

Consumer Debt Litigation Index

Top Recommendations for Reform in Tennessee

Tennessee's Score: 17/100

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

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

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

How: Tennessee 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 Tennessee were to Implement these Recommendations?

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

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

Tennessee does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, Tennessee does not meet sub-benchmark 1a because under Tennessee law "[a] summons and complaint may be served by any person who is not a party and is not less than 18 years of age. See Tenn. R. Civ. P. 4.01(2). Second, sub-benchmark 1b is not met because Tennessee does not require the court to send a defendant supplemental notice of a new consumer debt lawsuit and deny default judgment if that notice is 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

Tennessee does not meet this benchmark because Tennessee does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. See Tenn. R. Civ. P. 4.02.

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

Tennessee meets this benchmark because it provides a "sworn denial" form for use by a consumer debt defendant sued on an Account, to use if they "disagree with any of the Plaintiff's claims." See Sworn Denial, Tenn. Cts., https://www.tncourts.gov/sites/default/files/docs/sworn_denial_-_dec_2012.pdf (last visited Nov. 10, 2023). Tennessee also meets this benchmark because "The court shall allow the defendant orally to deny the account under oath and assert any defense or objection the defendant may have. Upon such denial, on the plaintiff's motion, or in the interest of justice, the judge shall continue the action to a date certain for trial. Tennessee Code Title 24. Evidence and Witnesses § 24-5-107. For court "sworn denial" form, see <https://www.tncourts.gov/node/1436225>.

4 - No Notarization Requirement to Answer

Score: 0/2

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

No

Tennessee does not meet this benchmark because, although it does not ordinarily require that pleadings be verified or notarized, see Tenn. R. Civ. P. 11.01, Tennessee's "Sworn Denial" form, through which a consumer debt defendant may deny a case brought on an Account, requires notarization. See <https://www.tncourts.gov/node/1436225> (Sworn Denial).

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

Tennessee meets the benchmark because there is no fee set forth to file an answer, although there is a fee for cross-filings and counter complaints in civil cases. Tenn. Code Ann. § 8-21-401 (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

Tennessee does not meet the benchmark because it does not require a consumer debt complaint to include (a) the name of the original creditor, (b) the basis of plaintiffs' standing, or (c) itemization of the amounts sought. See Tenn. Code Ann. § 24-5-107.

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

No

of obligation); and c. Amount of judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest?

Tennessee does not meet the benchmark or any sub-benchmarks. Tennessee courts may grant default judgments pursuant to Tennessee Rule of Civil Procedure 55, which does not impose any of the requirements in sub-benchmarks (a) through (c). There is also no Tennessee 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

Tennessee does not meet this benchmark because the statutes and rules of Tennessee 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. The statute of limitations is an affirmative defense in Tennessee, see Tenn. R. Civ. P. 8.03.

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

Tennessee 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, Tennessee has the following limitations periods: • breach of written contract: 6-year limitations period (T.C.A. §28-3-109(a)(3)) • breach of oral contract: 6-year limitations period (T.C.A. §28-3-109(a)(3)) ; • open account: 6-year limitations period (T.C.A. §28-3-109(a)(3)); • account stated ("an action for any article charged on an account in a store"): 6-year limitations period (T.C.A. §28-3-109(a)(3)); • unjust enrichment: 6-year limitations period (Keller v. Colgems-EMI Music, Inc., 924 S.W.2d 357, 359 (Tenn. Ct. App. 1996)); • conversion: 3-year limitations period (T.C.A. § 28-3-105(2); Ralston v. Hobbs, 306 S.W.3d 213, 222-23 (Tenn. Ct. App. 2009)); and • passing a bad check: 3-year limitations period (T.C.A. § 47-3-118(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

Tennessee 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 makes a subsequent payment toward the debt, explicitly acknowledges the debt, or expresses a new promise to pay the full debt. See Thomas v. Ken Smith

Auto Parts, 2023 WL 2575939 (Tenn. Ct. App., 2023) (a defendant may revive a plaintiff's remedy that had been barred by the running of a statute of limitations either by expressly promising to pay the debt or by acknowledging the debt and expressing a willingness to pay it), and Kesterson v. Jones, 2015 WL 2445968 (Tenn. Ct. App., 2015) (a defendant may revive a plaintiff's remedy that had been barred by the running of a statute of limitations either by expressly promising to pay the debt or by acknowledging the debt and expressing a willingness to pay it).

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

Tennessee does not meet this benchmark because it permits attorney fee shifting pursuant to statute or contractual provisions. Note: the case law and code are silent when it comes to reciprocal rights. The Tennessee Supreme Court has held that an award of attorneys' fees is permitted only where such fees are authorized by statute or contract. Segneri v. Miller, No. M2003-01014-COA-R3-CV, 2004 Tenn. App. LEXIS 685, at *1 (Ct. App. Oct. 19, 2004).

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

Tennessee does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). Prejudgment interest is 10% per annum. Post-judgment interest has no set maximum, but is set by the state's commissioner of financial institutions twice a year, based on the Federal Reserve System's average prime rate loan. See TN Code § 47-14-123 (2021). Thus, Oregon does not cap prejudgment interest for debt buyers at an annual rate of 7% (or less) nor does it cap post-judgment interest for all creditors at 5% (or less) of the judgment.

VI. Issue Area: Reduce the likelihood that consumer debt collection actions leave people homeless, or perpetuate a cycle of debt.

13 - Require Court Order to Garnish or Attach

Score: 5/5

Does the state in consumer debt lawsuits require a court order for garnishment and attachment?

Yes

Tennessee meets the benchmark because a court must issue a writ of garnishment or a writ of execution for attachment. Tenn. Stat. §§ 26-1-103; 26-2-203; Tenn. R. Civ. Proc. 69.05-06.

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

Tennessee 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. Tenn. Code Ann. § 26-2-103(a) provides that a "person may select for exemption the items of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution, up to the aggregate value of ten thousand dollars (\$10,000) debtor's equity interest."

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

Tennessee does not meet the benchmark because none of the sub-benchmarks are met. Tennessee law provides as follows: (a) Income: Tennessee does not meet sub-benchmark (a) because it exempts 75% of a person's aggregate weekly disposable earnings or 30 times the federal minimum hourly wage in effect when the person is paid, whichever is greater. Tenn. Code Ann. § 26-2-106. It also exempts \$2.50 per week for each dependent of a person who is under sixteen years old and is a resident of Tennessee. Tenn. Code Ann. § 26-2-107. 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: Tennessee does not meet sub-benchmark (b) because a home that is a person's principal place of residence is exempt only up to a value of \$35,000 subject to certain limited exceptions. Tenn. Code Ann. § 26-2-301(a). (c) Car: Tennessee does not meet sub-benchmark (c) because Tennessee does not offer any exemptions for a person's car(s). Tenn. Code Ann. § 26-2-103 (although Tennessee offers a wildcard exemption for \$10,000 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

Tennessee does not meet this benchmark because a judgment debtor is not entitled to notice prior to levy upon their property. Instead, the sheriff or other officer must provide the judgment debtor with a copy of the notice by mail or delivery to the judgment debtor immediately after levy upon the property. See Tenn. Code Ann. § 26-2-405 (West 2023). Additionally, even if notice were provided prior to garnishment, the state would not meet sub-benchmark (a) because the notice to the judgment debtor is not required to provide a complete list of exemptions (instead only providing an abbreviated list of certain available exemptions), or sub-benchmark (b) because it is not required to provide the manner in which to challenge an order. See *id.* at § 26-2-404.

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

Tennessee 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 Tennessee Constitution generally provides "that no person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases where there is strong presumption of fraud." Tenn. Const. art. 1, § 18. Tennessee appellate courts have held that a judgment debtor may be incarcerated for failure to obey a court order to pay a debt, but that a judgment debtor may not be held in jail if they are unable to pay. *Quality First Staffing Servs. v. Chase-Cavett Servs., Inc.*, No. 02A01-9807-CH-00205, 1999 WL 281312, at *3 (Tenn. Ct. App. May 7, 1999)(holding that "It is true that in order to imprison a person for civil contempt, the contemnor must have the ability to perform the act he is ordered to perform.")

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

Tennessee does not meet the benchmark because a person's failure to appear for a discovery hearing in aid of execution (a debtor's examination) need not be willful to constitute contempt, and a judge may order incarceration. Tenn. R. Civ. P. Rule 69.03; Tenn. R. Civ. P. Rule 37.02; Tenn. Code Ann. § 29-9-103.

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

Tennessee meets the benchmark because court rules provide that there is a right to counsel in "contempt of court proceedings in which the defendant is in jeopardy of incarceration." Tenn. Sup. Ct. R. 13(d)(1)(B).

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

No

who threaten or bring criminal prosecutions in bad check cases)?

Tennessee does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Tenn. Code Ann. §§ 39-14-121; 40-3-203.

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

Tennessee does not meet the benchmark because its laws do not expressly prohibit the use of bail or bond to pay a creditor. See Tenn R. Civ. P. 64.

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

Tennessee does not meet the benchmark because a judgment creditor may examine any person, including the judgment debtor, on the property the debtor listed for the court. The law does not limit the frequency of such examinations. Tenn. Code Ann. § 26-2-115 (2021)

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

Tennessee does not meet the benchmark because it does not collect, make available or publish specific data on the number of consumer debt lawsuits, nor does it publish data on types of dispositions of consumer debt cases. Tennessee courts do publish annual reports, which include general information by court level and include statistics on debt, but those statistics are grouped together with contract and specific performance case statistics, so the number and disposition of consumer debt lawsuits alone cannot be ascertained. See TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY FISCAL YEAR 2021-2022 (last visited May 2, 2023). See https://www.tncourts.gov/sites/default/files/docs/annual_report_fy2022.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

Tennessee does not meet the benchmark because it does not collect, make available or publish specific data on the number of consumer debt lawsuits, nor does it publish data on types of dispositions of consumer debt

cases. Tennessee courts do publish annual reports, which include general information by court level and include statistics on debt, but those statistics are grouped together with contract and specific performance case statistics, so the number and disposition of consumer debt lawsuits alone cannot be ascertained. See TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY FISCAL YEAR 2021-2022 (last visited May 2, 2023). See https://www.tncourts.gov/sites/default/files/docs/annual_report_fy2022.pdf.

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