

Top Recommendations for Reform in New Hampshire

New Hampshire's Score: 19/100

New Hampshire's National Rank: 27th

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. Although New Hampshire imposes these requirements for consumer debt cases filed in its small claims court, it does not yet have in place these key pleading requirements for cases filed in its Superior Court.

How: New Hampshire should adopt a law or practice that requires all consumer debt complaints, regardless of the court in which they are filed, 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. New Hampshire, however, does not yet have these key requirements in place.

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

How: New Hampshire 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 New Hampshire were to Implement these Recommendations?

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

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

New Hampshire 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 New Hampshire law permits personal service by any person over the age of eighteen years old who is not a party to the case. See N.H. Sup. Ct. Civ. R. 4(c). Second, New Hampshire does not meet sub-benchmark 1b because it does not require supplemental notice of a new consumer debt lawsuit be mailed to the defendant and require denial of 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

New Hampshire does not meet this benchmark because New Hampshire does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. NH Sup. Ct. Civ. R. 4(c).

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

3 - Simplified Answer

Score: 2/2

Does the state provide a simple Answer process by making available an Answer form for use by unrepresented persons in consumer debt lawsuits?

Yes

New Hampshire meets this benchmark because it provides a fillable Answer form that can be used by consumer debt defendants. See New Hampshire Judicial Branch, Civil Forms - Superior Court, https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-04/nhjb-2689-se.pdf.

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

New Hampshire meets this benchmark because it does not require pleadings to be verified or notarized. See NH Sup. Ct. Civ. R. 7(e). The fillable form answer available through the New Hampshire court website similarly does not include a verification or notarization section. See https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-04/nhjb-2689-se.pdf.

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

New Hampshire meets the benchmark because the fee schedule does not establish a filing fee for answers, but only sets forth fees for filing counterclaims in civil cases and small claims cases. Circuit Court Filing Fees, New Hampshire Judicial Branch. https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-06/filing_fees.pdf

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

New Hampshire does not meet the benchmark because, although it satisfies the benchmark requirements for cases filed in small claims court, it does not meet the benchmark requirements for cases filed in Superior Court. Specifically, New Hampshire requires that debt collection complaints in small claims court include (a) the name of the original creditor, (b) the basis of the plaintiff's claim, and (c) an itemization of the amount sought, see N.H. R. Dist. Ct. 4.1; Statement of Consumer Debt,

https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-05/nhjb-2875-de-statementofconsumerdebt.pdf. New Hampshire does not, however, require a consumer debt complaint in cases commenced in the Superior Court 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 N.H. Super. Ct. R. Civ. 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

New Hampshire does not meet this benchmark because it does not meet any of the sub-benchmarks (a) through (c). New Hampshire courts may enter a default judgment per N.H. R. Super. Ct. 42 without explicitly requiring the elements in the sub-benchmarks.

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

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

Score: 0/2

New Hampshire 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 N.H. Super. Ct. R. Civ. 9(d)(17) (establishing general pleading requirements).

9 - Four Year Statute of Limitations

Score: 5/5

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?

Yes

New Hampshire meets this benchmark because it imposes a 4-year (or shorter) statute of limitations for all consumer debt claims. In particular, New Hampshire has the following limitations periods: • breach of written contract: 3-year limitations period (N.H. Rev. Stat. Ann. § 508:4 (2022)); • breach of oral contract: 3-year limitations period (N.H. Rev. Stat. Ann. § 508:4 (2022)); • open account: 3-year limitations period (N.H. Rev. Stat. Ann. § 508:4 (2022)); • unjust enrichment: 3-year limitations period (N.H. Rev. Stat. Ann. § 508:4 (2022)); • unjust enrichment: 3-year limitations period (N.H. Rev. Stat. Ann. § 508:4 (2022); Schell v. Kent, No. 06-cv-425-JM, 2009 WL 948657, at *3 (D. N.H. Apr. 6, 2009)); • conversion: 3-year limitations period (N.H. Rev. Stat. Ann. § 508:4 (2022); Nastasi v. Brown, No. 2014-0671, 2015 WL 11071587 (N.H. July 23, 2015); and • passing a bad check: 3-years after dishonor of the draft or 10 years after the date of the draft, whichever expires first (N.H. Rev. Stat. Ann. § 382-A:3-118(c) (2022)).

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

New Hampshire does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run, including when a debtor makes a subsequent payment toward the debt, explicitly acknowledges the debt, or expresses a new promise to pay the full debt. See Stark v. Stinson, 23 N.H. 259, 261 (1851) ("In the case of a debt barred by the statute of limitations, partial payment is always evidence of a new promise to pay the balance."); Kittredge v. Brown, 9 N.H. 377, 379 (1838) ("It is well settled that a conditional, or limited promise of payment of a debt, barred by the statute of limitations, revives the claim no further than the actual extent of the promise."); Soper v. Purdy, 740 A.2d 1044, 1045-47 (N.H. 1999) (acknowledging the possibility of a debt's revival even after the relevant statute of limitations period had lapsed).

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

New Hampshire does not meet the benchmark because it does not prohibit attorneys' fee shifting. It does, however, provide for a reciprocal right to attorneys' fees for the prevailing defendant, requiring agreements between creditors and lenders to include a reciprocal fee shifting provision and taking discretion away from the court in awarding reciprocal fees. See N.H. Rev. Stat. § 361-C:2.

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

New Hampshire does not meet this benchmark because it does not satisfy the requirements of each of subbenchmark (a) and (b). Regarding prejudgment interest, New Hampshire law states that "the annual simple rate of interest on judgments, including prejudgment interest, shall be a rate determined by the state treasurer as the prevailing discount rate of interest on 26-week United States Treasury bills at the last auction thereof preceding the last day of September in each year, plus 2 percentage points, rounded to the nearest tenth of a percentage point. On or before the first day of December in each year, the state treasurer shall determine the rate and transmit it to the director of the administrative office of the courts. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year." For 2023, the rate was 5.8%. N.H. Rev. Stat. Ann. § 336:1(II). Regarding post-judgment interest, because New Hampshire law provides that it is the rate set by the state treasurer as noted above, New Hampshire does not meet this benchmark as it does not limit post-judgment to 5% or less. N.H. Rev. Stat. Ann. § 336:1(II).

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

New Hampshire meets the benchmark because, for post judgment garnishment or attachment, the creditor must first obtain a writ or order from the Court. N.H. Rev. Stat. Ann. §§ 511-A:4, 512:1, 512:3. Furthermore, in cases of garnishment, the plaintiff must get a new writ for every paycheck, as there is no continuous garnishment in New Hampshire. N.H. Rev. Stat. Ann. § 512:21; Trapper Brown Constr. Co. v. Electromech, Inc., 358 F. Supp. 105, 107 (D.N.H. 1973). Small claims court judgment execution is the same as district court procedure. N.H. Rev. Stat. Ann. § 503:12.

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

New Hampshire 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. N.H. Rev. Stat. Ann. § 512:21 provides that certain wages and funds in bank accounts are exempt.

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

New Hampshire does not meet the benchmark because none of the sub-benchmarks are met. New Hampshire law provides as follows: (a) Income: New Hampshire does not meet sub-benchmark (a) because it exempts 50 times the federal minimum hourly wage in effect when a person is paid. N.H. Rev. Stat. Ann. § 512:21(II). Fifty times the federal minimum wage (\$7.25 per hour in 2023) is only \$362.50. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), https://www.dol.gov/agencies/whd/minimum-wage/state. (b) Home: New Hampshire does not meet sub-benchmark (b) because a home, including the land on which the manufactured home sits if a person owns the land, is exempt only up to a value of \$120,000. N.H. Rev. Stat. Ann. § 480:1. (c) Car: New Hampshire does not meet sub-benchmark (c) because one car is exempt only up to a value of \$10,000. N.H. Rev. Stat. Ann. § 511:2(XVI). 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

New Hampshire does not meet this benchmark because even though the state does provide prior notice of garnishment to a judgment debtor (see N.H. Rev. Stat. Ann. §§ 512:3, 512:9-c (LexisNexis 2023), which requires simultaneous service on the judgment debtor and the trustee (property holder) who must then hold the

property for 30 days), it does not meet the benchmark because the state does not satisfy the sub-benchmarks. Specifically, the state does not provide the form of notice required to be sent to the judgment debtor and therefore does not meet sub-benchmark (a) requiring provision of a list of exemptions, or sub-benchmark (b) how challenge the order, or (c) how to assert exemptions. See N.H. Rev. Stat. Ann. §§ 512:3, 512:9-c (LexisNexis 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

New Hampshire does not meet the benchmark because a person may be incarcerated for failure to obey a court order to pay all or part of a debt. The law provides that if a person fails to make periodic payments on a judgment, as ordered by a court, the person may be held in contempt. N.H. Rev. Stat. § 524:6-a. The New Hampshire Supreme Court has held that a judgment debtor may be incarcerated for failure to make such periodic payments. Mason Furniture Corp. v. George, 116 N.H. 451, 362 A.2d 188 (N.H. 1976) (holding that "the commitment is ordered to secure a payment, not to punish the debtor for his failure to pay previous installments...The court may but need not require payment of the full amount which is overdue as the condition of release.")

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

New Hampshire does not meet the benchmark because it provides that when a judgment debtor fails to obey a discovery order, including an order to appear at a debtor's examination, the court may hold the person in contempt and "commitment may be made thereon. Parties may be arrested upon order of court and required to give bonds for appearance and to abide the order of court in any case where it shall be deemed necessary." N.H. Super. Ct. R. Rule 52.

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

New Hampshire does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See N.H. Rev. Stat. \S 604-B:2; Super. Ct. R. 52. The New Hampshire Supreme Court has held that whether there is a right to counsel in a contempt proceeding must be decided on a case-bycase basis. Duval v. Duval, 322 A.2d 1, 2 (N.H. 1974).

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

New Hampshire does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See N.H. Rev. Stat. Ann. § 638:4.

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

New Hampshire 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 N.H. Super. Ct. R. Rule 52. Further, New Hampshire state statutes explicitly permit the jailing of debtors for failure to make periodic payments under a previously issued court order. See, e.g., Mason Furniture Corp. v. George, 362 A.2d 188 (N.H. 1976).

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

New Hampshire does not meet the benchmark because a judgment debtor may be required to "appear at a time and date named [in the notice of hearing] and to submit to an examination relative to the judgment debtor's property and ability to pay the judgment." The law does not limit the frequency of such examinations. N.H. R. Cir. Ct. Dist. Div. 1.21

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

New Hampshire does not meet the benchmark because New Hampshire courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. Note: New Hampshire publishes annual reports which include the number of filed civil and small

claims cases, but the annual reports do not provide specific data on consumer debt collection lawsuits. Data & Reports, N.H. Jud. Branch, https://www.courts.nh.gov/media/data-reports (last visited Nov. 4, 2023).

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

New Hampshire does not meet the benchmark because New Hampshire courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. Note: New Hampshire publishes annual reports which include the number of filed civil and small claims cases, but the annual reports do not provide specific data on consumer debt collection lawsuits. Data & Reports, N.H. Jud. Branch, https://www.courts.nh.gov/media/data-reports (last visited Nov. 4, 2023).

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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