

Consumer Debt Litigation Index

Top Recommendations for Reform in Virginia

Virginia's Score: 17/100

Virginia's National Rank: 33rd

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

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

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

How: Virginia 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 Virginia were to Implement these Recommendations?

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

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

Virginia does not meet this benchmark because it does not meet either sub-benchmark 1(a) or 1(b). First, Virginia does not meet sub-benchmark 1(a) because, in addition to the sheriff, it permits non-parties over the age of 18, and private process servers to serve process. See VA Code Ann. § 8.01-293. Virginia does not meet sub-benchmark 1(b) because Virginia does not require that the court send supplemental notice of a new consumer debt lawsuit 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

Virginia does not meet this benchmark because Virginia does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Va. Supr. Ct. R. 3:5(a).

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

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

4 - No Notarization Requirement to Answer

Score: 2/2

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

Yes

Virginia meets this benchmark because it does not require that pleadings be verified or notarized. See VA Code Ann. § 8.01-271.1.

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

Virginia meets the benchmark because no fee is required to file an answer or cross-claim, although a filing fee is required when filing a counterclaim or third-party claim. See Va. Code Ann. § 17.1-275(A)(13) (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

Virginia does not meet this benchmark because it does not require consumer debt complaints to allege (a) the original creditor's name, (b) the basis of the plaintiff's standing, or (c) an itemization of the amounts sought. See Va. Code Ann. § 8.01-28.

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

Virginia does not meet the benchmark or any sub-benchmarks. Virginia courts may grant default judgments pursuant to Va. Sup. Ct. R. 3:19 and Form DC-412 (Warrant in Arrest). Rule 3:19 and the Warrant in Arrest form do not impose any of the requirements in sub-benchmarks (a) to (c). Va. Sup. Ct. R. 3:19 does not require evidence of damages for default judgement unless it is unliquidated damages. If the debtor appears in court, the burden is on the plaintiff to prove the existence of the debt.

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

Virginia does not meet this benchmark because it does not place the burden on the plaintiff to allege (a) the statute of limitations, (b) the date the debt accrued, or (c) the date the statute of limitations expires. Raising the statute of limitations becomes the debtor defendant's burden. See Va. Sup. Ct. R. 3:18(d).

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

Virginia 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, Virginia has the following limitations periods: • breach of written contract: 5-year limitations period (VA Code § 8.01-246(2)); • breach of oral contract: 3-year limitations period (VA Code § 8.01-246(4)); • unjust enrichment: 3-year limitations period (VA Code § 8.01-246(4); Cove v. Wallen, 104 Va. Cir. 6 (2019) • conversion: 3-year limitations period (VA Code § 8.3A-118(g); and • passing a bad check: 3-year limitations period after dishonor of the draft or ten years after the date of the draft, whichever period expires first (VA Code § 8.3A-118(c).

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

Virginia 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., Va. Code Ann. § 8.01-229.

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

Virginia does not meet this benchmark because it does not prohibit fee shifting. *Mullins v. Richlands Nat. Bank*, 241 Va. 447, 449, 403 S.E.2d 334, 335 (1991).

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

Virginia does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Regarding prejudgment interest, Virginia law states that the rate of prejudgment interest is 6% or the amount provided in contract, if higher. Although the 6% prejudgment interest rate is lower than benchmark (a)'s requirement of 7%, Virginia law does allow prejudgment interest to exceed 7% if such a rate is provided in contract. Regarding post-judgment interest, Virginia law states that post-judgment interest is 6% or the amount provided in contract, if higher. Not only is the 6% post-judgment interest rate higher than 5%, but Virginia law allows for post-judgment interest rates even higher than that if provided in contract. Thus, Virginia does not meet the requirements of this benchmark.

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

Virginia meets the benchmark because a summons must "be sued out of a clerk's office" for garnishment and a court clerk must issue a writ of fieri facias (a writ of execution) for attachment. Va. Code Ann. § 8.01-511; Va. Code Ann. § 8.01-466. Small claims courts in Virginia follow the procedures of the general district court in judgment and collection. Va. Code Ann. § 16.1-122.6.

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

Virginia 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. Va. Code Ann. § 34-4 provides an exemption for certain funds on deposit in a bank account 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

No

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?

Virginia does not meet the benchmark because none of the sub-benchmarks are met. Virginia law provides as follows: (a) Income: Virginia does not meet sub-benchmark (a) because it exempts the greater of 75% of a person's weekly disposable earnings or 40 times the federal or state minimum hourly wage, whichever is less, in effect when the person is paid, subject to certain limited exceptions. Va. Code Ann. § 34-29(a). (b) Home: Virginia does not meet sub-benchmark (b) because a home that is a person's or a dependent of a person's principal place of residence is exempt only up to a value of \$25,000 subject to certain limited exceptions. Va. Code Ann. § 34-4. (c) Car: Virginia does not meet sub-benchmark (c) because a person's car(s) is exempt only up to a total value of \$6,000 subject to a certain limited exception. Va. Code Ann. § 34-26(8). 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

Virginia does not meet this benchmark because a judgment debtor is not entitled to notice prior to garnishment of their property (notice is instead served on the judgment debtor "promptly" after service upon the garnishee). See Va. Code Ann. § 8.01-511(A) (West 2023). Additionally, even if notice were required to be provided prior to garnishment, the state would not meet sub-benchmark (b) because the notice is not required to explain how to challenge the order, or sub-benchmark (c) because it is not required to provide the manner in which to assert the exemptions. See *id.* at § 8.01-512.4.

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

Virginia does not meet the benchmark because it does not prohibit incarceration for failure to obey a court order to pay all or part of a debt judgment. The Virginia Supreme Court has held that, although there is no prohibition on incarceration for failure to pay a debt in the Virginia Constitution, "it is nevertheless established in this state that a person may not be imprisoned, absent fraud, for mere failure to pay a debt arising from contract or for mere failure to pay a judgment for a debt founded on contract ... [because] imprisonment of poor debtors offends fundamental principles of justice in today's ordered society." *Makarov v. Commonwealth*, 228 S.E.2d 573 (Va. 1976). But courts have also held that "In civil litigation, the trial court has the authority to hold [an] offending party in contempt for acting in bad faith or for willful disobedience of its order," including for disobedience of an order to pay. *Walker-Duncan v. Duncan*, 2004 WL 76338 (Va. Ct. App. 2004).

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

Virginia does not meet the benchmark because a person's failure to appear at a debtor's examination need not be willful for a judge to order a warrant for the person's arrest, and the person may be held in jail until they answer. Va. Code Ann. § 8.01-508.

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

Virginia meets the benchmark because the appointed counsel statute in the state provides for an attorney for any person accused of a criminal offense where the penalty may be confinement. Code of Virginia § 19.2-157. The Virginia contempt statute is in the criminal code, and is considered a crime against the administration of justice. Code of Virginia § 18.2-457.

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

Virginia does not meet the benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Va. Code Ann. § 18.2-181.

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

Virginia does not meet the benchmark because its laws do not expressly prohibit the use of bail or bond to pay a creditor. See Va. Code Ann. § 8.01-508.

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

Virginia does not meet the benchmark because, in order for a judgment creditor to examine a judgment debtor, the creditor must prove to the court that they have not examined the debtor in the last six months. The creditor may examine the debtor within the six month period only if they can show good cause for the examination. Va. Code § 8.01-506.

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

Virginia does not meet this benchmark because, although it collects and reports data on cases by type, it does not provide data specific to consumer debt cases. Va. Jud. Branch, CPSS-GCMS Caseload Statistics of the General District Courts, https://www.vacourts.gov/courtadmin/aoc/djs/programs/cpss/csi/stats/district/cms/2023/gcms1001_dec.pdf (last visited Jan. 31, 2024) (including data for "warrant in debt" and "garnishment" cases).

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

Virginia does not meet this benchmark because, although it collects and reports data on cases by type, it does not provide data specific to consumer debt cases. Va. Jud. Branch, CPSS-GCMS Caseload Statistics of the General District Courts, https://www.vacourts.gov/courtadmin/aoc/djs/programs/cpss/csi/stats/district/cms/2023/gcms1001_dec.pdf (last visited Jan. 31, 2024) (including data for "warrant in debt" and "garnishment" cases). Furthermore, the data is not broken down by case disposition.

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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