Chapter 82

1959 REPLACEMENT PART
(1969 reprint)

Interest and Usury

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CROSS REFERENCES

Banks, interest rates on loans by, 708.480

County orders, interest on, 208.020

Credit unions, limitations on rates of interest on loans by, 723.120

Debt consolidators, fees limited, 697.740

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Retail instalment contracts, service charges, 83.090, 83.100

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INTEREST

82.010 Legal rate of interest. (1) The legal rate of interest is six percent per annum and is payable on:

(a) All moneys after they become due; but open accounts bear interest from the date of the last item thereof.

(b) Judgments and decrees for the payment of money from the date of the entry thereof unless some other date is specified therein, except that those upon contracts bearing more than six percent interest and not exceeding the maximum rate, bear the same rate of interest as borne by such contracts.

(c) Money received to the use of another and retained beyond a reasonable time without the owner's express or implied consent.

(d) Money due upon the settlement of matured accounts from the day the balance is ascertained.

(e) Money due or to become due where there is a contract to pay interest and no rate specified.

(2) But on contracts interest up to a maximum rate of 10 percent per annum may be charged upon express agreement of the parties.

(3) Except as provided by subsection (4) of this section, the limitations of this section shall not apply to any contract or obligation for which a domestic or foreign corporation is the obligor, and any domestic or foreign corporation by agreement in writing and not otherwise may agree to pay any rate of interest not exceeding 12 percent per annum on such contract or obligation as the corporation may determine. The defense or claim of usury by a corporation, or anyone acting in its behalf, in any action or proceeding arising out of a contract or obligation that meets the requirements of this subsection is prohibited.

(4) Subsection (3) of this section does not apply to any charitable, religious or other nonprofit corporation and any such nonprofit corporation is not prohibited from interposing or pleading the defense of usury in any action or proceeding.

[Amended by 1959 c.365 §1]

USURY

82.110 Charging higher than permitted rate; computation of interest; expenses not included. (1) No person, corporation or association, mutual or otherwise, shall receive in money, goods or things in action, or in any other manner, any greater sum or value for the loan or use of money than in this chapter prescribed.

(2) If, pursuant to any arrangement, understanding or agreement, with the knowledge of the lender, either as a part of the contract of borrowing or collateral thereto, regardless of when made and whether it is made as a special arrangement or in conformity to a regular rule, regulation or practice, there is paid by or at the expense of the borrower to the lender, his broker, officer, director or agent, any commission, bonus, fee, premium, penalty or other charge, compensation or gratuity, whether in money, credit or other thing of value, as a consideration, compensation or inducement for obtaining any loan, or any renewal, extension or forbearance thereof, the same shall be deemed a part of the interest charged on such loan within the meaning of this chapter.

(3) In computing interest for the purposes of this chapter, any bona fide commission paid or sustained by the borrower shall be computed for the contract term and not for any accelerated period or prepayment.

(4) This section does not include:

(a) Reasonable amounts actually applied in payment of the expense of inspecting any security offered in connection with the loan, investigating the responsibility of the applicant or procuring or extending any abstract of title or certificate of title insurance covering such security;

(b) The amount actually paid for the examination of any such abstract or title insurance certificate; or

(c) The cost of the preparation, execution and recording of any papers necessary in consummating such loan.

82.120 Jury trial where usury is involved; burden of proof; who may plead usury; inapplicability of provisions to sales or resales of securities or commercial paper; forfeiture. (1) In the trial of any cause involving the defense of usury either party thereto shall be accorded a jury trial in

action at law and, at the discretion of the court, in suits in equity, upon making timely request therefor to the court or judge thereof wherein the cause is pending.

(2) The burden of proof to establish usury is upon the party interposing that defense, but the question of whether the usurious contract had been made or usury exacted is for determination by the jury in law actions, and in suits in equity by the court or by a jury, in the discretion of the court. In either case the verdict of the jury shall have the same force and effect as in law actions, and said defense shall be deemed to have been established as in other civil actions when sustained by the preponderance of the evidence in the case. If upon such trial evidence is introduced with respect to the subject matter of the litigation showing the payment of any commission, bonus, fee, premium, penalty or other charge, compensation or gratuity by the borrower to any officer, director or agent of the lender, knowledge thereof is, prima facie, imputed to the lender.

(3) The defense of usury may be interposed not only by the borrower, but by his accommodation indorser, guarantor or surety; by any junior mortgagee or lien holder; and by the vendee or grantee of any property involved in, or pledged or mortgaged as security for, the alleged usurious loan. Deduction shall be made from the amount actually received by the borrower of all usurious payments made by him or for his account.

(4) This chapter does not apply to bona fide sales or resales of securities or commercial paper.

(5) If it is ascertained in any action or suit brought on any contract that a rate of interest has been contracted for greater than is authorized by this chapter in money, property or other valuable thing, or that any gift or donation of money, property or other valuable thing has been made or promised to be made to a lender or creditor, or to any person for him, either by the borrower or debtor, or by any person for him, the design of which is to obtain for money so loaned or for debts due or to become due a rate of interest greater than that specified by the provisions of this chapter, it shall be deemed usurious, and shall work a forfeiture of the entire debt so contracted to the county school fund of the county wherein such suit is brought. The court in which such suit is prosecuted shall render judgment for the amount of the original sum loaned or the debt contracted, without interest, less all payments made by or for account of the borrower, against the defendant and in favor of the state for the use of the county school fund of said county, and against the plaintiff for costs of suit.

82.130 Recovery by assignee of usurious contract. Nothing in this chapter shall be construed to prevent the bona fide assignee of usurious contract from recovering from his immediate assignor or the original usurer the full amount paid by him for such contract, which may be recovered by proper action in any court having competent jurisdiction if such assignee had no notice of the usury affecting the contract.

82.140 Agreement to pay taxes on debt, credit or mortgage. (1) Any contract made by borrower and lender, debtor and creditor, or mortgagor and mortgagee on which the rate of interest is eight percent or under whereby one party agrees to pay the taxes on the debt, credit or mortgage existing or entered into between such parties, is legal and not usurious.

(2) Any such contract may be enforced by the parties thereto in the courts; but in making the assessments of credits, loans or mortgages, the same shall be assessed to the holder thereof as now provided by law.

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 November 1, 1959.

Sam R. Haley
Legislative Counsel