

Top Recommendations for Reform in Rhode Island

Rhode Island's Score: 9/100

Rhode Island's National Rank: 48th

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

How: Rhode Island 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. Rhode Island, however, does not yet have these key requirements in place.

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

How: Rhode Island 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; 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 Rhode Island were to Implement these Recommendations?

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

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

Rhode Island does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b.. First, it does not meet sub-benchmark 1a because service of summons in Superior Court may be made by any person who is not a party and who is at least eighteen (18) years of age. See Super. R. Civ. P. 4(c). The District Court, which handles small claims cases where the parties are claiming damages of \$5,000 or less, is more restrictive but still allows for service by any other person authorized by law, or by some person specially appointed by the court for that purpose, and provides that special appointments to serve process will be made freely when substantial savings in travel fees will result. Further, the District Court may order special service of any process, original or auxiliary, in any proceeding within the jurisdiction of the court, by personal notice, notice by mail, or publication in a newspaper within or without the state, for the purpose of dealing with any property, relation, or person subject to the jurisdiction of the court. See 8 R.I. Gen. Laws Ann. § 8-8-6 Second, sub-benchmark 1b is not met because the state does not require that the court 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

Rhode Island does not meet this benchmark because Rhode Island does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See R.I. Super. Ct. R. Civ. P. 4.

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?

Rhode Island meets this benchmark because it provides an Answer form that can be used by consumer debt defendants. See

https://www.courts.ri.gov/PublicResources/forms/District%20Court%20Forms/Small%20Claims%20Notice%20of%20Suit%20-%20Answer.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

Rhode Island meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See R.I. Super. R. Civ. P. 11. 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

Rhode Island does not meet the benchmark because there is a fee for every action in the district court and every civil action in the superior court. 9 R.I. Gen. Laws Ann. §§ 9-29-1, 18 (West).

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

Rhode Island 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 plaintiffs' standing, or (c) an itemization of the amount sought. See R.I. Super. Ct. R. Civ. P. 8(a) (setting forth pleading requirements in Rhode Island superior court); Dist. R. Civ. P. 8(a) (setting forth pleading requirements in Rhode Island district court).

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

Rhode Island does not meet the benchmark or any sub-benchmarks. Rhode Island courts may grant default judgment pursuant to Rhode Island Rule of Civil Procedure 55 and Rhode Island District Court Rules of Small Claims Sections 2.03 and 6.01, which do not impose any of the requirements in sub-benchmarks (a) through (c). There is also no Rhode Island 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

Rhode Island does not meet this benchmark because the statutes and rules of Rhode Island do not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date of the claim accrued, or (c) the date that the statute of limitations expires. See R.I. Super. Ct. R. Civ. P. 8(c) (setting forth statute of limitations as an affirmative defense); R.I. Dist. R. Civ. P. 8(c) (same).

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

Rhode Island does not meet this Benchmark it does not require a 4-year (or shorter) statute of limitations for all consumer debt claims. In particular, Rhode Island has the following limitations periods: • breach of contract: 10-year limitations period, 9 R.I. Gen. Laws Ann. § 9-1-13; • account stated: 10-year limitations period, 9 R.I. Gen. Laws Ann. § 9-1-13; • unjust enrichment: 10-year limitations period, 9 R.I. Gen. Laws Ann. § 9-1-13; • conversion: 3-year limitations period on conversion, 9 R.I. Gen. Laws Ann. § 9-1-13; and • bad checks claims: 10-year limitations period on bad check claims, 9 R.I. Gen. Laws Ann. § 9-1-13.

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

Rhode Island 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 La France v. Moquin, 49 R.I. 151, 141 A. 307, 308 (1928) ("Its bar may be removed either by (1) an acknowledgment of the debt under circumstances from which a promise to pay may be implied, or (2) an unconditional promise to pay the debt, or (3) a conditional promise to pay and evidence that the condition has been performed."); see also Innoncente v. Guisti, 71 R.I. 274, 279, 43 A.2d 700, 703 (1945) (finding that "joint debtor is authorized in virtue of his relation to the parties, to make such new contract which shall bind them all" even when the "debt [is] already barred against all"); Security Bank and Trust Co. v. Beaufort, 540 A.2d 13, 16 (R.I. 1988) (affirming trial court's conclusion that by "continually acknowledg[ing] the debt, [the defendant] thereby eliminated] the defense [related to the statute of limitations] by renewing the cause of action with each acknowledgment").

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

11 - Prohibit Attorneys' Fees Shifting

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

No

Score: 0/3

Rhode Island does not meet the benchmark because it statutorily authorizes attorneys' fee shifting in certain consumer debt cases and follows the American Rule in others, allowing contractual fee shifting provisions to control. Note: Rhode Island does not provide reciprocal right to attorneys' fees for a prevailing defendant where petitioner has a contractual right to attorneys' fees. See Clean Harbors Envt'l Servs., Inc. v. 96-108 Pine Street LLC, 286 A.3d 838 (R.I. 2023); R.I. Gen. Laws § 6-26.1-10.

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

Rhode Island does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). For both pre- and post-judgment, interest is set at the rate set in the contract and, if no rate is set, then 12% per annum. See R.I. Gen. Laws § 9-21-10(a). Thus, Rhode Island 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

Rhode Island meets this benchmark because the court must issue an execution for attachment or garnishment. R.I. Stat. § 9-25-6. In small claims judgments, the same writs used in Rhode Island district courts may be used to execute judgments by way of attachment and/or garnishment. R.I. Dist. Ct. R. Small Claims P. Rule 6.02.

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

Rhode Island 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. 42 R.I. Gen. Laws \S 9-26-4(18) provides that "savings or other deposits held in a banking or financial institution not exceeding the sum of five hundred dollars (\$500)" are exempt from attachment, but the exemption is not self-executing.

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

Rhode Island does not meet the benchmark because sub-benchmarks (a) (income) and (c) (car) are not met. Rhode Island law provides as follows: (a) Income: Rhode Island does not meet sub-benchmark (a) because it exempts 30 times the federal minimum hourly wage or, if a person makes more than 30 times the federal minimum hourly wage each week, 75% of the person's weekly disposable earnings. No Fresh Start 2022, National Consumer Law Center (2022), https://www.nclc.org/wp-content/uploads/2022/12/NoFreshStart-22_Tables.pdf; R.I. Gen. Laws § 9-26-4(8)(ii) (exempting 100% of a person's weekly wages if the person is currently receiving public assistance or has received public assistance within the last year). 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: Rhode Island meets sub-benchmark (b) because a home that a person uses as a residence is exempt up to a value that is at least the median price of a home in the state. R.I. Gen. Laws § 9-26-4.1(a). (c) Car: Rhode Island does not meet sub-benchmark (c) because a person's car(s) are exempt only up to an aggregate value of \$12,000. R.I. Gen. Laws § 9-26-4(13). 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

Rhode Island does not meet the benchmark for wage garnishment because no form of notice to a judgment debtor is required (although examples of forms are provided on the Rhode Island court website) so the state does not meet the sub-benchmarks because notice to the judgment debtor is not required (a) to list exemptions, (b) to provide the manner in which to challenge an order, or (c) to describe the manner in which to assert exemptions (although the form provided on the Rhode Island courts website does provide a list of exemptions and how to assert them). See R.I. Dist. Ct. Civ. R. 84; R.I. Super. Ct. Civ. R. 84. Rhode Island similarly does not meet this benchmark for non-wage garnishment because a judgment debtor is not entitled to receive notice prior to the garnishment. (Instead the judgment creditor must send notice to the judgment debtor on the day of service of a writ on the trustee (garnishee). See R.I. Dist. Ct. Civ. R. 69(e)(2); R.I. Super. Ct. Civ. R. 69(e)(2). Additionally even if notice were served prior to garnishment, the state would not meet the sub-benchmarks since it does not designate the requirements for the form of the notice to a judgment debtor (although examples of forms are provided on the Rhode Island court website) so notice is not required (a) to list exemptions, (b) provide the manner in which to challenge an order, or (c) describe the manner in which to assert exemptions (although the form provided on the Rhode Island courts website does provide a list of exemptions and how to assert them). See R.I. Dist. Ct. Civ. R. 84; R.I. Super. Ct. Civ. R. 84.

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

Rhode Island does not meet the benchmark because the Constitution provides only, "The person of a debtor, when there is not strong presumption of fraud, ought not to be continued in prison, after such person shall have delivered up property for the benefit of said person's creditors." R.I. Const. Art. 1, § 11. The law further provides that if a judgment debtor fails to comply with a judgment payment installment plan, they may be held in contempt and incarcerated. R.I. Super. Ct. Civ.P. Rule 69(d).

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

Rhode Island does not meet the benchmark because it provides that if a judgment debtor fails to appear at a debtor's examination a judge may issue a "civil body attachment" (a warrant for arrest). R.I. Super. Ct. Civ.P. Rule 69(b)(5).

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

Rhode Island does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See R.I. Gen.L. 1956 §§ 12-15-3; 10-1-10.

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

Rhode Island does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See R.I. Gen. Laws §§ 19-9-24 – 19-9-25.

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

Rhode Island does not meet the benchmark because its laws do not expressly prohibit the use of bail or bond to pay a creditor. See R.I. R. Civ P. 69.

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

Rhode Island does not meet the benchmark because a judgment debtor may be required to appear in court to be examined by the court regarding the debtor's income and ability to pay the judgment. The law does not limit the frequency of such examinations. R.I. Gen. Laws § 9-28-4.

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

Rhode Island does not meet the benchmark because Rhode Island's state courts do not collect and publish statewide data on the number of consumer debt lawsuits nor on the types of dispositions of consumer debt lawsuits. The Annual Report of the Rhode Island Judiciary categorizes cases as: criminal (felonies, misdemeanors, ordinances and violations); civil (civil appeals, contract, miscellaneous civil, probate/estate, real property, tort); family (wayward/delinquent, violations, dependency/neglect/abuse, termination of parental rights, adoption/guardianship, civil violations, other); domestic/other (divorce, miscellaneous, abuse, child support, adult criminal). District Court cases are divided into misdemeanors; felonies; civil violations; ordinances; small claims; civil; abuse; administrative appeals; and mental health hearings. See ANNUAL REPORT OF THE RHODE ISLAND JUDICIARY (last visited Apr. 2, 2023). See

https://www.courts.ri.gov/PublicResources/annualreports/PDF/2021.pdf.

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

Rhode Island does not meet the benchmark because Rhode Island's state courts do not collect and publish statewide data on the number of consumer debt lawsuits nor on the types of dispositions of consumer debt lawsuits. The Annual Report of the Rhode Island Judiciary categorizes cases as: criminal (felonies, misdemeanors, ordinances and violations); civil (civil appeals, contract, miscellaneous civil, probate/estate, real property, tort); family (wayward/delinquent, violations, dependency/neglect/abuse, termination of parental rights, adoption/guardianship, civil violations, other); domestic/other (divorce, miscellaneous, abuse, child support, adult criminal). District Court cases are divided into misdemeanors; felonies; civil violations; ordinances; small claims; civil; abuse; administrative appeals; and mental health hearings. See ANNUAL REPORT OF THE RHODE

ISLAND JUDICIARY (last visited Apr. 2, 2023). See
https://www.courts.ri.gov/PublicResources/annualreports/PDF/2021.pdf.
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