

Chapter 83

1957 REPLACEMENT PART

Motor Vehicle Retail Instalment Contracts

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CROSS REFERENCES

Restrictive motor vehicle financing agreements,
646.410 to 646.460

83.580
Accident and health insurance written in connection
with instalment loans, 741.410
Credit life insurance, 739.605

Note: This chapter does not apply to any contract executed before January 1, 1958; but this chapter does apply to any renewal or extension of an existing contract after December 31, 1957, and to any new contract executed after January 1, 1958. See 1957 c.625 §§26, 29.

83.010 to 83.500 [Reserved for expansion]

83.510 Definitions. As used in this chapter except where the context otherwise requires:

(1) "Cash sale price" means the price for which the seller would sell to the buyer, and the buyer would buy from the seller, the motor vehicle which is covered by the retail instalment contract, if the sale were a sale for cash instead of a retail instalment sale. The cash sale price may include any taxes, registration, license and other fees and charges for accessories and their installation and for delivering, servicing, repairing or improving the motor vehicle.

(2) "Finance charge" means that part of the time sale price which exceeds the aggregate of the cash sale price, the amounts, if any, included in a retail instalment sale for insurance and other benefits, and official fees.

(3) "Financing agency" means a person engaged, in whole or in part, in purchasing or otherwise acquiring retail instalment contracts from one or more retail sellers. The term includes, but is not limited to, a bank, trust company, industrial loan companies, or loan associations, and consumer credit companies, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers. The term does not include the pledgee or other holder of more than one retail instalment contract pledged or otherwise given by a retail seller, or a transferee from him, to a lender as collateral security for a loan made to the retail seller or his transferee.

(4) "Holder" of a retail instalment contract means the retail seller of the motor vehicle covered by the contract or, if the contract is purchased or otherwise acquired by a financing agency or other assignee, the financing agency or other assignee.

(5) "Motor vehicle" or "vehicle" means:

(a) A self-propelled device used for transportation of person or property upon a public highway.

(b) A trailer, semitrailer or trailer home. The term does not include tractors, power shovels, road machinery, agricultural machinery, or other machinery not designed

primarily for highway transportation but which may be used incidentally to transport persons or property on a public highway, or devices which move upon or are guided by a track or travel through the air.

(6) "Official fees" means the filing or other fees required by law to be paid to a public officer to perfect the interest or lien, in or on a motor vehicle, retained or taken by a seller under a retail instalment contract, and to file or record a release, satisfaction or discharge of the contract.

(7) "Person" means individual, partnership, corporation, association or other group, however organized.

(8) "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller and who executes a retail instalment contract in connection therewith.

(9) "Retail instalment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property in or a lien upon a motor vehicle, which is the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract.

(10) "Retail instalment sale" or "sale" means a sale of a motor vehicle by a retail seller to a retail buyer for a time sale price payable in one or more instalments, payment of which is secured by a retail instalment contract. The term includes a bailment or leasing as defined in subsection (9) of this section. It does not include a sale of a motor vehicle for resale in the ordinary course of the buyer's business.

(11) "Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer pursuant to a retail instalment contract.

(12) "Time sale price" means the aggregate of the cash sale price of the motor vehicle, the amount, if any, included for insurance and other benefits, official fees and the finance charge. [1957 c.625 §1]

83.520 Form and contents of retail instalment contract for motor vehicle. (1) A retail instalment contract shall be in writing, shall contain all the agreements of the parties, shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks, and shall be signed by the buyer and the seller.

(2) The printed portion of the contract shall be in at least eight-point type. The contract shall contain in printing or writing of a size equal to at least ten-point bold type, the following:

(a) Both at the top of the contract and directly above the space reserved for the signature of the buyer, the words "**RETAIL INSTALMENT CONTRACT**";

(b) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(c) The following notice:

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank space, except that if delivery of the vehicle is to be made to you after this contract is signed, the serial number or other identifying information and the due date of the first instalment may be filled in at the time of delivery.

You are entitled to a copy of this contract.

You have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge.

(3) The contract shall contain the following items:

(a) The cash sale price of the motor vehicle which is the subject matter of the retail instalment sale.

(b) The amount of the buyer's down payment, itemizing the amounts, if any, paid or credited in money or in goods and containing a brief description of the goods traded in.

(c) The difference between the items set forth in paragraphs (a) and (b) of this subsection.

(d) The amount, if any, included for insurance and other benefits, specifying the coverages and benefits.

(e) The amount, if any, of official fees, as defined in subsection (6) of ORS 83.510.

(f) The principal balance, which is the sum of the items set forth in paragraphs (c), (d) and (e) of this subsection.

(g) The amount of the finance charge.

(h) The time balance, which is the sum of the items set forth in paragraphs (f) and (g) of this subsection.

(i) The time sale price.

(j) A plain and concise statement of the amount in dollars of each instalment or future payment to be made by the buyer, the number of instalments required, and the date or dates at which, or period or periods in which, the instalments are due.

(4) The contract may contain additional items to explain the calculations involved in determining the stated time balance to be paid by the buyer. [1957 c.625 §§2, 3, 5]

83.530 Filling blanks. No retail instalment contract shall be signed by any party thereto when it contains blank spaces to be filled in after its execution except that, if delivery of the motor vehicle is not made at the time of execution, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first instalment may be inserted in the contract on or about the date of delivery. [1957 c.625 §8]

83.540 Delivery of copy of contract to buyer. The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have an unconditional right to cancel the contract and to receive immediate refund of any amount paid and redelivery of all goods delivered or traded in to the seller on account of or in contemplation of the contract. An acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least ten-point bold type and, if contained in the contract, shall also appear directly above the legend required above the buyer's signature by paragraph (a) of subsection (2) of ORS 83.520. [1957 c.625 §4]

83.550 Acknowledgment of delivery of copy of contract. The buyer's written acknowledgment, conforming to the requirements of ORS 83.540, of delivery of a copy of a contract shall be conclusive evidence of such delivery and of compliance with ORS 83.530. [1957 c.625 §8]

83.560 Finance charge. (1) A retail seller may, in a retail instalment contract, contract for and charge, receive and collect a finance charge of \$25 or a finance charge not in excess of the following rates whichever is greater:

(a) Any new motor vehicle designated by the manufacturer by a year model not earlier than one year prior to the year in which the sale is made, not more than \$8 per \$100 of principal balance.

(b) Any new motor vehicle not included in subsection (1) of this section, and any used motor vehicle designated by the manufacturer by a year model not earlier than two years prior to the year in which the sale is made, not more than \$10 per \$100 of principal balance.

(c) Any used motor vehicle not included in subsection (2) of this section, not more than \$12 per \$100 of principal balance.

(2) The finance charge allowed by subsection (1) of this section shall apply to contracts payable in 12 successive monthly instalments of substantially equal amounts. The finance charge which may be charged in contracts payable over a period at more or less than 12 successive months shall be decreased or increased proportionately according to the period over which the payments are to be made.

(3) When a retail instalment contract provides for unequal or irregular instalments, the finance charge shall be at the effective rate provided in subsection (1) of this section, giving due regard to the schedule of instalments. [1957 c.625 §§19, 20, 21]

83.570 Extra charges prohibited. The finance charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in ORS 83.560, 83.590, 83.620 and 83.630 and except for those items expressly provided for in the retail instalment contract as set forth in subsections (3) and (4) of ORS 83.520. [1957 c.625 §22]

83.580 Insurance. (1) The amount, if any, included for automobile insurance, shall not exceed the premiums chargeable in accordance with rate filings made by the insurer with the State Insurance Commissioner for such insurance.

(2) The amount, if any, included for life, health and accident or other insurance, other than automobile insurance, shall not exceed the premiums charged by the insurer.

(3) The seller or financing agency, if an amount for automobile or other insurance on the motor vehicle is included in a retail instalment contract, shall within 30 days after execution of the retail instalment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer of a motor vehicle under a retail instalment contract shall have the privilege of purchasing such insurance from an agent of his own selection and of selecting an insurance company acceptable to the seller; provided, however, that the inclusion of the insurance premium in the retail instalment contract when the buyer selects the agent or company, shall be optional with the seller and in such case the seller or financing agency shall have no obligation to send, or cause to be sent, to the buyer the policy or certificate of insurance.

(4) If an insurance policy or certificate that was obtained for an amount included in the retail instalment contract is canceled, the unearned insurance premium refund received by the holder of the contract shall be credited to the last maturing instalments of the retail instalment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer or of the buyer and the holder of the contract. [1957 c.625 §6]

83.590 Delinquency and collection charges. The holder of a retail instalment contract may, if the contract so provides, collect a delinquency charge on each instalment in default for a period of 10 days or longer. The delinquency charge for any instalment shall not exceed five percent of the delinquent instalment or \$5, whichever is less. In addition to the delinquency charge, the retail instalment contract may provide for the payment of reasonable collection costs which may include the payment of reasonable attorneys' fees where such contract is referred to an attorney not a salaried employe of the holder of the contract

for collection, plus the court costs and disbursements. [1957 c.625 §7]

83.600 Statements; receipts. Upon written request from the buyer, the holder of a retail instalment contract shall give or forward to the buyer a written statement of the dates and amounts of payments made and the total amount unpaid on the contract. A buyer shall be given a written receipt for any payment when made in cash. [1957 c.625 §12]

83.610 Delivery to buyer of instrument indicating full payment; release of security. After the payment of all sums for which the buyer is obligated under a retail instalment contract, and upon written demand made by the buyer, the holder of such contract shall mail to the buyer at his last known address, good and sufficient instruments to indicate payment in full and to release all security in the motor vehicle. This section is supplementary to and is not restrictive of ORS 86.440, 86.460 and 481.410. [1957 c.625 §23]

83.620 Voluntary prepayment by buyer; refund. Notwithstanding the provisions of a retail instalment contract to the contrary, the buyer may pay in full at any time before maturity the obligation contained in the retail instalment contract. Upon such premature payment, the buyer shall receive a refund credit. The amount of the refund credit shall not be less than that proportion of the finance charge after first deducting from such finance charge an acquisition cost of not more than \$15, as the sum of the periodic time balances after the month in which prepayment is made, bears to the sum of all the periodic time balances under the schedule of instalments in the original contract. Where the amount of the credit for premature payment is less than \$1, no refund need be made. This section does not prohibit the holder of a retail instalment contract from collecting any charge, cost or fee under ORS 83.590. [1957 c.625 §24]

83.630 Extension of scheduled due date; deferment of scheduled payment. The holder of a retail instalment contract may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or part of any instalment or instalments. In any such case, the holder may restate the amount of the instalments and the time schedule therefor, and collect as a refinance charge for such extension or deferment, a flat service fee not to exceed \$5 and

a total additional charge not exceeding an amount equal to one percent per month simple interest on the respective descending balances computed from the date of such agreement of extension or deferment. [1957 c.625 §25]

83.640 Purchase of contract by financing agency; assignment of contract. (1) A financing agency may purchase a retail instalment contract from a seller on such terms and conditions and for such price as may be mutually agreed upon. No filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments on the contract or over the vehicle if repossessed by the seller, shall be necessary to the validity of a written assignment of a retail instalment contract as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

(2) Unless the buyer has notice of actual or intended assignment of a retail instalment contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees. [1957 c.625 §§10, 11]

83.650 Effect of negotiation of notes on buyer's rights against seller. (1) No retail instalment contract shall require or entail the execution, by the buyer, of any note or series of notes, which when separately negotiated will cut off as against third parties any right of action or defense which the buyer may have against the seller.

(2) The rights of a holder in due course of any negotiable instrument executed contrary to subsection (1) of this section are not impaired by reason of the violation of subsection (1) of this section, but the buyer may bring an action against the seller for the recovery of any loss or expense, including attorneys' fees in defending an action on the instrument by the holder, incurred by reason of the violation of subsection (1) of this section. The buyer's action may be joined with any other right of action he has against the seller arising out of the instalment sale. [1957 c.625 §9]

83.660 Acceleration provision. No provision in a retail instalment contract by which, in the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the time balance is enforceable. This section does not prohibit pro-

visions in a retail instalment contract accelerating any part or all of the time balance in the event of sale or transfer, or removal outside the state of the motor vehicle covered by the contract. [1957 c.625 §13]

83.670 Unenforceable contract provisions. (1) No provision in a retail instalment contract for confession of judgment, power of attorney therefor, or wage assignment is enforceable.

(2) No provision in a retail instalment contract which authorizes a seller or holder of the contract or other person acting on his behalf to enter upon the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of a motor vehicle is enforceable.

(3) No provision in a retail instalment contract by which the buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle is enforceable.

(4) No provision in a retail instalment contract by which the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the motor vehicle, is enforceable.

(5) No provision in a retail instalment contract relieving the seller from liability for any legal remedies which the buyer may have had against the seller under the contract, or any separate instrument executed in connection therewith, is enforceable. [1957 c.625 §§14, 15, 16, 17, 18]

83.680 Waiver of provisions of chapter void. Any waiver of the provisions of this chapter shall be unenforceable and void. [1957 c.625 §28]

83.690 to 83.980 [Reserved for expansion]

83.990 Penalties. (1) Any person who wilfully and intentionally violates any provision of this chapter shall, upon conviction, be punished by a fine not to exceed \$500.

(2) A wilful violation of ORS 83.520 to 83.600 or 83.640 to 83.670 by any person shall bar his recovery of any finance charge, delinquency or collection charge or refinancing charge on the retail instalment contract involved.

(3) Notwithstanding the provisions of this section, any failure to comply with any provision of this chapter may be corrected within 10 days after the holder is notified thereof in writing by the buyer, and, if so corrected, neither the seller nor the holder shall be subject to any penalty. [1957 c.625 §27]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel

CHAPTERS 84 AND 85
[Reserved for expansion]