

Top Recommendations for Reform in Nebraska

Nebraska's Score: 27/100

Nebraska's National Rank: 14th

Consumer debt lawsuits <u>dominate civil court dockets</u> across the country. In an overwhelming number of cases—<u>more than 70% in many places</u>—the people sued do not respond or defend themselves. As a result, courts often enter default judgments without determining whether the defendant even knows about it, it is timely, or has merit. In turn, people face high fees and interest, onerous payment plans, seizure of wages and possessions, and potential imprisonment. States across the country have established laws and practices aimed at reducing unjust lawsuits and producing fairer outcomes. To support states in their respective efforts, the National Center for Access to Justice in 2024 created the <u>Consumer Debt Litigation Index</u> in consultation with a panel of experts. The Index ranks the states on their progress in adopting 24 best policies ("benchmarks") for fairness. See our Top Recommendations and Complete Findings, below.

1. Establish Pleading Requirements (Benchmark 6)

Why: People facing debt collection lawsuits often have difficulty understanding the claim against them. Lax pleading requirements also invite illegitimate lawsuits. Requiring complaints to name the original creditor, demonstrate ownership of the debt, and 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. Nebraska, however, does not yet have these key pleading requirements in place.

How: Nebraska 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. Although Nebraska requires that for consumer debt actions filed in its County Courts (for small claims less than \$3,900 and civil claims under \$57,000) the original debt instrument must be filed with a motion for default judgment, the state does not require proof supporting validity of service or of the amounts sought in cases filed in the County Courts. Further, none of the benchmark protections are required for debt collection action in the Nebraska District Courts (for actions over \$57,000).

How: Nebraska should adopt a law or practice that requires plaintiffs in all 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. Nebraska, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

How: Nebraska 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 Nebraska were to Implement these Recommendations?

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

Complete Consumer Debt Litigation Index Findings for Nebraska

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

Nebraska does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. Nebraska does not meet sub-benchmark 1a because a summons must be served by a sheriff "[u]unless the plaintiff has elected certified mail service or designated delivery service." Neb. Rev. Stat. § 25-506.01. Furthermore, Nebraska's small claims rules allow the plaintiff to serve through a sheriff or certified mail (see Neb. J. Branch, Filing a Small Claims Case in Nebraska, available at https://supremecourt.nebraska.gov/self-help/small-claims-case

Nebraska#:~:text=The%20defendant%20must%20provide%20a,to%20the%20time%20of%20trial). Nebraska does not meet sub-benchmark 1b because it does not require the court to send a defendant supplemental notice of a new consumer debt lawsuit and deny default judgment where such 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

Nebraska does not meet this benchmark because Nebraska does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Neb. Ct. R. Pldg. § 6-1105; see also NEB. J.

BRANCH, Small Claims Form CC 4:1, available at https://supremecourt.nebraska.gov/sites/default/files/Ch6Art14App1.pdf.

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

Nebraska does not meet this benchmark because, although its court website includes certain forms, Nebraska does not provide an Answer form that can be used by consumer debt defendants. See Neb. J. Branch, Master Forms List, available at https://supremecourt.nebraska.gov/forms? title=answer&field_form_number_value=&field_form_type_tid=All&field_language_tid=All.

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

Nebraska meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See Neb. Ct. R. Pldg. § 6-1111. 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

Nebraska meets the benchmark because no law requires a fee for filing answers. Neb. Rev. Stat. Ann. § 33-106 (West); id. at § 25-2804.

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

Nebraska does not meet the benchmark because it does not have special pleading requirements for consumer debt complaints 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 NE R PLDG § 6-1108(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

Nebraska does not meet the benchmark or any sub-benchmarks. Nebraska District Courts (civil claims over \$57,000) may grant default judgments pursuant to Nebraska Court Rule 6-1508 and this rule does not impose any of the requirements in sub-benchmarks (a) to (c). There is also no Nebraska statute that separately imposes requirements regarding the entry of default judgments in District Courts. The Nebraska Court Rules separately address judgments in County Courts, which handle civil claims less than \$57,000 and small claims less than \$3,900. Nebraska Court Rule 6-1432 requires plaintiffs to attach the original debt instrument to their motion and affidavit for default judgement (satisfying sub-benchmark (b)). The District Courts do not have a similar requirement and documentation/proof of the debt instrument is at the discretion of the court. There is also no Nebraska statute that separately imposes requirements regarding the entry of default judgments in County Courts.

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

Nebraska does not meet this benchmark because the statutes and rules of Nebraska 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 that the claim accrued, or (c) the date that the statute of limitations expires. See NE R PLDG \S 6-1108(c).

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

Nebraska 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, Nebraska has the following limitations periods: • breach of written contract: 5-year limitations period (Neb. Code § 25-205); • breach of oral contract: 4-year limitations period (Neb. Code § 25-206); • open account: 4-year limitations period (Neb. Code § 25-206); • unjust enrichment: 4-year limitations period (Neb. Code § 25-212); •

conversion: 4-year (Neb. Code § 25-207) or 3-year (conversion of an instrument, Neb. U.C.C. § 3-118(g)) limitations period; 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 (Neb. U.C.C. § 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

Nebraska 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. See, e.g., Neb. Code § 25-216 (2022); Blair v. Willman Estate, 105 Neb. 735 (1921) (Voluntary part payment will toll statute of limitations, or will revive debt, if same is barred).

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

Nebraska does not meet the Benchmark because it does not prohibit attorneys' fee shifting in consumer debt cases. As a general matter, Nebraska follows the American Rule that "attorney fees may be recovered only when authorized by statute or when a recognized and accepted uniform course of procedure allows recovery of an attorney fee." Hage v. Gen. Serv. Bureau, 306 F. Supp. 2d 883, 888 (D. Neb. 2003). By statute, Nebraska permits plaintiff in lawsuits for \$4000 or less (including debt actions) to recover "reasonable" attorneys' fees. Neb. Rev. Stat. Ann. § 25-1801 (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

Nebraska does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Nebraska law states a judgment for prejudgment interest shall bear interest at the rate set forth in the contract or 12% if the contract is silent. Neb. Rev. Stat. § 45-104. Thus, Nebraska does not limit prejudgment interest on debt to 7% or less (as is required to meet sub-benchmark (a)). Regarding post-judgment interest, Nebraska 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. Neb. Rev. Stat. 45-103(2). If no interest was set forth in the contract, the post-judgment interest rate shall be 2% above the bond investment rate as published by the Secretary of Treasury of the United States. Neb. Rev. Stat. § 45-103. Thus, Nebraska 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

Nebraska meets the benchmark because it provides that a judge must approve an order of attachment and a clerk must issue a summons for garnishment. Neb. Rev. Stat. Ann. §§ 25-1002; 25-1003; 25-1056. In small claims court, prejudgment actions for attachment are prohibited. Neb. Rev. Stat. Ann. § 25-2804. Execution on a small claims judgment may be issued as in other cases in county court. Neb. Rev. Stat. Ann. § 25-2806.

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

Nebraska 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. Neb. Rev. Stat. Ann \S 25-1560 provides for an exemption for wages for 60 days from the start of the proceeding.

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

Nebraska does not meet the benchmark because none of the sub-benchmarks are met. Nebraska law provides as follows: (a) Income: Nebraska 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. Neb. Rev. Stat. Ann. § 25-1558 (exempting 85% of a person's weekly disposable earnings if the person is the head of the family). 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: Nebraska does not meet sub-benchmark (b) because a home, including its land of not more than 160 acres or 2 lots within a city or village, that is a person's residence is exempt only up to a value of \$60,000. Neb. Rev. Stat. Ann. § 40-101. (c) Car: Nebraska does not meet sub-benchmark (c) because a person's interest in one car is exempt only up to a value of \$5,000. Neb. Rev. Stat. Ann. § 25-1556 (as adjusted by the Department of Revenue every five years). 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/wpcontent/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

Nebraska does not meet this benchmark because a judgment debtor is only entitled to notice by mail at their last known address within seven business days following the issuance by the court of an order of garnishment. See Neb. Rev. Stat. Ann. §§ 25-1056, 25-1011 (LexisNexis 2023). If Nebraska provided its required notice prior to garnishment, it would satisfy the benchmark because its notice lists exemptions for wages and funds held at financial institutions (sub-benchmark (a)), and explains how to challenge the order, although not the underlying judgment, (sub-benchmark (b) and assert exemptions (sub-benchmark (c)). https://supremecourt.nebraska.gov/sites/default/files/CC-3-8B.pdf.

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

Nebraska meets the benchmark because it prohibits incarceration for contempt for failure to obey a court order to pay all or part of a debt judgment. Nebraska's constitution states: "No person shall be imprisoned for debt in any civil action on mesne or final process." Neb. Const. art. I, sec. 20 (1875). In Sickler v. Sickler, 293 Neb. 521, 534 (2016), the Nebraska Supreme Court held that the constitutional prohibition on imprisonment for debt "applies to money directly due under a contract, to judgment debt arising from contractual debts, to attempts to specifically enforce creditor-debtor agreements, and to damages for breach of any form of contractual obligation."

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

Nebraska meets the benchmark because it provides that "A judgment debtor shall not be committed to jail for failing to appear [for a debtor's examination] unless, after service of an order to appear and show cause as to why the judgment debtor should not be found in contempt for failing to appear, the judgment debtor is found to be in willful contempt." Neb. Rev. Stat. § 25-1565. Note, however, that if a judge finds before a debtor's examination that "there is danger of the debtor leaving the state or concealing himself to avoid the examination," the judge may preemptively issue a warrant for the person's arrest and order incarceration. Neb. Rev. Stat. Ann. § 25-1566.

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

Nebraska meets the benchmark because the Supreme Court has held that "an indigent litigant has a right to appointed counsel when, as a result of the litigation, he may be deprived of his physical liberty," including in civil and criminal contempt cases. Allen v. Sheriff of Lancaster Cty., 511 N.W.2d 125 (Neb. 1994).

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

Nebraska does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Neb. Rev. Stat. § 28-611.

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

Nebraska 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 Neb. Rev. Stat. Ann. § 25-1566.

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

Nebraska does not meet the benchmark because, after a judgment creditor receives execution against the property of the judgment debtor, the judge may require the debtor to appear at a specific time and place to answer questions regarding their property. The law does not limit the timing or frequency of such examinations. Neb. Rev. Stat. \S 25-1569.

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

Nebraska does not meet the benchmark because it does not collect and publish data on consumer debt lawsuits. Nebraska courts do publish annual reports, which include general information by court level, but

there are no statistics available that are precisely on point. NEBRASKA JUDICIAL BRANCH, ANNUAL REPORT JULY 1, 2021 - JUNE 30, 2022 (last visited May 2, 2023). See https://supremecourt.nebraska.gov/sites/default/files/AnnualReport2022.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

Nebraska does not meet the benchmark because it does not collect and publish data on consumer debt lawsuits. Nebraska courts do publish annual reports, which include general information by court level, but there are no statistics available that are precisely on point. NEBRASKA JUDICIAL BRANCH, ANNUAL REPORT JULY 1, 2021 - JUNE 30, 2022 (last visited May 2, 2023). See

https://supremecourt.nebraska.gov/sites/default/files/AnnualReport2022.pdf.

To learn more about the Consumer Debt Litigation Index, including how other states fared, visit https://ncaj.org/state-rankings/consumer-debt.

Download State Reports