat. § 516.120); • conversion: 5-year limitations period (Mo. Rev. Stat. § 516.120); and • passing a bad check: must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first (Mo. Rev. Stat. § 400.3-118(c)).

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

Missouri does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run, when, for instance, a debtor makes a subsequent payment toward the debt, or explicitly acknowledges the debt in a writing. See, e.g., Mo. Rev Stat § 516.320 (2022); Crockett v. Polen, 225 S.W.3d 419, 420 (Mo. 2007) ("[Voluntary payment rendered after expiration of the statute of limitations demonstrates a debtor's acknowledgment of the outstanding debt and intent to renew the promise to pay, thereby taking the case out of the statute.").

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

Missouri does not meet the benchmark because it does not prohibit attorneys' fee shifting in consumer debt litigation. In Mayhall v. Berman, the Court noted that Missouri Law explicitly allows for attorneys' fees in credit collection actions. Mayhall v. Berman & Rabin, P.A., No. 4:13CV0175 AGF, 2014 WL 340215, at *8 (E.D. Mo. Jan. 30, 2014). Under Missouri statute, attorney's fees are permitted "to enforce a credit agreement," as long as they are under 15 percent of the outstanding credit balance and/or written into the credit agreement. Mo. Ann. Stat. § 408.092 (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

Missouri does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). With respect to prejudgment interest, the Missouri code states that, when no rate of interest is stated in the applicable contract, then a 9% annual interest rate shall apply. See Mo. Rev. Stat. § 408.020 (2022). It also states that parties may agree in writing to an annual interest rate up to 10% except that when the "market rate" (as defined under the statute) is greater than 10% on the date of such contract, then the parties may agree to the "market rate." Mo. Rev. Stat. § 408.030 (2022). The "market rate" for any "calendar quarter" is defined as "the monthly index of long term United States government bond yields for the second preceding calendar month prior to the beginning of the calendar quarter plus an additional three percentage points rounded off to the nearest tenth of one percent." Id. It defines a new "calendar quarter" as beginning on January 1, April 1, July 1, and October 1 of each year. Id. Thus, Missouri does not limit prejudgment interest to 7% or less (as is required to meet sub-benchmark (a)). With respect to post-judgment interest, the Missouri code states that, in nontort actions, the annual interest rate shall by 9% or, if it is higher, the interest rates set forth in the applicable contract. Mo. Rev. Stat. § 408.040(2) (2022). For tort actions, the interest shall be the "per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus five percent." Id. § 408.040(3) (2022). Thus, Missouri 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

Missouri meets the benchmark because the court must issue a fiere facias (writ of execution) for garnishment or attachment. Mo. Stat. $\S\S 521.560$; 525.020

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

Missouri 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 Mo. Rev. Stat. § 513.430.

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

Missouri does not meet the benchmark because none of the sub-benchmarks are met. Missouri law provides as follows: (a) Income: Missouri 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 a certain limited exception. Mo. Rev. Stat. § 525.030(2)(1) (exempting 90% of a person's weekly disposable earnings if the person is the head of the family and a resident of Missouri). 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: Missouri does not meet sub-benchmark (b) because a home, including the connected land, is exempt only up to a value of \$15,000 or \$5,000 if a person's primary residence is a mobile home, subject to a certain limited exception. Mo. Rev. Stat. §\$ 513.475, 513.430(6). (c) Car: Missouri does not meet sub-benchmark (c) because any cars are exempt only up to an aggregate value of \$3,000. Mo. Rev. Stat. § 513.430(5). 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

Missouri 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 Mo. Sup. Ct. R. 90.15. Note: the only instance in which personal service of a garnishment order on a judgment debtor is required prior to attachment is where the suit is not brought in (i) the county (or in certain cases city) where the defendant resides, or (ii) the county (or in certain cases, city) where the debt is contracted and the cause of action arose or accrued. See id. at § 525.290.

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

Missouri meets the benchmark because it permits courts to punish individuals for contempt only when "a judgment requires the performance of any other act than the payment of money." Mo. Rev. Stat. § 511.340.

18 - Prohibit Incarceration for Failure to Obey a Court Order to Appear at a Debtor's Examination, Unless Nonappearance Was Willful

Score: 5/5

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?

Yes

Missouri meets the benchmark because a person's failure to appear for a debtor's examination must be willful to constitute contempt. If a judgment debtor fails to appear for a debtor's examination, the court may hold that person in contempt. Mo. R. Civ. P. 76.27, 76.28. The law defines contempt as "willful disobedience of any process or order lawfully issued or made" by the court. Vernon's Ann. Mo. Stat. § 476.110.

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

Missouri does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See Mo. Rev. Stat. §§ 600.042(4); Mo. Rev. Stat. § 476.120.

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

Missouri does not meet this benchmark because there is no statutory or judicial prohibition on such relationships or financial arrangements between prosecutors and debt collectors. See Mo. Rev. Stat. § 570.120.

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

Missouri 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. In fact, judges in Missouri have issued arrest warrants that require the person to post bail at equal to or greater than the amount of the judgment owed, in cash. See, e.g, Petition, Case No. 12-50325, (Bankr. E.D. Mo. Oct. 25, 2012).

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

Missouri does not meet the benchmark because, when a judgment is returned unsatisfied, in whole or in part, the judgment creditor "may, at any time within five years after such return so made" be entitled to an order from the court requiring the judgment debtor to undergo "an examination under oath touching on his ability and means to satisfy said judgment." Mo. Rev. Stat. \$513.380

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

Missouri does not meet the benchmark because, although it collects and publishes data on "suit on account" cases, that category includes but is not limited to consumer debt cases. See Mo. Jud. Branch, Circuit Court, FY 2021 Circuit/Civil Domestic Relations Cases Filed and Disposed By Case Type, https://www.courts.mo.gov/file.jsp?id=185436 (last visited Jan. 31, 2024).

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

Missouri does not meet the benchmark because, although it collects and publishes data, including on "suit on account" cases, that category includes but is not limited to consumer debt cases. See Mo. Jud. Branch, Circuit Court, FY 2021 Circuit/Civil Domestic Relations Cases Filed and Disposed By Case Type, https://www.courts.mo.gov/file.jsp?id=185436 (last visited Jan. 31, 2024).

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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