

Consumer Debt Litigation Index

Top Recommendations for Reform in Montana

Montana's Score: 7/100

Montana's National Rank: 49th

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

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

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

How: Montana should make bank account exemptions self-executing. Further, the state should update and expand on garnishment and attachment provisions so that they also 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 and (b) 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 Montana were to Implement these Recommendations?

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

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

Montana does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, it does not meet sub-benchmark 1a because Montana permits service of process by any person over the age of 18 not a party to the action (Mont. R. Civ. P. 4(d)(2) or by mail (Mont. R. Civ. P. 4(d)(3)(A)). Montana does not meet sub-benchmark 1b because the state does not require the court to provide 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

Montana does not satisfy this benchmark because Montana does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Mont. R. Civ. P. 4(c).

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

Montana does not meet this benchmark because Montana does not provide an Answer form 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

Montana meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See Mont. R. Civ. P. 11(a). No such rule or statute applies to an Answer in a consumer debt litigation.

5 - No Fee to Answer

Score: 0/5

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

No

Montana does not meet the benchmark because defendants are charged fees for appearance. Mont. Code Ann. § 25-1-201 (West).

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

Montana 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 standing, or (c) an itemization of the amount sought. See M. R. Civ. P. 8(a).

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

Montana does not meet this benchmark or any of its sub-benchmarks. Montana courts may grant default judgments pursuant to Montana Rule of Civil Procedure 55 and this rule does not impose any of the requirements in sub-benchmarks (a) to (c). There is also no Montana 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

Montana does not meet this benchmark because the statutes and rules of Montana do not place the burden of pleading timeliness on the plaintiff and do not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date the claim accrued, or (c) the date that the statute of limitations expires. See M. R. Civ. P. 8(c)(1).

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

Montana 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, Montana has the following limitations periods: • breach of written contract: 8-year limitations period (Mont. Code § 27-2-202(1)); • breach of oral contract: 5-year limitations period (Mont. Code § 27-2-202(2)); • open account: 5-year limitations period (Mont. Code § 27-2-202(2)); • account stated: 5-year limitations period (Mont. Code § 27-2-202(2)); • unjust enrichment: 3-year limitations period (Mont. Code § 27-2-202(3)); • conversion: 2-year (Mont. Code § 27-2-207(2)) or 3-year (conversion of an instrument, Mont. Code § 30-3-122(7)) limitations period; and • passing a bad check: must be commenced within six years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first (Mont. Code § 27-1-717(6); Mont. Code § 30-3-122(3)).

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

Montana 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., Mont. Code § 27-2-409 (2022) (“An acknowledgment or the part payment of a debt is sufficient evidence to cause the relevant statute of limitations to begin running 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

Montana does not prohibit fee shifting in consumer debt cases, but tolerates it in the course of authorizing reciprocal fees if one side has contractual right to fees. Mont. Code Ann. § 28-3-704 (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

Montana does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). With respect to prejudgment interest, Montana law states that unless there is a contract in writing fixing a different rate, interest is payable on money at 10% per year after it becomes due. Mont. Code Ann. § 31-1-106 (2022). Furthermore, Montana law states that the maximum rate that parties can agree to in writing cannot exceed the greater of 15% or the amount that is six percentage points above the Federal Reserve's Prime Rate, but this limitation does not apply to regulated lenders. Mont. Code Ann. § 31-1-107 (2022). Thus, Montana does not limit prejudgment interest to 7% or less (as is required to meet sub-benchmark (a)). With respect to post-judgment interest, Montana law states that (i) interest payable on judgments accrues at a rate equal to the rate for bank prime loans published by the Federal Reserve plus 3% and (ii) interest on a judgment involving a contractual obligation must be paid at the rate specified in the contractual obligation. Mont. Code Ann. § 25-9-205 (2022). Thus, Montana 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

Montana meets the benchmark because the court must issue a writ of attachment or, in the case of garnishment, a writ of execution. Mont. Code Ann. §§ 27-18-205; 25-13-201; 25-13-301. In small claims court, execution on a judgment is governed by general Montana law. Mont. Code Ann. § 25-35-807.

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

Montana 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. Mont. Code Ann. § 25-13-610(2)(3) specifies the amount that may be exempted with respect to earnings for 45 days after receipt, if traceable.

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

Montana does not meet the benchmark because sub-benchmarks (a) (income) and (c) (car) are not met. Montana law provides as follows: (a) Income: Montana 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. Mont. Code Ann. § 25-13-614(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: Montana meets sub-benchmark (b) because a home, including the connected land, is exempt up to a value that is at least the median price of a home in the state. Mont. Code Ann. § 70-32-104. (c) Car: Montana does not meet sub-benchmark (c) because a person's interest in one car is exempt only up to a value of \$4,000. Mont. Code Ann. § 25-13-609(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: 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

Montana does not meet this benchmark because a judgment debtor is only entitled to notice within five (5) days following the seizure of their property. Additionally, even if notice was served prior to garnishment, Montana would not meet sub-benchmark (a) (potential exemptions) because it requires only that a judgment debtor be informed that there may be exemptions available without providing notice of potential exemptions; sub-benchmark (b) (how to challenge the order) because it does not explain how to challenge the order; or sub-benchmark (c) because it does require that the judgment debtor be notified of the procedure for asserting exemptions. See Mont. Code Ann. § 25-13-211 (West 2023).

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

Montana does not meet the benchmark because Montana law does not prohibit incarceration for failure to obey a court order to pay all or part of a debt judgment. Although the Montana Constitution generally prohibits imprisonment for debt, there is an exception for when a debtor refuses “to deliver up his estate for the benefit of his creditors.” Mont Const. art. 2, § 27. Moreover, Montana statutes provide for incarceration in cases of both civil and criminal contempt and do not have any prohibitions on incarceration for when the contempt is for failure to obey a court order to pay a debt judgment. Mont. Code Ann. § 3-1-501 (3) (2022); Mont. Code Ann § 3-1-520 (2022); Mont. Code Ann § 45-7-309(2) (2022). The Montana Supreme Court has also recognized that a judgment debtor in contempt for failure to pay a judgment can be incarcerated but has held it is a valid defense to the contempt if the judgment debtor lacks the monetary resources to pay the debt through no fault of his or her own, stating, “In our opinion inability to render obedience to such an order is a good defense to a charge of contempt for its violation, unless it appears that the person charged has voluntarily and contumaciously brought the disability upon himself.” State ex rel. McLean v. Mont. Second Jud. Dist. Ct., 37 Mont. 485, 97 P. 841 (1908).

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

Montana does not meet the benchmark because failure to appear at a debtor's examination need not be willful to constitute contempt. If a person fails to appear for a debtor's examination, the person may be held in contempt of court. Mont. Code Ann. § 25-14-101; Mont. R. Civ. P. 37. The state defines contempt as "disobedience of any lawful judgment, order, or process of the court," and such contempt is punishable by incarceration. Mont. Code Ann. §§ 3-1-501(e), 3-1-520.

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

Montana does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See Mont. Code Ann. §§ 47-1-104(4); MCA § 3-1-518(2).

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

Montana does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Mont. Code Ann. § 45-6-316.

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

Montana 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 Mont. Code Ann. §§ 3-1-514, 516.

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

Montana does not meet this benchmark because, when a judgment is unsatisfied, in whole or in part, "the judgment creditor, at any time after the return is made, is entitled to an order from a judge of the court requiring the judgment debtor to appear and answer concerning the judgment debtor's property before the judge or a referee appointed by the judge at a time and place specified in the order." Mont. Code Ann. § 25-14-101

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

Montana does not meet the benchmark because Montana courts do not collect or publish statewide data on number of consumer debt lawsuits or types of dispositions of consumer debt lawsuits. Montana state courts do not make consumer debt statistics available. In fact, the court generally does not publish statistics, but instead favors public access to trial court records. See Montana Judicial Branch, MONTANA PUBLIC ACCESS PORTAL(S) (last visited Mar. 31, 2023). See <https://courts.mt.gov/Courts/portals>.

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

Montana does not meet the benchmark because Montana courts do not collect or publish statewide data on number of consumer debt lawsuits or types of dispositions of consumer debt lawsuits. Montana state courts do not make consumer debt statistics available. In fact, the court generally does not publish statistics, but instead favors public access to trial court records. See Montana Judicial Branch, MONTANA PUBLIC ACCESS PORTAL(S) (last visited Mar. 31, 2023). See <https://courts.mt.gov/Courts/portals>.

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