

Top Recommendations for Reform in New York

New York's Score: 46/100

New York's National Rank: 2nd

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. Require Court Order to Garnish or Attach (Benchmark 13)

Why: Imposing court supervision on the garnishment and attachment process by requiring that a judge or court clerk sign off on the requested garnishment or attachment provides a check against plaintiffs issuing their own garnishment or attachment orders. Forty-four states have such a requirement, but New York allows a judgment creditor's attorney to issue an execution against wages directly to a sheriff, who carries out the order.

How: New York should adopt a law requiring a court order for garnishment or attachment. If it does so, the state's score would increase 5 points.

2. Establish Essential Garnishment and Attachment Exemptions (Benchmark 15)

Why: Garnishment and attachment exemptions are essential to ensure that debtors can maintain a very basic standard of living and the ability to work. Arizona and Texas have both adopted exemptions that prevent people from becoming impoverished, unhoused, or unable to work by

exempting from garnishment at least: (a) \$576.92 per week in income, 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 at up to \$15,000. New York, however, does not meet any of these basic exemption levels.

How: New York should update its garnishment exemption laws to exempt at least: (a) \$576.92 per week in income, 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 at up to \$15,000. If it does so, the state's score would increase 5 points.

3. Limit the Frequency of Debtor's Examinations (Benchmark 22)

Why: Often, judgment creditors require defendants to go to court frequently (as often as monthly) to undergo financial examinations intended to establish whether and how much the person can pay. Not only is attendance at these hearings burdensome, requiring time off from work, child care arrangements, costly transportation, etc., but they also can result in undue pressure on the judgment debtor to settle or agree to make payments the debtor cannot afford, and sometimes the possibility of incarceration if a defendant misses a court date. To limit these harms, Maryland limits debtor's examinations to no more than once per year unless the judgment creditor can show good cause for another examination within that time. Illinois does not allow any second or subsequent debtor's examinations unless the court finds, based on affidavits, that there is reason to believe that the judgment debtor has income or assets to which the judgment creditor is entitled — and that the hearing is not for the purpose of harassing the judgment debtor. New York, however, does not limit the frequency of such examinations.

How: The state should adopt a law limiting the frequency of debtor's examinations to no more than once per year unless the judgment creditor can show good cause for another examination within that time. If it does so, the state's score will increase 5 points.

What Would Happen if New York were to Implement these Recommendations?

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

I. Issue Area: Help people know when they are being sued and where to find help.

1 - Government Notice of Lawsuits

Score: 5/5

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?

Yes

New York meets this benchmark because it satisfies sub-benchmark 1b. Specifically, New York meets sub-benchmark 1b because it requires the court clerk to send to the defendant, by first class mail, an additional notice of a lawsuit arising out of a consumer credit transaction, and provides that default judgment will not be entered if the notice is returned as undeliverable. N.Y. C.P.L.R. 306-d. New York does not meet sub-benchmark 1a because service may be made by any person who is eighteen (18) years of age or older and is not a party to the action, N.Y. C.P.L.R. 2103.

2 - Guidance on Finding Help

Score: 5/5

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?

Yes

New York meets this benchmark because it requires that supplemental notice in a consumer debt lawsuit must include information about obtaining legal aid through the LawHelpNY or court's website. N.Y. C.P.L.R. 306-d. ("Sources of information and assistance: The court encourages you to inform yourself about your options as a defendant in this lawsuit. In addition to seeking assistance from a private attorney or legal aid office, there are free legal assistance computer programs that you can use online to help you represent yourself in this lawsuit. For further information, or to locate a legal aid program near you, you may visit the LawHelpNY website or the New York state court system website, which has information for representing yourself and links to other resources at: [court's website]").

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 York meets this benchmark because it provides an Answer form specifically for use by consumer debt defendants. See https://www.nycourts.gov/LegacyPDFS/rules/CCR/forms/Consumer-Credit-Answer.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 York meets this benchmark because, effective January 1, 2024, it no longer requires that verified pleadings be notarized. See N.Y. C.P.L.R. 2106 (Consol. 2024) (allowing any person in a civil case to file sworn documents without notarization); S5162/A5772.

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 York meets the benchmark because the state court filing fee table does not indicate a fee required to file an answer in any civil court. See N.Y. Uniform Dist. Ct. Act § 1911 (McKinney) (2023); Filing Fees, New York State Unified Court System, (setting forth fees required to file a claim but not to file an answer); Court Fees in the New York City Civil Court, New York State Unified Court System (setting forth filing fees for civil cases including fees to file a claim or counterclaim but not to file an answer).

https://www.nycourts.gov/forms/filingfees.shtml#6 https://www.nycourts.gov/courts/nyc/civil/fees.shtml

III. Issue Area: Require the creditor to provide evidence of a valid debt claim.

6 - Pleading Requirement

Score: 10/10

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?

Yes

New York meets the benchmark because it requires complaints in consumer debt claims to include (a) the name of the original creditor, (b) the basis of plaintiff's standing, and (c) an itemization of the amount sought. See N.Y. C.P.L.R. 3016(j), as amended by New York S.B. 153, 2021–2022 Reg. Sess. (Jan. 6, 2021) (codifying New York's 2022 updated provisions concerning consumer credit transactions).

7 - Authenticated Records for Default

Score: 10/10

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?

Yes

New York meets this benchmark because it meets sub-benchmarks (a) through (c). New York courts require specified affidavits when a collector seeks a default judgment in a consumer debt lawsuit; this rule applies both to original creditors and debt buyers in the New York State Supreme Court, New York City Civil Court, city courts outside of the city of New York, and district courts within New York. Under N.Y. Admin. Rules of the United Ct. Sys. & Unif. Rules of the Trial Courts §§ 202.27-a, 202.27-b, 208.14-a, 210.14, 210.14-a, 212.14-a, and 212.14-b, any creditor or debt buyer seeking a default judgment must submit an affirmation of non-expiration of the statute of

limitations. That affirmation must indicate the date the action accrued, the state where the action accrued, and the number of years of the applicable statute of limitations. Additionally, the plaintiff must file a notice of consumer credit action in English and Spanish for the court clerk to send to the consumer. In seeking a default judgment, original creditors must also submit an affidavit of facts from someone with personal knowledge of the business records that describes the debt, itemizes the charge-off balance, post-charge-off interest, and post-charge-off fees and charges. The original creditor must also attach the credit agreement. When the action is based upon an account statement, a copy of that account statement must also be attached. A debt buyer must produce all information that the original creditor is required to produce plus additional information: an affidavit of facts and purchase of account by the debt buyer; an affidavit from the original creditor of facts and sale of account by the original creditor; and, if applicable, an affidavit from the debt seller for each transfer of the account prior to the account being transferred to the debt buyer seeking the default judgment. The affidavits must include detailed information and attach the actual assignment. Pursuant to N.Y. C.P.L.R. 3213 (McKinney), as amended by New York S.B. 153, 2021–2022 Reg. Sess. (Jan. 6, 2021), as of May 6, 2022, the provision of a chain of title of the debt is added as a requirement for debt buyers when making an application for default judgment. Pursuant to N.Y. C.P.L.R. 306-d (McKinney), as amended by New York S.B. 153, 2021-2022 Reg. Sess. (Jan. 6, 2021), as of May 6, 2022, creditors must also provide the court clerk with a stamped, unsealed envelope addressed to the consumer containing extensive information in English and Spanish about the implications of being sued. The clerk then mails that envelope. No default judgment based on the consumer's failure to answer shall be entered if this requirement is not met or if the notice is returned to the court as undeliverable. Under N.Y. C.P.L.R. 3212(j) (McKinney), as amended by New York S.B. 153, 2021-2022 Reg. Sess. (Jan. 6, 2021), also as of May 6, 2022, a similar requirement of mailing consumer rights information is added where a creditor seeks a summary judgment. Failure to comply with the additional notice will, likewise, prevent issuance of a summary judgment. Thus, New York meets all sub-benchmarks (a) through (c).

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

New York does not meet the benchmark because it does not require a consumer debt Plaintiff to allege (a) the applicable statute of limitations, (b) the date the claim accrued, or (c) the date the statute of limitations expires. See N.Y. C.P.L.R. 3016(j), as amended by New York S.B. 153, 2021–2022 Reg. Sess. (Jan. 6, 2021) (codifying New York's 2022 updated provisions concerning consumer credit transactions).

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

New York 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, New York has the following limitations periods: • breach of written contract: 6-year limitations period (N.Y. C.P.L.R. § 213(2)); • breach of oral contract: 6-year limitations period (N.Y. C.P.L.R. § 214-i); • account stated: 6-year

limitations period (N.Y. C.P.L.R. § 213(2)); • unjust enrichment: 6-years for an express or implied contract (N.Y. C.P.L.R. § 213(1)-(2); see Elliott v. Qwest Commc'ns Corp., 808 N.Y.S.2d 443, 445 (3d Dep't 2006)(applying the six year statute of limitations to an unjust enrichment claim); and • conversion: 3-year limitations period (N.Y. C.P.L.R. § 214(3)).

10 - Prohibit Revival of Time-Barred Claims

Score: 2/2

Does the state prohibit revival of time-barred consumer debt claims, even where defendant makes subsequent payment toward a debt?

Yes

New York meets this Benchmark because, once the statute of limitations has run on a consumer debt claim, New York does not permit renewal or revival of certain expired claims related to "consumer credit transactions," even by subsequent payment toward debt. N.Y. Civil Practice Law & Rules § 214-i states: "An action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant must be commenced within three years. . . . Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period."

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 York does not meet the benchmark because the state does not prohibit fee shifting. Rather, it acknowledges fee shifting in state law that authorizes reciprocal right to attorneys' fees for the prevailing defendant in consumer contract actions. See N.Y. Gen. Oblig. Law § 5-327.

12 - Interest Caps Score: 3/3

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?

Yes

New York meets this benchmark because it satisfies the requirements of sub-benchmarks (a) and (b). New York law does not distinguish between prejudgment and post-judgment interest. Regarding both prejudgment and post-judgment interest, the relevant statute sets a maximum annual interest rate of 2% for any action arising out of a consumer debt where a natural person is a defendant (N.Y. C.P.L.R. § 5004). Thus, New York law does meet this benchmark.

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: 0/5

Does the state in consumer debt lawsuits require a court order for garnishment and attachment?

No

New York does not meet the benchmark because an execution against wages can be issued directly from the judgment creditor's attorney, as an officer of the court, to a sheriff, directing the sheriff to satisfy the judgment out of the real and personal property of the judgment debtor. N.Y. C.P.L.R. § 5230.

14 - Bank Account Garnishment Exemptions Are Self Executing

Score: 2/2

Does state law require in consumer debt lawsuits that garnishment exemptions for bank accounts are self-executing?

Yes

New York meets the benchmark because it provides that "if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments...were made to the judgment debtor's account during the forty-five day period preceding the date that the restraining notice was served on the banking institution, then the banking institution shall not restrain two thousand five hundred dollars in the judgment debtor's account. If the account contains an amount equal to or less than two thousand five hundred dollars, the account shall not be restrained and the restraining notice shall be deemed void." N.Y. C.P.L.R. § 5222(h). Financial institutions must also protect an amount equal to 240 times the state or federal minimum wage, whichever is higher. N.Y. C.P.L.R. § 5222(i).

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 York does not meet the benchmark because none of the sub-benchmarks are met. New York law provides as follows: (a) Income: New York does not meet sub-benchmark (a) because it exempts 75% of a person's weekly disposable earnings or 30 times the federal or state minimum hourly wage, whichever is more, if the person earns more than 30 times the federal minimum hourly wage in effect when the person is paid each week. N.Y. C.P.L.R. Law § 5231(b). If a person does not earn more than 30 times the federal or state minimum hourly wage in effect when the person is paid each week, New York exempts 100% of a person's weekly pay. NY CPLR § 5231(b). Thirty times the state minimum wage (\$14.20 in 2023) is only \$426. 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 York does not meet sub-benchmark (b) because it exempts a home that is a person's principal residence, including the land on which the home sits, only up to a value ranging from \$75,000 to \$150,000, depending on the county in which the home is located. N.Y. C.P.L.R. Law § 5206(a). (c) Car: New York does not meet sub-benchmark (c) because one car is exempt only up to a value of \$4,000. N.Y. C.P.L.R. Law § 5205(a)(8) (exempting up to a value of \$10,000 if the car is equipped for use by a person who is disabled). 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 York does not meet this benchmark because, in non-wage garnishment, the notice it requires be provided to the judgment debtor does not explain how to challenge the order, and thus does not meet sub-benchmark (b). New York otherwise would meet the benchmark because it requires prior notice to the judgment debtor of both wage and non-wage garnishment before amounts are paid to the judgment creditor, and that notice satisfies the sub-benchmark requirements other than sub-benchmark (b) for non-wage garnishment. Wage garnishment in New York is handled by the sheriff, who provides a copy of the garnishment order (known in New York as an income execution) to the judgment debtor prior to service on the employer, with instructions that unless the judgment debtor commences making installment payments on the debt, the income execution will be served on the employer (or other person making payments to the debtor). The required notice explains the exemptions in detail, and explains that, in addition to consulting an attorney or legal aid, New York provides "two procedures through which an income execution can be challenged: CPLR § 5231(i) [for modifying an order] and CPLR § 5240 [explaining that]... at any time, the judgment debtor may make a motion to the court for an order denying, limiting, conditioning, regulating, extending or modifying... an income execution." See N.Y. C.P.L.R. 5231(d), (e), (g) (McKinney 2023). Although these notice provisions are complex and potentially confusing, they do meet subbenchmark (a) (list of exemptions); sub-benchmark (b) (how to challenge the order); and, sub-benchmark (c) how to assert exemptions. For non-wage garnishment, New York requires that the debtor be provided notice that their funds have been restrained, but before the funds are turned over to the creditor. The notice satisfies subbenchmarks (a) and (c) because it sets forth the available exemptions in detail and how to assert them, but does not meet sub-benchmark (b) because it does not require that the notice to the judgment debtor indicate the manner in which to challenge the order of garnishment. See id. at 5222-A(b)(4).

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 York does not meet the benchmark because it provides that a court may hold someone in contempt, punishable by imprisonment, for "the non-payment of a sum of money, ordered or adjudged by the court to be paid." N.Y. Jud. § 753. Furthermore, when a judgment debtor is about to leave the state and has property of value with him, a court may issue a warrant for the person's arrest. N.Y. C.P.L.R. § 5250.

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 York does not meet the benchmark because failure to appear at a debtor's examination need not be willful to constitute contempt, which is punishable by incarceration. If a judgment debtor fails to appear for a debtor's examination, the court may hold them in contempt and may issue a warrant directing the sheriff to arrest the person and bring them to court. N.Y. C.P.L.R. § 2308. A court may hold a person in civil contempt, punishable by imprisonment, for failing to attend a hearing after receiving a subpoenaed. N.Y. Jud. § 753. See also N.Y. C.P.L.R. § 5250.

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 York does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See N.Y. County Law § 717(1); N.Y. Judiciary Law § 753(3).

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 York 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.Y. Penal Law §§ 190.05; 190.50; N.Y. Tax Law § 30; N.Y. Gen. Bus. Law § 602.

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 York 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.Y. C.P.L.R. §§ 2308(a); 5250.

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 York does not meet the benchmark because, at any time, the judge may "order the examination of witnesses and the production of any books and papers by any party or witness," which "may be used in

evidence by any creditor or assignee in any action or proceeding then pending, or which may hereafter be instituted." The law does not limit the frequency of such examinations. N.Y. Debt & Cred. L. § 16.

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 York does not meet the benchmark because New York courts do not collect and publish statewide data on the number of consumer debt lawsuits nor the dispositions of consumer debt lawsuits. New York's Annual Reports of the Chief Administrator categorize cases as civil and criminal with no distinction for consumer debt lawsuits. See NY Courts, ANNUAL REPORTS OF THE CHIEF ADMINISTRATOR. See https://ww2.nycourts.gov/reports/annual/index.shtml.

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 York does not meet the benchmark because New York courts do not collect and publish statewide data on the number of consumer debt lawsuits nor the dispositions of consumer debt lawsuits. New York's Annual Reports of the Chief Administrator categorize cases as civil and criminal with no distinction for consumer debt lawsuits. See NY Courts, ANNUAL REPORTS OF THE CHIEF ADMINISTRATOR. See https://ww2.nycourts.gov/reports/annual/index.shtml.

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