

Top Recommendations for Reform in Ohio

Ohio's Score: 20/100

Ohio's National Rank: 26th

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

How: Ohio should adopt a law or practice that requires plaintiffs in consumer debt cases to allege: (a) the name of the original creditor; (b) the plaintiff's standing (e.g. the chain of ownership of the debt); and (c) 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. Ohio, however, does not yet have these key requirements in place.

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

How: Ohio 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 Ohio were to Implement these Recommendations?

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

<u>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 Ohio

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

Ohio does not meet this benchmark. In Ohio, all requests for service must be made to the clerk of court, who may deliver the complaint to any person "designated by court order to serve civil process." Ohio Civ. R. 4.1(C)(1). See also Ohio Civ. R. 4.1(D)-E). Ohio does not meet benchmark 1b because it does not require the clerk to send the defendant by first class mail supplemental notice of a new consumer debt lawsuit and deny default judgment 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

Ohio does not meet this benchmark because Ohio does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Ohio Civ. R. 4

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

Ohio does not meet this benchmark because it does not provide an Answer form for use by consumer debt defendants.

4 - No Notarization Requirement to Answer

Score: 2/2

Does the state make it easier to respond to consumer debt lawsuits by never requiring defendants to have an Answer notarized before filing?

Yes

Ohio meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. Ohio Civ. R. 11. 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

Ohio meets the benchmark because there is no filing fee set forth to file an answer, although at least one county charges a fee for counterclaims. See Wayne County, Court Costs & Fees. https://www.wayneclerkofcourts.org/resources/court-costs-fees

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

Ohio 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 Ohio Civ. R. 8(A); Ohio Civ. R. 10(D)(1).

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

Ohio does not meet the benchmark or any sub-benchmarks. Ohio courts may grant default judgments pursuant to Ohio Rule of Civil Procedure 55, and that rule does not impose any of the requirements in sub-benchmarks (a) to (c). There is also no Ohio statute that separately imposes requirements regarding the entry of default judgments.

IV. Issue Area: Require consumer debt collection actions to be brought

within a reasonable time of non-payment.

8 - Burden on Plaintiff to Allege Timeliness

Score: 0/2

Does the state place the pleading burden on the consumer debt plaintiff to allege in the Complaint the timeliness of each claim, including each of the following: a. applicable statute of limitations; b. date that claim accrued; and c. date that statute of limitations expires?

No

Ohio does not meet this benchmark because the statutes and rules of Ohio do not place the burden of pleading timeliness on the plaintiff and do not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date the claim accrued, or (c) the date that the statute of limitations expires. The statute of limitations is an affirmative defense. See Matrix Acquisitions, LLC v. Hooks, 2011 WL 2464183, at *2 (Ohio App. 5 Dist., 2011).

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

Ohio 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, Ohio has the following limitations periods: • breach of written contract: 6-year limitations period (OH Rev. Code § 2305.06 (2022)); • breach of oral contract: 4-year limitations period (OH Rev. Code § 2305.07(A) (2022)); • open account: 4 or 6 -year limitations period (OH Rev. Code § 2305.07(C) (2022)); • account stated ("an action for any article charged on an account in a store"): 4 or 6 -year limitations period (OH Rev. Code § 2305.07(A) (2022); OH Rev. Code § 2305.07(C) (2022)); • unjust enrichment: 4-year limitations period (OH Rev. Code § 2305.07(A) (2022); Blank v. Bluemile, Inc., 174 N.E.3d 859, 869 (Ohio App. 10th Dist. 2021)); • conversion: 3-year limitations period (OH Rev Code § 1303.16(G)(1) (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 (OH Rev Code § 1303.16(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

Ohio 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 O.R.C. § 2305.08 (2022).

V. Issue Area: Prohibit attorneys' fee shifting, and cap interest.

11 - Prohibit Attorneys' Fees Shifting

Score: 3/3

Does the state prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provision or reciprocity in fee shifting?

Yes

Ohio meets the benchmark because it does not enforce attorney fee shifting for consumer debt, even where the debt contracts contain such a provision. Ohio permits such fee shifting for some debt contracts over \$100,000, but excludes debts incurred for personal, household, or family purposes. Ohio Rev. Code Ann. § 1319.02 (West). The 6th Circuit has held Ohio common law and statute indicate that consumer debt fee shifting arrangements are not enforceable.

12 - Interest Caps Score: 0/3

Does the state cap interest in consumer debt lawsuits (regardless of any contractual provision) as follows: a. Prejudgment 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

Ohio does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). With respect to prejudgment interest, the Ohio code states that the contract rate should apply and, if no interest rate is specified, then the interest rate shall be the federal short term rate plus 3%, calculated as set forth in the Ohio Rev. Code Ann. § 5703.47. See Ohio Rev. Code Ann. § 1343.03(A) (2022). Thus, Ohio does not limit prejudgment interest to 7% or less (as is required to meet sub-benchmark (a)). With respect to post-judgment interest, the Ohio code states that the contract rate should apply and, if no interest rate is specified, then the interest rate shall be the federal short term rate plus 3%, calculated as set forth in the Ohio Rev. Code Ann. § 5703.47. See Ohio Rev. Code Ann. § 1343.03(B)) (2022). Thus, Ohio 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

Ohio meets the benchmark because a plaintiff must apply to the court by written motion for the attachment of a defendant's property other than personal earnings. Ohio Rev. Code Ann. § 2715.03. To garnish a judgment debtor's wages, a judgment creditor must obtain an order of garnishment from the court. Ohio Rev. Code Ann. § 2716.03. Attachment proceedings are not allowed to proceed in small claims court. Ohio Rev. Code Ann. § 1925.07. Otherwise, creditors follow execution and judgment proceedings as would be followed in an ordinary civil action. Ohio Rev. Code Ann. § 1925.13.

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

Ohio 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. Ohio Rev. Code Ann. § 2329.66(A)(3) specifies

the amount that may be exempted with respect to money deposited in a bank.

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

Ohio does not meet this benchmark because none of the sub-benchmarks are met. Ohio law provides as follows: (a) Income: Ohio 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. Ohio Rev. Code Ann. § 2329.66(A)(13) (West 2023). 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: Ohio does not meet sub-benchmark (b) because one home that is used as a residence by a person or a dependent of a person, including the land on which the home is located is exempt only up to a value of \$125,000 (adjusted every three years for inflation). Ohio Rev. Code Ann. § 2329.66(A)(1)(b) (West 2023). (c) Car: Ohio does not meet sub-benchmark (c) because a person's interest in one car is exempt only up to a value of \$3,225. Id. at § 2329.66(A)(2). For more information on garnishment exemptions see Michael Best and Carolyn Carter, No Fresh Start 2023, National Consumer Law Center (Dec. 2023), https://www.nclc.org/wp-content/uploads/2023/12/2023_Report_No-Fresh-Start-3.pdf.

16 - Require Prior Notice of Garnishment

Score: 5/5

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?

Yes

Ohio meets this benchmark with respect to wage garnishment because it requires a hearing on notice to the judgment debtor prior to entry of a wage garnishment order, that explains available exemptions and how to assert them as well as how to challenge the garnishment order. See Ohio Rev. Code Ann. § 2716.02 & .06 (LexisNexis 2023). Ohio also meets this benchmark with respect to non-wage garnishment because it requires prior notice of the garnishment be given to the judgment debtor, and meets sub-benchmark (a) because the notice contains a list of available exemptions; sub-benchmark (b) because it explains how to request a hearing to challenge the garnishment order; and sub-benchmark (c) because it explains how to assert exemptions. See id. at § 2716.13.

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

Ohio does not meet the benchmark because, while Article I, Section 15 of the Ohio Constitution states "No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud," Ohio courts have held that a court may order incarceration for contempt for failure to obey an order to pay. See, e.g. Home S. &

L. Co. v. Midway Marine, Inc., 2012 WL 1971134, 2012-Ohio-2432, \P 37 (Ohio Ct. App. 2012) (holding that incarceration for failure to pay a promissory no was "not a punishment for a civil debt, but was instead a statutorily permitted penalty for civil contempt designed to give Mercure an incentive to comply with the trial court's writ of possession.").

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

Ohio does not meet the benchmark because a person's failure to appear at a debtor's examination need not be willful to constitute contempt, which is punishable by incarceration. A court may order a judgment debtor to appear and answer questions regarding their property. Ohio Rev. Code Ann. \S 2333.09. If the person fails to appear, they may be held in contempt. Ohio Rev. Code Ann. \S 2333.19. The law defines contempt as "Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer." Ohio Rev. Code Ann. \S 2705.02(A); 2705.05.

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

Ohio does not meet the benchmark because the law provides that in a contempt hearing, the accused must be given "an opportunity to be heard, by himself or counsel." Ohio Rev. Code Ann. § 2705.03.

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

Ohio does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Ohio Rev. Code Ann. §§ 1321.45; 2913.11.

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

Ohio 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 Ohio Rev. Code Ann. §§ 2333.19.

22 - Limit Frequency of Examinations

Does the state in consumer debt litigation schedule or otherwise limit financial examinations to no more than once per year?

No

Score: 0/5

Ohio does not meet this benchmark because the law provides that "a judgment creditor shall be entitled to an order for the examination of a judgment debtor concerning his property, income, or other means of satisfying the judgment upon proof by affidavit that such judgment is unpaid in whole or in part." The law does not limit the frequency of such examinations. Ohio Rev. Code § 2333.09.

IX. Issue Area: Collect data to improve the system.

23 - Data Collection: Number of Lawsuits

Do state courts at least annually collect and publish statewide data on number of consumer debt lawsuits?

Score: 0/3

Ohio does not meet the benchmark because it does not collect and publish data on number of consumer debt lawsuits (or pertinent subcategories) or types of dispositions of consumer debt lawsuits. See State of Ohio, Courts of Common Pleas, Central Division, Caseload and Performance Measures (last visited Oct. 1, 2023),

https://analytics.das.ohio.gov/t/SCPUB/views/FormA-judge-state-PROD/CaseloadandPerformance? iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no Note: Reporting on caseload data from Ohio courts is also collected by the Court Statistics Project of the National Center for State Courts, but the reported data for Ohio is not specific to consumer debt or its subtypes. See, e.g., Court Statistics Project, Annual Report Archive 1975-2018 (last visited Oct. 1, 2023), https://www.courtstatistics.org/csp-annual-caseload-reports. See also, CSP STAT (last visited Oct. 1, 2023), https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat.

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?

Ohio does not meet the benchmark because it does not collect and publish data on number of consumer debt lawsuits (or pertinent subcategories) or types of dispositions of consumer debt lawsuits. See State of Ohio, Courts of Common Pleas, Central Division, Caseload and Performance Measures (last visited Oct. 1, 2023),

https://analytics.das.ohio.gov/t/SCPUB/views/FormA-judge-state-PROD/CaseloadandPerformance? iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no Note: Reporting on caseload data from Ohio courts is also collected by the Court Statistics Project of the National Center for State Courts, but the reported data for Ohio is not specific to consumer debt or its subtypes. See, e.g., Court Statistics Project, Annual Report Archive 1975-2018 (last visited Oct. 1, 2023), https://www.courtstatistics.org/csp-annual-caseload-reports. See also, CSP STAT (last visited Oct. 1, 2023), https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat.

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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