

Consumer Debt Litigation Index

Top Recommendations for Reform in North Dakota

North Dakota's Score: 19/100

North Dakota's National Rank: 27th

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

How: North Dakota 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 North Dakota requires some evidence supporting the amount of a default judgment in its courts of general jurisdiction, it does not

require such proof in small claims court. Further, it does not require proof of valid service or of the validity of the debt in any court.

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

How: North Dakota 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 North Dakota were to Implement these Recommendations?

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

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

No

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?

North Dakota does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, sub-benchmark 1a is not met because personal service is permitted within the state by any person of legal age who is not a party to nor interested in the action. See N.D. R. Civ. P. 4(d)(1)(A). Second, North Dakota does not meet sub-benchmark 1b because it does not require supplemental notice of a new consumer debt lawsuit to be mailed to the defendant and that default judgment be denied if 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

North Dakota does not meet this benchmark because North Dakota does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See N.D. Civ. P. 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?

North Dakota meets this benchmark because it provides Answer forms that can be used by consumer debt defendants in both District Court and Small Claims Court. See

<https://www.ndcourts.gov/Media/Default/Legal%20Resources/Legal%20Self%20Help/Civil%20Action/Answer%20Civil%20Action%20Fillable.pdf>,

<https://www.ndcourts.gov/Media/Default/Legal%20Resources/Legal%20Self%20Help/Civil%20Action/Answer%20Civil%20Action%20Fillable.pdf>,

<https://www.ndcourts.gov/Media/Default/Legal%20Resources/Legal%20Self%20Help/Small%20Claims/Form4.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

North Dakota meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See N.D. 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

North Dakota does not meet the benchmark because a filing fee of \$50 is required to file an answer to a civil claim that is not a small claim. N.D. Cent. Code Ann. § 27-05.2-03(1)(b) (West) (2023) ("For filing an answer to a case that is not a small claims action, fifty dollars.").

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

North Dakota 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 claim, or (c) an itemization of the amount sought. See N.D. 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

North Dakota does not meet this benchmark because it does not meet sub-benchmarks (a) or (c). Pursuant to Rule 55 of North Dakota's Rules of Civil Procedure, if the plaintiff's claim against the defendant is for a sum certain or sum that can be made certain by computation based on a declaration of the amount due and on production of the contract in which the claim is based, the court may direct the entry of judgment for the amount due plus costs and disbursements. In all other cases, the court, before directing the entry of judgment, must require necessary proof so it may determine and grant relief to the plaintiff. To this end, the court may hear evidence and assess damages, direct a reference for an accounting or taking testimony for a determination of the facts, or submit any issue of fact to a jury. North Dakota's small claims courts do not have any relevant rules to this benchmark beyond the fact that if a defendant does not respond to a small claims proceeding within 20 days, default judgment may be entered against the defendant. Thus, North Dakota meets sub-benchmark (b). However, North Dakota does not meet the benchmark because it does not meet the requirements of sub-benchmarks (a) or (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

North Dakota does not meet this benchmark because the statutes and rules of North Dakota 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. N.D. R. Civ. P. 8(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

North Dakota 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, North Dakota has the following limitations periods: • breach of written contract: 6-year limitations period (N.D.C.C. § 28-01-16(1) (2022)); • breach of oral contract: 6-year limitations period (N.D.C.C. § 28-01-16(1) (2022)); • open account: 6-year limitations period (N.D.C.C. § 28-01-16(1) (2022); see also *Kadrmas, Lee & Jackson, P.C. v. Bolken*, 508 N.W.2d 341, 343 (N.D. 1993)); • account stated ("an action for any article charged on an account in a store"): 6-year limitations period (N.D.C.C. § 28-01-16(1) (2022); see also *Kadrmas, Lee & Jackson, P.C. v. Bolken*, 508 N.W.2d 341, 343 (N.D. 1993)); • unjust enrichment: 3-year

limitations period (N.D.C.C. § 41-03-18(7) (2022)); • conversion: 3-year limitations period (N.D.C.C. § 41-03-18(7) (2022)); and • passing a bad check: 3-year limitations period after dishonor of the draft or 10-year period after date of the draft, whichever expires first (N.D.C.C. § 41-03-18(3) (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

North Dakota 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 acknowledges the debt in writing, makes a subsequent payment toward the debt, or expresses a new promise in writing to pay the debt. See *Regan Farmers Union Co-op. v. Hinkel*, 437 N.W.2d 845, 847 (N.D. 1989) (" [W]here a debtor signs a note indicating he owes a certain amount on a past debt, the debtor waives any statute-of-limitations defense he may have had prior to signing the note, and the statute of limitations begins to run anew from the date he signs the renewal note."); *Kadrmas, Lee & Jackson, P.C. v. Bolken*, 508 N.W.2d 341, 345 (N.D. 1993) (holding that acknowledgment of the debt, including by partial payment, precludes the debtor from raising a statute of limitations defense based on the original due date). An acknowledgment must include acknowledgement that the debt still exists and will be paid. See *Pear v. Grand Forks Motel Associates*, 553 N.W.2d 774, 782 (N.D. 1996).

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

North Dakota does not meet the benchmark because it statutorily authorizes attorneys' fee shifting in civil cases. Note: The state also does not provide a reciprocal right to attorneys' fees for a prevailing defendant where petitioner has a contractual right to attorneys' fees. See N.D. Cent. Code § 28-26-01.

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

North Dakota does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, North Dakota law states that interest for any legal indebtedness must be at the rate of 6% per year unless a different rate is provided in the agreement, which is not to exceed the state's maximum contract rate. While the maximum prejudgment rate without a contract is 6%, this rate only applies if there is no other contractual provision. Thus, North Dakota does not limit prejudgment interest for debtors, regardless of any contractual provision, at an annual rate of 7% or less, in contrast with sub-benchmark (a). Regarding post-judgment interest, North Dakota law states: "Interest is payable on judgments entered in the courts of this state at the same rate as is provided in the original instrument, upon which the maximum judgment is based, which rate may not exceed the state's maximum contract rate." N.D. Cent. Code § 28-20-34. North Dakota's maximum contract rate is as follows: "[A] person, either directly or indirectly, may not take or receive, or agree to take or receive, in money, goods or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action that five and one-half percent per annum higher than the current cost of money as reflected by the average rate of interest payable on United States treasury bills maturing in six months in effect for North Dakota for the six months immediately preceding the month in which the transaction occurs . . . but that in any event the maximum allowable interest rate ceiling may not be less than seventh percent." N.D. Cent. Code § 47-14-09. Thus, North Dakota does not meet sub-benchmark (b) because it does not limit post-judgment interest to five percent or less.

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

North Dakota meets the benchmark because garnishment and attachment require an execution issued by the court clerk. N.D. Stat. §§ 28-21-06; 28-21-04.2.

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

North Dakota 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.D. Cent. Code § 28-22-03.1(1) specifies that people may choose to exempt up to \$10,000 in lieu of the homestead exemptions.

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

North Dakota does not meet this benchmark because none of the sub-benchmarks are met. North Dakota law provides as follows: (a) Income: North Dakota does not meet sub-benchmark (a) because it exempts 75% of a person's weekly disposable earnings or 40 times the federal minimum hourly wage in effect when the person is paid, whichever is more, in addition to \$20 per dependent family member who resides with the person. N.D. Cent. Code Ann. § 32-09.1-03 (West 2023). Forty times the federal minimum wage (\$7.25 per hour in 2023) is only \$290. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), <https://www.dol.gov/agencies/whd/minimum-wage/state>. (b) Home: North Dakota does not meet sub-benchmark (b) because a home is exempt only up to a value of \$150,000. N.D. Cent. Code Ann. § 47-18-01 (West 2023). (c) Car: North Dakota does not meet sub-benchmark (c) because one car is exempt only up to a value of \$10,000 subject to a certain limited exception. Id. at § 28-22-03.1(2) (increased exemption if car has been modified above a certain cost for the car's owner who has a permanent physical disability). 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

North Dakota does not meet this benchmark with respect to wage garnishment because, although it requires advanced notice of wage garnishment, that notice does not meet the sub-benchmarks. Specifically, notice to the judgment debtor (a) is not required to provide a full list of exemptions, (b) does not provide the manner in which to contest the order and (c) does not provide the manner in which to assert exemptions. See N.D. Cent. Code Ann. § 32-90.1-04(1) (West 2023). North Dakota also does not satisfy the benchmark with respect to non-wage garnishment because notice of the garnishment is only required to be sent to the judgment debtor within ten days after service upon the garnishee. See id. at § 32-90.1-08(3). Additionally, even if served in advance, the state would not meet sub-benchmark (a) because the notice is not required to provide a list of potential exemptions; sub-benchmark (b) because the notice does not provide the manner in which to contest the order, or sub-benchmark (c) because the notice does not

provide the manner in which to assert exemptions. See *id.* at § 32-90.1-07; <https://casetext.com/statute/north-dakota-century-code/title-32-judicial-remedies/chapter-32-091-garnishment/section-32-091-07-form-of-summons-and-notice>.

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**

North Dakota does not meet the benchmark because the law provides that a court may hold a person in contempt for "intentional nonpayment of a sum of money ordered by the court to be paid." N.D. Cent. Code Ann. § 27-10-01.1(b).

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**

North Dakota meets the benchmark because a person's failure to appear at a debtor's examination must be "intentional" to be considered contempt. N.D. Cent. Code Ann. § 27-10-01.1(d).

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**

North Dakota meets the benchmark because the Supreme Court has held that "indigent defendants in civil contempt proceedings should be granted counsel at state expense when, if they lose, they will likely be deprived of their physical liberty." *Peters-Riemers v. Riemers*, 663 N.W.2d 657 (N.D. 2003) (quoting *State ex rel. Gullickson v. Gruchalla*, 467 N.W.2d 451, 453 (N.D.1991)).

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**

North Dakota 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.D. Cent. Code, § 6-08-16.

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**

North Dakota 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.D. Cent. Code Ann. §§ 28-25-05; 27-10-01.1(d).

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

North Dakota does not meet this benchmark because, when there is a judgment for more than \$25, the court "may require the judgment debtor to appear and answer concerning the judgment debtor's property" if the judgment has been returned unsatisfied in whole or in part, or "it is made to appear to the court that the judgment debtor has property which the judgment debtor unjustly refuses to apply to the satisfaction of the execution." The law does not limit the frequency of such examinations. N.D. Cent. Code § 28-25-01.

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

North Dakota does not meet the benchmark because North Dakota state courts do not collect or publish the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. Note: North Dakota state courts offer a helpful checklist for individuals who have been served a debt collection summons / complaint. North Dakota Supreme Court, Checklist for Answering a Debt Collection Summons and Complaint (last visited Apr. 2, 2023). See <https://www.ndcourts.gov/Media/Default/legal-resources/legal-self-help/civil-action/Answering%20a%20Debt%20Collection%20Civil%20SC%20Checklist.pdf>.

24 - Data Collection: Disposition of Lawsuits**Score: 0/2**

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