

Consumer Debt Litigation Index

Top Recommendations for Reform in Oregon

Oregon's Score: 19/100

Oregon'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. Oregon requires that complaints brought by debt buyers and debt collectors include the name of the original creditor and an itemization of the amount sought, but it does not require them to plead the basis of their standing. Further, it does not impose these requirements on conventional creditors.

How: Oregon should amend its requirements for plaintiffs in consumer debt cases to allege not only the name of the original creditor and an itemization of the amount sought, but also the plaintiff's standing (e.g. chain of ownership of debt). Furthermore, the state should amend the requirements so

that they apply not only to debt buyers and debt collectors, but also to creditors. 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 Oregon requires proof of service before a judge may grant a default judgment, it does not require plaintiffs to prove with authenticated business records the validity of the debt or the itemized amounts sought.

How: Oregon should adopt a law or practice that requires plaintiffs in consumer debt cases to establish not only proof of service but also validity of the debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation) and the 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. Oregon, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

How: Oregon 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 Oregon were to Implement these Recommendations?

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

Complete Consumer Debt Litigation Index Findings for Oregon

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

Oregon does not meet this benchmark because it does not meet either sub-benchmark 1a nor 1b. Oregon does not meet sub-benchmark 1a because it permits service by an individual over the age of 18 who is not party to an action. Or. R. Civ. P. 7(E); Or. Rev. Stat. § 55.045(3) and (4). Sub-benchmark 1b is not met because there is no statute requiring supplemental notice by mail preventing entry of default judgment if the supplement 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

Oregon does not meet this benchmark because Oregon does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Or. Rev. Stat. Ann. §§ 55.045(5), 46.445(4) (West 2023). More specifically, Oregon does not meet this benchmark because it does not provide guidance on where to find free legal assistance. In fact, state law requires that a notice of claim be served upon the defendant in the manner required by law for service of a Summons, Or. Rev. Stat. Ann. §§ 55.045(5), 46.445(4) (West 2023), and state law describing the service of Summons includes the provision of a court form Summons at ORCP 7 (C), which contains a paragraph that refers readers to the Oregon State Bar's referral service via a State Bar

website and State Bar referral service telephone number. However, NCAJ determined that the website link is broken, and that the telephone number identified in the paragraph goes to a voice message when dialed during regular office hours, and the voice message refers callers to the same broken website link for referral service). More fundamentally, the new Oregon State Bar website online (osbar.org) contains a link to a lawyer referral page, <https://www.osbar.org/public/ris>, and at that page there is a form on which a person can make a request for an initial consultation with a lawyer -- but, importantly, the lawyer referral page also states that an initial half hour consultation may cost up to \$35 dollars, that all lawyers in the referral service charge a fee. Nowhere does the Oregon Bar refer visitors seeking legal help to the free legal services organizations in the state.

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

Oregon does not meet this benchmark because, although it provides an Answer form for use of consumer debt defendants in small claims court and has a self-help tab on its court website devoted to consumer debt cases, it does not provide an Answer form for use in its lower courts (Circuit Courts). See Defendant's Response, Or. Cts., <https://www.courts.oregon.gov/forms/Documents/SC-Response.pdf> (last visited Nov. 10, 2023); Debt Collection Cases, Or. Jud. Branch, <https://www.courts.oregon.gov/help/pages/debtcollection.aspx> (last visited Nov. 10, 2023).

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

Oregon meets this benchmark because it does not require pleadings to be verified or notarized. See Or. R. Civ. P. 17(A).

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

Oregon does not meet this benchmark because there is a fee "when an answer or other first appearance is filed in the proceeding" in tort or contract actions. Or. Rev. Stat. Ann. § 21.160 (West 2023). A judge may, however, waive or defer all or part of the fees "if the judge finds that the party is unable to pay all or any part of the fees and costs." Or. Rev. Stat. Ann. § 21.682 (2020).

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

Oregon does not meet this benchmark because, although it requires that complaints brought by debt buyers and debt collectors include (a) the name of the original creditor and (c) itemization of the amount sought, it does not require (b) the basis of plaintiff's standing or impose these requirements on conventional creditors. See Or. Rev. Stat. Ann. § 646A.670(1) (West 2023). See also Uniform Trial Court Rule (UTCRC) 5.180 requiring debt buyers to demonstrate compliance with ORS 646A.670 by submitting a "Consumer Debt Collection Disclosure" form, found here: <https://www.courts.oregon.gov/forms/Documents/DebtBuyerDisclosure-Fillable.pdf>.

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

Oregon does not meet this benchmark because it does not meet sub-benchmarks (b) or (c). Oregon courts may grant default judgments pursuant to Oregon Rule 69 of Civil Procedures. Or. R. Civ. P. 69. Oregon meets sub-benchmark (a) because the party seeking default must file a motion with the court, accompanied by an affidavit or declaration, sufficient to establish "that the party to be defaulted has been served with summons pursuant to Rule 7 or is otherwise subject to the jurisdiction of the court." Or. R. Civ. P. 69(c)(1)(a). This rule does not, however, impose the requirements in sub-benchmarks (b) 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

Oregon does not meet this benchmark because the statutes and rules of Oregon do not place the burden of pleading timeliness on the plaintiff and do not require that a debt collection complaint state: (a) the applicable statute of limitations, (b) the date the claim accrued, or (c) the date that the statute of limitations expires. See Or. R. Civ. P. 19(B); Or. Rev. Stat. Ann. § 646.639(4)(a) (West 2023).

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

Oregon does not meet this Benchmark because it does not have a 4-year (or shorter) statute of limitations for all consumer debt claims. In particular, Oregon has the following limitations periods: • breach of contract: 6-year limitations period, Oregon Code § 12.080 (1991) and • account stated: 6-year limitations period, id. § 12.080

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

Oregon does not meet this Benchmark because it makes consumer debt claims subject to revival even after the statute of limitations has run. In particular, Oregon law states: "No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter [Chapter 12: Limitations of Actions and Suits], unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest." Ore. Rev. Stat. 12.230 (2023). Courts have interpreted this language to mean that while an acknowledgment or promise to pay must be in writing and signed by the debtor-party in order to revive an otherwise expired debt claim, a payment on a debt after the limitations periods has run might revive the obligation and allow an action to be maintained. See Matter of Culver's Est., 26 Or. App. 809, 812, 554 P.2d 541, 543 (1976). ("However, under ORS 12.230,1 a payment made on a debt After the statute of limitations has run might revive the legal obligation and permit an action to be maintained, Marshall v. Marshall, 98 Or. 500, 194 P. 425 (1921)").

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

Oregon does not meet the benchmark because it provides a reciprocal right to attorneys' fees for a prevailing defendant in debt contract litigation. Or. Rev. Stat. Ann. § 20.096 (West). By statute, the prevailing party is entitled to reasonable attorneys' fees, regardless of whether or not they are the party specified in the contract to receive attorneys' fees. Or. Rev. Stat. Ann. § 20.096 (West)

12 - Interest Caps

Score: 0/3

Does the state cap interest in consumer debt lawsuits (regardless of any contractual provision) as follows: a. Pre-judgment interest for debt buyers capped at an annual rate of 7% (or less); and b. Post-judgment interest for all creditors capped at 5% (or less) of the judgment?

No

Oregon does not satisfy this benchmark for either (a) or (b). For both prejudgment and post-judgment interest rates, Oregon law states that the contract rate shall apply and, if no interest rate is identified, then the rate shall be 9% per annum. See Or. Rev. Stat. § 82.010. Thus, Oregon does not cap prejudgment interest for debt buyers at an annual rate of 7% (or less) nor does it cap post-judgment interest for all creditors at 5% (or less) of the judgment.

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

Oregon meets the benchmark because the law requires the court to issue a writ of garnishment or a writ of attachment. Or. Rev. Stat. §§ 18.830; 52.210; Or. R. Civ. P. 83, 84.

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

Oregon 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. Or. Rev. Stat. Ann. § 18.345(1)(p) provides that a debtor's interest in any personal property up to \$400 is exempt from garnishment. If traceable, wages up to \$7,500 remain exempt from garnishment after being deposited in a bank account. Or. Rev. Stat. Ann. § 18.348(2).

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

Oregon does not meet the benchmark because none of the sub-benchmarks are met. Oregon law provides as follows: (a) Income: Oregon does not meet sub-benchmark (a) because it exempts only 75% of a person's weekly disposable earnings or at least \$254 in net weekly disposable earnings, whichever is greater. Or. Rev. Stat. § 18.385(1)–(2). (b) Home: Oregon does not meet sub-benchmark (b) because a home that is the “actual abode of and occupied by” a person or a person's spouse, parent or child is exempt only up to a value of \$40,000 subject to a certain limited exception. Or. Rev. Stat. § 18.395. (c) Car: Oregon does not meet sub-benchmark (c) because one car is exempt only up to a value of \$3,000. Or. Rev. Stat. § 18.345(1)(d). 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

Oregon does not meet this benchmark because notice of the garnishment is not required to be given to the judgment debtor prior to the garnishee being required to retain the property of the judgment debtor (instead, the person who delivered the writ of garnishment to the garnishee must mail or deliver notice to the judgment debtor after delivery to the garnishee). See Or. Rev. Stat. Ann. § 18.658. Also, the state does not meet the sub-benchmark (b) because it does not require the notice to the judgment debtor to specify the manner in which to contest the judgment order. See *id.* at §§ 18.658, 18.845, 18.847.

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

Oregon does not meet the benchmark because the Supreme Court has held that incarceration for failure to obey a court order to pay a debt does not violate the constitutional ban on imprisonment for debt. *State Ex. Rel. Hubble v. Hubble*, 128 Or. 46 (Or. 1929) (holding that "A citizen cannot be imprisoned for debt in this state. Constitution, art. 1, § 19. He can be imprisoned for willful disobedience of a lawful order of a court.").

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

Oregon meets the benchmark because a person's failure to appear at a debtor's examination must be willful to constitute contempt. Or. Rev. Stat. §§ 33.015; 18.265.

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

Oregon meets the benchmark because the contempt statute in the state provides that an attorney should be appointed in cases where remedial sanctions are sought. Or. Rev. Stat. § 33.055(9).

VIII. Issue Area: Prevent government from undue intervention on behalf of creditor.

20 - Prohibit Collaboration Between Creditors and Prosecutors

Score: 2/2

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)?

Yes

Oregon meets this benchmark because it provides that a public agency or public official may not "(a) allow a person or entity in the practice of collecting debt, including restitution, to use the seal or letterhead of the public agency or public official; or (b) Receive or collect a fee from a person or entity in the practice of collecting debt, including restitution, in exchange for the person or entity using the seal or letterhead of the public agency or public official." Or. Rev. Stat. § 697.107.

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

Oregon 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 Or. Rev. Stat. Ann. § 18.270.

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

Oregon does not meet the benchmark because the law provides that at any time the judgment creditor can require the judgment debtor to appear before the court to answer questions about the debtor's property under oath. The law does not limit the frequency of such examinations. Or. Rev. Stat. § 18.265

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

Oregon does not meet the benchmark because Oregon does not collect and publish statewide data on the number of consumer debt lawsuits or the dispositions of consumer debt lawsuits. Oregon has not published an annual report since 2015, but it does publish circuit court case statistics about the number of civil, landlord tenant and small claims cases filed and terminated state-wide and in each of the district courts. Reports, Statistics and Performance Measures, <https://www.courts.oregon.gov/about/pages/reports-measures.aspx>. The

statistics do not, however, include data specific to consumer debt lawsuits, or subcategories of consumer debt. Id. The Oregon state court administrator must collect and compile statistical and other data (including caseload) to the extent directed by the chief justice of the Oregon Supreme Court, but there is no requirement specific to consumer debt. O.R.S. § 8.125 (2022).

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

Oregon does not meet the benchmark because Oregon does not collect and publish statewide data on the number of consumer debt lawsuits or the dispositions of consumer debt lawsuits. Oregon has not published an annual report since 2015, but it does publish circuit court case statistics about the number of civil, landlord tenant and small claims cases filed and terminated state-wide and in each of the district courts. Reports, Statistics and Performance Measures, <https://www.courts.oregon.gov/about/pages/reports-measures.aspx>. The statistics do not, however, include data specific to consumer debt lawsuits, or subcategories of consumer debt. Id. The Oregon state court administrator must collect and compile statistical and other data (including caseload) to the extent directed by the chief justice of the Oregon Supreme Court, but there is no requirement specific to consumer debt. O.R.S. § 8.125 (2022).

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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