

# **Top Recommendations for Reform in Utah**

Utah's Score: 14/100

Utah's National Rank: 39th

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

**How:** Utah 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. Utah, however, does not yet have these key requirements in place.

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

**How:** Utah 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 Utah were to Implement these Recommendations?

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

# **Complete Consumer Debt Litigation Index Findings for Utah**

# 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

Utah does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. It does not meet sub-benchmark 1a because Utah permits personal service by "any person 18 years of age or older at the time of service and not a party to the action or a party's attorney." See Utah R. Civ. P. 4(d)(1). Utah does not meet sub-benchmark 1b because Utah does not require that the court mail supplemental notice of a new consumer debt lawsuit to a defendant and deny default judgment if that 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

Utah does not meet this benchmark because Utah does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Utah R. Civ. P. 4(c)(1)(E).

# 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

Utah meets this benchmark because it provides a specific Answer form for use in a consumer debt collection case. See https://apps.utcourts.gov/InterviewAPI/aem/forms/template/1057. Although the Small Claims Court does not offer an answer form for defendants, no answer is required in small claims court. See SRPE R. 5.

## 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

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

Utah meets the benchmark because the courts website states that "[t]here is no fee to file an answer. There is a fee, however, to file a counterclaim, cross-claim or third-party claim." Utah State Courts, Answering a Complaint or Petition. See also, Utah Code Ann.  $\S$  78A-2-301(d), (e) (West). https://www.utcourts.gov/en/self-help/case-categories/family/answer.html

# 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

Utah does not meet this benchmark because it does not require a consumer debt complaint to allege (a) the original creditor's name, (b) the basis of the plaintiff's standing, or (c) itemization of the debt. See Utah R. Civ. P. 8(a).

## 7 - Authenticated Records for Default

Score: 0/10

Does the state require the following be established before a default judgment can be granted: a. Proof of Service b. Validity of debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and c. Amount of judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest?

No

Utah does not meet the benchmark. First, Utah courts may grant default judgments pursuant to Utah Rule of Civil Procedure 55. Rule 55 permits the court clerk to enter a default judgment if, among other things, "the defendant has been personally served pursuant to Rule 4(d)(1)" and the plaintiff has submitted a verified complaint, affidavit or unsworn declaration that "sets forth facts necessary to establish the amount of the claim, after deducting all credits to which the defendant is entitled, and verifies the amount is warranted by information in the plaintiff's possession." While this may satisfy sub-benchmark (a) on validity of service and sub-benchmark (c) on the amount of judgment sought, it does not require the plaintiff to satisfy the other sub-benchmarks in order to obtain a default judgment. Second, Utah small claims courts may grant default judgments pursuant to Rule 9, which states: "If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment in an amount not to exceed the amount requested in plaintiff's affidavit." That rule does not satisfy any sub-benchmark. Finally, Utah has not passed any statute imposing requirements on consumer debt 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

Utah does not meet this benchmark because the statutes and rules of Utah do not place the burden of pleading timeliness on the plaintiff and do not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date that the claim accrued, or (c) the date that the statute of limitations expires. See Utah R.Civ.P. 8(c).

### 9 - Four Year Statute of Limitations

Score: 0/5

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

No

Utah 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, Utah has the following limitations periods:  $\bullet$  breach of written contract: 6-year limitations period (Utah Code § 78B-2-309(1)(b);  $\bullet$  breach of oral contract: 4-year limitations period (Utah Code § 78B-2-307(1)(a);  $\bullet$  open account: 4-year limitations period (Utah Code § 78B-2-307(1)(b);  $\bullet$  conversion: 3-year limitations period (Utah Code 70A-3-118(7); and  $\bullet$  passing a bad check: within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first. Utah Code 70A-3-118(3).

## 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

Utah 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 explicitly acknowledges the debt, or expresses a new promise to pay the full debt. See, e.g., Bradsen v. Shellpoint Mortgage Servs., 505 P.3d 1109, 1114–15 (Utah Ct. App. 2022) (To restart a statute of limitations, an acknowledgment of a debt must be 'clear, distinct, direct, unqualified, and intentional.'").

# 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

Utah does not meet this benchmark because Utah law permits fee shifting. Note: Utah provides a reciprocal right to attorneys' fees for prevailing defendants when the debt contract "allow(s) at least one party to recover attorney fees." Utah Code Ann. § 70C-2-105 (West); Utah Code Ann. § 78B-5-826 (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

Utah does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) and (b). With respect to prejudgment interest, the Utah code states that the parties to a "lawful written, verbal, or implied contract may agree upon any rate of interest, including . . . a claim or a breach of contract." Utah Code § 15-1-1(1) (2022). When the contract does not state the rate of interest, the rate of interest for the contract (or breach of contract) is 10% per annum. Id. § 15-1-1(2) (2022). Thus, Utah does not limit prejudgment interest to 7% or less (as is required to meet sub-benchmark (a)). With respect to post-judgment interest, the Utah code states that, for contract actions, the rate of interest specified in the contract shall apply to judgments rendered on that contract; all other final civil and criminal judgments "shall bear interest at the federal post judgment interest rate as of January 1 of each year, plus 2%." Utah Code § 15-1-4 (2022). Thus, Utah 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

Utah meets the benchmark because a court must issue a writ of garnishment or a writ of execution. Utah R. Civ. P. 64D, 64E. In small claims actions, judgments may be collected under normal state civil procedure rules. Utah R. Small Claims P. 11.

# 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

Utah 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. See UT Code  $\S$  70C-7-103.

### 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

Utah does not meet this benchmark because none of the sub-benchmarks are met. Utah law provides as follows: (a) Income: Utah 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, for consumer debts, subject to certain limited exceptions. Utah Code Ann. § 70C-7-103 (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: Utah does not meet sub-benchmark (b) because a home that is a person's primary personal residence is exempt only up to a value of \$42,000. Utah Code Ann. § 63A-3-503(2) (West 2023) (updated for inflation annually). A home that is not the primary personal residence of a person is exempt up to a value of \$5,000 subject to certain limited exceptions. Id. (c) Car: Utah does not meet sub-benchmark (c) because one car is exempt only up to a value of \$3,000. Id. at § 78B-5-506(3)(b). 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

Utah does not meet this benchmark because a judgment debtor is not entitled to notice prior to garnishment of their property (notice is instead sent to the judgment debtor by the garnishee within seven business days after service of a writ of garnishment upon the garnishee). See Utah R. Civ. P. 64D(g). Additionally, even if notice were provided prior to garnishment, the state would not meet subbenchmark (a) because the notice provided to the judgment debtor only is required to provide a partial list of exemptions (and not a complete list of exemptions), or sub-benchmark (b) because it is not required to provide the manner in which to challenge the order. See Utah R. Civ. P. 64D(g), 64(a)(6).

# 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

Utah does not meet the benchmark because it does not prohibit incarceration for contempt for failure to obey a court order to pay all or part of a debt judgment. The Utah Supreme Court has held that a court may imprison a person for failing to obey a court order to pay a debt and that such imprisonment does not violate the state constitution's prohibition on imprisonment for debt. See In re Clift's Est., 108 Utah 336, 344–45 (1945).

# 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

Utah does not meet the benchmark because a person's failure to appear at a debtor's examination need not be willful to constitute contempt. After a judgment, courts may "conduct hearings as necessary to identify property and to apply the property toward the satisfaction of the judgment or order." Utah R. Civ. P. 64. A person may be held in contempt for "disobedience of any lawful judgment, order or process of the court," including an order to appear, and a judge may order incarceration. Utah Code Ann. §§ 78B-6-301; 78B-6-310.

# 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

Utah does not meet the benchmark because it does not provide a right to counsel in contempt cases in which incarceration is possible. See Utah Code §§ 78B-22-201; 78B-6-309.

# 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

Utah does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Utah Code Ann.  $\S$  76-6-505.

### 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

Utah does not meet the benchmark because it authorizes judges to order that bail posted in a contempt proceeding be used to pay the creditor. Utah Code  $\S$  78B-6-311.

## 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

Utah does not meet this benchmark because the court or judge may compel the judgment debtor to appear before the court to be fully examined under oath regarding their estate. The law does not limit the frequency of such examinations. Utah Code Ann. § 6-1-13.

# 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?

Utah does not meet this benchmark because, although it has created a dashboard that provides data on court filings, including in debt collection cases generally, it does not break down the data specifically by "consumer debt" cases. Utah Jud. Branch, District Court Filings, 2010-2023, https://app.powerbigov.us/view?

r=eyJrIjoiZjY4ZDBmN2MtZDQwNy00N2QwLWEyNTgtY2VhNDNlZmY0Yjg1IiwidCI6ImI0NTI2NjI5LTc4MDEtNDhjMy1hMTU5LTc4NjdkNjhmNjdhYSJ9 (last visited Jan. 24, 2024).

### 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?

Utah does not meet this benchmark because it has created a dashboard that provides data on court filings, including in debt collection cases generally, but it does not break down the data specifically by "consumer debt" cases. Utah Jud. Branch, District Court Filings, 2010-2023, https://app.powerbigov.us/view?

r=eyJrIjoiZjY4ZDBmN2MtZDQwNy00N2QwLWEyNTgtY2VhNDNlZmY0Yjg1IiwidCI6ImI0NTI2NjI5LTc4MDEtNDhjMy1hMTU5LTc4NjdkNjhmNjdhYSJ9 (last visited Jan. 24, 2024).

To learn more about the Consumer Debt Litigation Index, including how other states fared, visit <a href="https://ncaj.org/state-rankings/consumer-debt">https://ncaj.org/state-rankings/consumer-debt</a>.

# **Download State Reports**