

Consumer Debt Litigation Index

Top Recommendations for Reform in Pennsylvania

Pennsylvania's Score: 37/100

Pennsylvania's National Rank: 5th

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. Pennsylvania does not require plaintiffs to allege in their complaints the name of the original creditor, the plaintiff’s standing, or an itemization of the amounts sought. Further, courts have interpreted the law to require debt buyers to trace in their pleadings the chain of ownership of the debt, but the legislature has not codified such a requirement.

How: Pennsylvania should adopt a law 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. Pennsylvania, however, does not yet have these key requirements in place.

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

How: Pennsylvania should make bank account exemptions self-executing. Further, the state should update and expand on attachment provisions so that they protect at minimum: (a) a home, regardless of value, or at least the median price of a home in the state; and (b) 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 Pennsylvania were to Implement these Recommendations?

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

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

Pennsylvania does not meet this benchmark because it authorizes service by "a competent adult" as an alternative to service by the sheriff, both in the First Judicial District, and in certain scenarios in other districts in the commonwealth. 231 Pa. Code § 400–400.1 (2023); Pa. R. C. P. 400-400.1. Accordingly, Pennsylvania does not satisfy sub-benchmark 1a. Second, Pennsylvania does not meet sub-benchmark 1b because it does not require supplemental notice of a new consumer debt lawsuit and prohibit entry of default judgment if such notice is returned as undeliverable. The policy for sub-benchmark 1b was not found in the state's law.

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

Pennsylvania meets this benchmark because Pennsylvania requires that every complaint in a civil action include a Notice to Defend which contains the following language (with contact information designated by each court): "YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE." 231 Pa. Code § 1018.1 (2023); Pa. R. C. P. 1018.1.

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

Pennsylvania meets this benchmark. Pa. R.C.P.M.D.J. 318 says that the judge must notify the plaintiff when the defendant voices intention to enter a defense. Notwithstanding that this process contemplates an actual appearance by defendant in court, experts advised NCAJ that answering by appearing (without filing) is a simplification of the answer requirement that increases response rate.

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

Pennsylvania meets this benchmark because although it requires “[e]very pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer’s personal knowledge or information and belief” be verified, see Pa. R. Civ. P. 1024(a), the term “verified” is defined as “an unsworn document containing a statement by the signatory that is made subject to the penalties...” for making a false written statement to authorities. 42 Pa. C.S. § 102; see also Pa. R. Civ. P. 1024(a)-(c) (incorporating this definition of verification for responsive pleadings) and 18 Pa. C.S. § 4904(a)-(d) (describing penalties for making false written statements to public servants).

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

Pennsylvania meets this benchmark because it does not charge a fee for filing an answer. Copy and Fee Requirements, Unified Jud. Sys. Penn. (Nov. 1, 2023), <https://www.pacourts.us/courts/commonwealth-court/copy-and-fee-requirements>. Further, in minor courts defendants are not required to file a written answer. See 246 Pa. Code R. 205(4).

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

Pennsylvania does not meet the benchmark because it does not have specific rules requiring a consumer debt complaint 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 231 Pa. Code 101. Pennsylvania courts have, however, interpreted Pa. R. C. P. Rule 2002(a), which requires that all actions be prosecuted in the name of the real party in interest, to require a debt collector to trace in its pleadings the derivation of its cause of action from the assignor. See *Brown v. Esposito*, 42 A.2d 93, 94 (Pa.Super 1945) (requiring a plaintiff to trace the derivation of its cause of action from its assignor); *CACH, L.L.C. v. Abbott*, No. 2008-00409, at 6-7 (Pa. Ct. Com. Pl. Mar. 15, 2010), <https://library.nclc.org/sites/default/files/unreported/CACH.pdf> (finding that plaintiff failed to adequately trace its ownership of a credit card account on which it was trying to recover from defendant). This requires the complaint to state the fact and date of the assignment and the parties thereto, thereby likely meeting sub-benchmarks (a) and (b).

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

Pennsylvania does not meet this benchmark or any sub-benchmarks. Pennsylvania courts may grant default judgments pursuant to state law which does not impose any of the requirements in sub-benchmarks (a) to (c). 231 Pa. Code § 1037 (2023). Default judgment, however, may not be entered unless a written notice of intention to file a praecipe was mailed or delivered to the defendant at least 10 days before the date of filing. Pa. R. Civ. P. 237.1.

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

Pennsylvania does not meet the benchmark because it does not require a consumer debt complaint to include (a) the statute of limitations, (b) the date the claim accrued, or (c) the date the statute of limitations expires. See 231 Pa. Code Rule 1030(a) (establishing the statute of limitations as an affirmative defense).

9 - Four Year Statute of Limitations

Score: 5/5

Does the state require 4-year (or shorter) statute of limitations for the causes of action most commonly used to pursue consumer debt collection: breach of contract (written or oral), open account, account stated, unjust enrichment, conversion, bad check?

Yes

Pennsylvania meets this benchmark because it has a 4-year (or shorter) statute of limitations for all consumer debt claims. In particular, Pennsylvania has the following limitations periods: • breach of contract: 4-year limitations period (42 Pa. C. S. A. § 5525(a)(1) (2002)); • account stated: 4-year limitations period (42 Pa. C. S. A. § 5525(a)(2) (2002)); • unjust enrichment: 4-year limitations period (42 Pa. C. S. A. § 5525(a)(4) (2002); Cole v. Lawrence, 701 A.2d 987, 989 (Pa. Super. Ct. 1997)); • conversion: 2-year limitations period (42 Pa. C. S. A § 5524(3) (2002)); • bad checks: 2-year limitation period (42 Pa. C. S. A. § 5524(7) (2002); 42 Pa. C. S. A §5552(a).

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

Pennsylvania does not meet this benchmark because it makes consumer debt claims subject to revival, even after the statute of limitations has run, when a debtor makes a partial payment of the debt or acknowledges the debt. See Asset Acquisition Grp. LLC v. DeJesus, No. CI-08-01680, 2010 WL 2841692 (Pa. Com. Pl. Apr. 6, 2010) (“Pursuant to the ‘acknowledgement doctrine,’ a statute of limitations may be tolled or its bar removed by a promise to pay the debt”) (quoting Huntingdon Fin. Corp. v. Newtown Artesian Water Co., 659 A.2d 1052, 1054 (Pa. Super. Ct. 1995)).

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

Pennsylvania does not meet this benchmark because it permits attorney fee shifting according to contractual provisions. The Pennsylvania Supreme Court has held that, although the state generally follows the American rule (parties pay their own attorneys' fees), it is permissible to stipulate via contract that a party will pay attorneys' fees, so long as those fees are reasonable. McMullen v. Kutz, 985 A.2d 769, 776–77 (Pa. 2009). By statute, Pennsylvania grants the prevailing party in debt litigation a right to reasonable attorneys fees, although the decision to grant attorneys' fees in this case appears to be within the court's discretion. 13 Pa. C. S. § 5111(e) (2022) (see Bar Association comment). Note: We did not identify any case law that resolves whether a Pennsylvania court could grant attorneys' fees to a prevailing defendant if the contract stipulates attorneys' fees only for the creditor.

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

Pennsylvania does not meet this benchmark because the sub-benchmarks are not met. Regarding (a) (prejudgment interest), Pennsylvania law provides that the contract rate should apply and, if no interest rate is specified, then the interest rate shall be 6%. 41 P.S. § 202 (2022). Thus, Pennsylvania does not limit prejudgment interest to 7% or less (as is required to meet sub-benchmark (a)). With respect to (b) (post-

judgment interest), Pennsylvania law provides that the contract rate should apply and, if no interest rate is specified, then the interest rate shall be 6%. *Id.* Thus, Pennsylvania 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

Pennsylvania meets the benchmark because attachment and garnishment require a writ of execution from the court. Pa. R. C. P. 3102 and 3111. Small claims may be filed in Pennsylvania Magisterial District Court or Philadelphia Municipal Court, and judgments may be executed upon request filed with magisterial district judge, who then delivers the accepted order to the sheriff. Pa.R.C.P.M.D.J. 402.

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

Pennsylvania does not meet this benchmark because it does not require financial institutions to protect money deposited in bank accounts unless a judgment debtor asserts an exemption. 42 Pa. C.S.A. § 8123(a) (2022). State law generally exempts any property up to the value of \$300. *Id.*

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

Pennsylvania does not meet this benchmark because sub-benchmarks (b) (home) and (c) (car) are not met. Pennsylvania law provides as follows: (a) Income: Pennsylvania meets sub-benchmark (a) because it exempts 100% of a person's wages for consumer debt while in the hands of the employer. 42 Pa. Cons. Stat. Ann. § 8127 (West 2023). (b) Home: Pennsylvania does not meet sub-benchmark (b) because it does not offer any exemptions for a person's home(s), but there is a wildcard exemption for \$300. 42 Pa. Cons. Stat. Ann. § 8123 (West 2023). (c) Car: Pennsylvania does not meet sub-benchmark (c) because it does not offer any exemptions for a person's car(s). *Id.* at § 8123 (although Pennsylvania offers a general wildcard exemption for \$300 which may be applied to a person's car(s)). 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

Pennsylvania does not meet this benchmark for wage garnishment because it does not require provision of prior notice to the judgment debtor since the writ of attachment with respect to wages is sent by ordinary mail to both the garnishee and the judgment debtor concurrently. See 18 Pa. Code § 3304 (2023). Even if notice were provided in advance, the state would not meet sub-benchmark (a) because the writ that is forwarded to the judgment debtor does not list available exemptions; sub-benchmark (b) because it is not required to contain the manner in which to contest the order; or sub-benchmark (c) because it does not contain the manner in which to assert exemptions. See *id.* at § 3313. Notably, Pennsylvania does not permit most private creditors to garnish wages in connection with consumer debt, although it does permit wage garnishment for payment of back rent. <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=42&div=0&chpt=81&sctn=27&subctn=0>. Pennsylvania also does not meet this benchmark

for non-wage garnishment because prior notice of levy or attachment pursuant to a writ of execution is not required to be given to the judgment debtor before the levy or attachment (instead, the sheriff must mail notice to the judgment debtor after levy or attachment and the garnishee must also forward the writ to the judgment debtor). See *id.* at §§ 3108, 3140(a). Additionally, even notice were provided in advance, the state would not meet sub-benchmark (a) because notice to the judgment debtor only contains a list of major exemptions and not a full list of all exemptions, or sub-benchmark (b) because the notice is not required to contain the manner in which to contest the judgment order. See *id.* at § 3252.

VII. Issue Area: Eliminate debtors' prison.**17 - Prohibit Incarceration for Failure to Obey a Court Order to Pay Consumer Debt****Score: 5/5**

Does the state prohibit incarceration for contempt for failure to obey a court order to pay all or part of a consumer debt judgment?

Yes

Pennsylvania meets this benchmark because the courts have held that a judge may not order incarceration for contempt for failure to obey a court order to pay all or part of a debt judgment. For example, in *Smithfield Acq. Inc. t/a Barrick-Pittsburgh LP v. Lehman*, 2 Pa. D. & C.4th 11, 15 (Pa. Com. Pl. 1989), the court found that Pennsylvania's "statutory prohibition against arrest and imprisonment for debt bars enforcement of a court order or decree through contempt for non-payment of money. . . ."

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

Pennsylvania does not meet this benchmark because the Superior Court has held that "failure to appear in open court can be contemptuous conduct punishable by a term of imprisonment." *In re Davis*, 302 A.3d 166, 185 (Pa. Super. Ct. 2023).

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

Pennsylvania meets this benchmark because courts have held that "upon the trial court's determination at the civil contempt hearing that there is a likelihood of imprisonment for contempt and that the defendant is indigent, the court must appoint counsel and permit counsel to confer with and advocate on behalf of the defendant at a subsequent hearing." *B.A.W. v. T.L.W.*, 230 A.3d 402, 408 (P.A. Super. Ct. 2020) (quoting *Commonwealth v. Diaz*, 191 A.3d 850 (Pa. Super. Ct. 2018)).

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

Pennsylvania does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See 18 Pa. Cons. Stat. Ann. § 4105; 42 Pa. Cons. Stat. Ann. § 8304.

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

Pennsylvania does not meet this benchmark because its laws do not include an express prohibition on the use of bail or bond to pay a creditor.

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

Pennsylvania does not meet this benchmark because it provides that a "plaintiff at any time after judgment, before or after the issuance of a writ of execution, may, for the purpose of discovery of assets of the defendant, take the testimony of any person, including a defendant or a garnishee, upon oral examination or written interrogatories." Pa. R.C.P.Code § 3117.

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

23 - Data Collection: Number of Lawsuits

Score: 3/3

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

Pennsylvania meets this benchmark because it publishes data on the number of consumer debt lawsuits. See Unified Judicial System of Pa., Civil Caseload Data, <https://www.pacourts.us/news-and-statistics/research-an-statistics/dashboard-table-of-contents/statewide-civil-cases> (last visited Jan. 24, 2024). Data may be viewed at the state and county level in this dashboard.

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**

Pennsylvania does not meet this benchmark because it does not publish data on the dispositions of consumer debt cases. It does, however, publish data on the number of consumer debt cases. See Unified Judicial System of Pa., Civil Caseload Data, <https://www.pacourts.us/news-and-statistics/research-an-statistics/dashboard-table-of-contents/statewide-civil-cases> (last visited Jan. 24, 2024). Data may be viewed at the state and county level in this dashboard.

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