

Consumer Debt Litigation Index

Top Recommendations for Reform in Vermont

Vermont's Score: 24/100

Vermont's National Rank: 21st

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. In credit card debt cases Vermont requires plaintiffs to allege the name of the original creditor and the basis of the plaintiff’s standing, but not an itemization of the amount sought. In other types of consumer debt cases it does not require plaintiffs to allege any of these key elements.

How: Vermont should adopt a law or practice that requires plaintiffs in all types of 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. Vermont requires plaintiffs to file a certificate of service in small claims court but not in other courts. With regard to sub-benchmark (b), Vermont requires plaintiffs to provide the contract or other evidence of the debt signed by the debtor. The state should, however, require proof of service, as well as evidence of validity of the debt and an itemization of the amount of the judgment through authenticated business records in every court and in every type of consumer debt case

How: Vermont should adopt a law or practice that requires plaintiffs in all types of consumer debt cases—and in all courts—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. Vermont, however, does not have self-executing bank account exemptions, and it has not increased garnishment and attachment exemptions sufficiently.

How: Vermont 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 Vermont were to Implement these Recommendations?

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

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

Vermont does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, Vermont does not meet sub-benchmark 1a because, in addition to the sheriff, constable or a judge, Vermont permits any person authorized by law, or an indifferent person appointed by a judge to serve process. Vt. R. Civ. P. 4(c)-(g). Vermont does not meet sub-benchmark 1b because Vermont does not require that the court mail supplemental notice of a new consumer debt lawsuit to a defendant 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

Vermont does not meet this benchmark because Vermont does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. Vt. R. Civ. P. 4(b).

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

Vermont meets this benchmark because, under the rules of service, plaintiffs are required to include with the summons a blank Answer and Notice of Appearance form that can be used by consumer debt defendants. See Vt. R. Civ. P. 4(b). <https://www.vermontjudiciary.org/sites/default/files/documents/100-00051.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

Vermont meets this benchmark because it does not require that a pleading be verified except when specifically required by rule or statute. See Vt. 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

Vermont meets the benchmark because there is no filing fee disclosed to file an answer, although there is a fee for filing a counterclaim or cross-claim or third-party claim. See Vt. Stat. Ann. tit. 32, § 1431 (c)(1), (d) (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

Vermont does not meet the benchmark because although with respect to actions involving credit card debt, it requires the complaint to include (a) the name of the original creditor, and (b) the basis of plaintiffs' standing, see Vt. R. Civ. P. 9.1, it does not require (c) an itemization of the amount sought, specifically in regards to fees and costs, and does not meet any of the sub-benchmarks for other consumer debt actions, see Vt. 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

Vermont does not meet the benchmark or any of its sub-benchmarks across all courts and for all types of consumer debt. Vermont courts may grant default judgments pursuant to Vermont Civil Procedure Rule 55(c) and Vermont Small Claims Procedure Rule 3(e). Except as noted below, neither of those rules impose all of the requirements in sub-benchmarks (a) to (c) for all types of debt. With respect to sub-benchmark (a), Vermont Small Claims Rule 3(e)(1) requires the plaintiff to file a certificate of service with the clerk's office, but the Vermont Rules of Civil Procedure do not contain a similar requirement. With respect to sub-benchmark (b), solely with respect to credit card debt, Vermont Civil Procedure Rule 55(c)(7) and Vermont Small Claims Procedure Rule 3(e)(2) require establishing the validity of the debt by the motion for default including the contract or other documentary evidence of the debt signed by the debtor or account statements. In addition, there is no Vermont 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

Vermont does not meet this benchmark because the statutes and rules of Vermont 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 Vt. R. Civ. P. 8(c) (listing statute of limitations as an affirmative defense). With respect to actions involving a credit card debt, Vermont does require that a consumer debt complaint "contain additional information necessary to provide the court with sufficient information regarding . . . the statute of limitations." Vt. R. Civ. P. 9.1. Vermont nonetheless fails to meet the benchmark given the lack of specificity in this requirement and given that this requirement applies only to actions involving a credit card debt.

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

Vermont 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, Vermont has the following limitations periods: • breach of written contract: 8-year limitations period (VT 12 V.S.A. § 507); • breach of oral contract: 6-year limitations period (VT 12 V.S.A. § 511); • open account: 3-year limitations period (VT 9A V.S.A. § 3-118(g)); • unjust enrichment: 6-year limitations period (VT 12 V.S.A. § 511); • conversion: 3-year limitations period (VT 9A V.S.A. § 3-118(g)); and •

passing a bad check: must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first. (VT 9A V.S.A. § 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

Vermont 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, e.g., *Putnam v. Swain*, 102 Vt. 90, 146 A. 6, 7 (1929) ("It is true that voluntary part payment of a debt, whether barred by the statute or not, if made without protestation of further liability, is a recognition of such debt by the debtor, from which the law not only implies an admission of the existence of the balance as a subsisting debt, but also a promise to pay it which prevents the operation of the statute."); *Cross v. Conner*, 14 Vt. 394 (1842) (reviving stale claims acceptable under certain circumstances); *Flex-A-Seal, Inc. v. Safford*, 117 A.3d 823, 827-28 (Vt. 2015) (citing *Gailer v. Grinnel*, 2 Aik. 349 (1828), for the proposition that "the acknowledgement or new promise is a waiver of the statute [of limitations], and takes the case out of it, so that the statute does not operate upon it; and whenever a case is taken out of the statute, the original debt is revived, and the action may be brought upon it"); see also *Gailer*, 2 Aik. at 350 ("It appears to be well settled, that an acknowledgment of a debt barred by the statute of limitations, or a promise to pay it, revives the original debt . . .").

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

Vermont does not meet this benchmark because it does not prohibit fee shifting. Vermont generally adheres to the American rule (each party bears their own attorney's costs), but this general rule does not apply when a contract says otherwise. *Kwon v. Eaton*, 2010 VT 73, ¶ 14, 188 Vt. 623, 626, 8 A.3d 1043, 1047 (2010). Note: We did not identify case law or statute suggesting a reciprocal right to attorneys fees for prevailing consumers debtors.

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

Vermont does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) or (b). With respect to prejudgment interest, Vermont law states that "the rate of interest or the sum allowed for forbearance or use of money shall be 12 percent per annum." 9 V.S.A § 41a(a) (2022). Vermont law further allows for interest on certain types of debt to exceed this 12% cap and interest on credit card debt can be whatever the rate is that is agreed upon by the lender and borrower. 9 V.S.A § 41a(b) (2022). Thus, Vermont does not limit prejudgment interest to 7% or less (as is required to meet sub-benchmark (a)). With respect to post-judgment

interest, Vermont law states “interest on a judgment lien shall accrue at the rate of 12 percent per annum.” 12 V.S.A. § 2903(c) (2022). Thus, Vermont 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

Vermont meets the benchmark because a court clerk must issue a writ of execution. Vt. R. Civ. P. 69. In order to garnish a judgment debtor's wages, the judgment creditor must first move the court to invoke "trustee process" (Vermont's name for garnishment proceedings). Vt. Stat. Ann. tit. 12, § 3168. In small claims cases, Vermont follows the same process. Vt. Stat. Ann. tit. 12, § 5534.

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

Vermont 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. Vt. Stat. Ann. tit. 12, § 2740(15) provides an exemption for a debtor's deposits in a bank, up to \$700, 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

Vermont does not meet the benchmark because none of the sub-benchmarks are met. Vermont law provides as follows: (a) Income: Vermont does not meet sub-benchmark (a) because it exempts 85% of a person's weekly disposable earnings or 40 times the federal minimum hourly wage in effect when the person is paid, whichever is more, for consumer debts, subject to certain limited exceptions (exempting 100% of a person's weekly disposable earnings if the person received certain public benefits within two months of the garnishment proceeding; courts may exempt a greater percentage if a person shows a need for increased exemption). Vt. Stat. Ann. tit. 12, § 3170. Forty times the federal minimum wage (\$7.25 per hour in 2023) is only \$290. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), <https://www.dol.gov/agencies/whd/minimum-wage/state>. (b) Home: Vermont does not meet sub-benchmark (b) because a home, including the land on which the home is located, is exempt only up to a value of \$125,000. Vt. Stat. Ann. tit. 12, § 101. (c) Car: Vermont does not meet sub-benchmark (c) because a person's interest in car(s) is exempt only up to an aggregate value of \$2,500. Vt. Stat. Ann. tit. 12, § 2740(1). 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**

Vermont does not meet this benchmark because a judgment debtor is not entitled to notice prior to execution against their property (notice is instead provided by the officer serving the judgment debtor with a copy of the writ of execution, with no specific time period required prior to execution). See Vt. R. Civ. P. 69. Additionally, even if notice were provided in advance, the state would not meet sub-benchmark (a) because it does not require provision of a complete list of exemptions; sub-benchmark (b) because the notice is not required to provide the manner in which to challenge the order; or sub-benchmark (c) because the notice is not required to explain how to assert the exemptions. Id.

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**

Vermont 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. Under the Vermont Constitution, imprisonment for debt has been abolished. Vt. Const. ch II, § 40. The related statutory provision, however, states, "No person shall be arrested or imprisoned on an execution or by other means to enforce a judgment in any civil action for money damages. Notwithstanding the provisions herein, the court shall have full power to punish for contempt." See Vt. Stat. Ann. Tit. 12 §§ 123, 3521.

18 - Prohibit Incarceration for Failure to Obey a Court Order to Appear at a Debtor's Examination, Unless Nonappearance Was Willful

Score: 5/5

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? **Yes**

Vermont meets the benchmark because a judge may not order incarceration for failure to appear for a debtor's examination. If a judgment debtor fails to appear for a financial disclosure hearing, a judge may schedule a contempt hearing, but the law provides that "The penalties for contempt shall be limited to (1) authorizing the creditor to obtain a credit report on the debtor, or (2) adding a financial penalty to the judgment, in addition to the filing and service fees incurred for the motion." Vt. R. Small Claims P. 8.

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

Vermont meets the benchmark because the Supreme Court has held that in a contempt proceeding a person "has a right to be represented by an attorney...and if she cannot afford an attorney, she has the right to request that an attorney be appointed for her by this Court." In re McCoy-Janien, 200 A.3d 669 (Vt. 2018).

VIII. Issue Area: Prevent government from undue intervention on behalf of creditor.

20 - Prohibit Collaboration Between Creditors and Prosecutors

Score: 0/2

Does the state prohibit relationships (including financial relationships) in which prosecutors lend the authority of their offices to facilitate the activities of debt collectors (e.g. payments by creditors to prosecutors who threaten or bring criminal prosecutions in bad check cases)?

No

Vermont does not meet this benchmark because there is no statutory or judicial prohibition on relationships or financial arrangements between prosecutors and debt collectors. See Vt. Stat. Ann. tit. 13, § 2022.

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

Vermont does not meet the benchmark because its laws do not expressly prohibit the use of bail or bond to pay a creditor. See Vt. Stat. Ann. Tit. 12 §§ 123, 3521.

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

Vermont does not meet the benchmark because the law authorizes a creditor to subpoena a judgment debtor to appear before the court for questioning. The law does not limit the frequency of such examinations. Vt. R. Civ. P. 69.

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

Vermont does not meet the benchmark because it does not collect and publish data on consumer debt lawsuits. Vermont courts do publish annual reports, which include general information by court level, but there are no statistics available that are precisely on point. VERMONT JUDICIARY, FY22 ANNUAL STATISTICS (last visited May 2, 2023). See

<https://www.vermontjudiciary.org/sites/default/files/documents/Appendix%20I%20Statewide%20%203.23.23.pdf>

Vermont also provides a public portal for case statistics, but it does not provide specific statistics for debt lawsuits. VERMONT JUDICIARY PUBLIC PORTAL (last visited May 2, 2023). See

<https://publicportal.courts.vt.gov/Portal/Home/Dashboard/29#> .

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

Vermont does not meet the benchmark because it does not collect and publish data on consumer debt lawsuits. Vermont courts do publish annual reports, which include general information by court level, but there are no statistics available that are precisely on point. VERMONT JUDICIARY, FY22 ANNUAL STATISTICS (last visited May 2, 2023). See

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