

Chapter 82

1979 REPLACEMENT PART

Interest and Usury; Repayment Restrictions

INTEREST	
82.005	Definitions for ORS 82.010
82.010	Legal rate of interest
USURY	
82.110	Charging higher than permitted rate; computation of interest; expenses not included
82.115	Usury defense not applicable to loan covered or controlled by federal agencies
82.117	Usury defense not applicable to loan from retirement plan
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
82.125	Transactions to which defense of usury applies
82.130	Recovery by assignee of usurious contract
82.140	Agreement to pay taxes on debt, credit or mortgage
REPAYMENT RESTRICTIONS	
82.150	Definitions for ORS 82.160 and 82.170
82.160	Notice to borrower of penalty for repayment prior to date for repayment in loan agreement
82.170	Notice to borrower of lender's authority to refuse to accept repayment prior to date for repayment in loan agreement

CROSS REFERENCES

Banks, interest rates on loans, 708 480	Redemption by mortgagor, judgment debtor or successors, interest payable, 23 560
Consumer finance loans, interest rates, 725 340	Redemption from redemptioner, interest payable, 23.550
County orders, interest, 208 020	Retail instalment contracts, service charges, 83 090, 83.100
Credit unions, limitations on rates of interest on loans, 723 502	Small loans, interest rates, 725.340
Debt consolidators, fees limited, 697 740	State development credit corporation, interest on loans, 63 240
Motor vehicle retail instalment contracts, finance charge, 83 560	
Pawnbrokers, interest rates, 726.390	
Redemption by lien creditor, interest payable, 23 540	

INTEREST

82.005 Definitions for ORS 82.010. As used in ORS 82.010, "business" includes any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain. [1979 c 655 §2]

82.010 Legal rate of interest. (1) The legal rate of interest is nine 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, to accrue from the date of the entry of the judgment or decree unless some other date is specified therein, except that those judgments and decrees upon contracts bearing more than nine 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) On contracts, interest up to a maximum rate of 10 percent per annum may be charged upon express agreement of the parties.

(3) The limitations of this section shall not apply to any contract or obligation for which a business is the obligor, and any business 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 business may determine. The defense or claim of usury by a business, 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) The limitations of this section shall not apply to any contract or obligation in an amount in excess of \$50,000, and the parties to such contract or obligation may agree in writing to the payment of interest at a rate in

excess of those set forth in subsection (1), (2), (3) or (5) of this section.

(5) Except as provided in subsection (4) of this section, up to a maximum rate of 12 percent per annum may be charged on loans or obligations secured by real property, including residential real estate. For the purposes of this section and ORS 708.480, "residential real estate" means any parcel of real property which is or will be improved, by the use of the proceeds of the loan, with a structure designed as a permanent single-family dwelling that is or will be occupied by the borrower as the borrower's primary residence. [Amended by 1959 c.365 §a; 1973 c.198 §1; 1975 c 61 §1; 1977 c.791 §1; 1979 c 655 §1; 1979 c.794 §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 appli-

cant 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.

82.115 Usury defense not applicable to loan covered or controlled by federal agencies. (1) Notwithstanding any other provisions of this chapter, the defense or claim of usury shall not apply to:

(a) Any loan which is wholly or partially secured or covered by guarantees or insurance by the Federal Housing Administration, the Veterans' Administration or the Farmers' Home Administration of the United States, any department, bureau, board, commission or agency of the United States or any corporation wholly owned, directly or indirectly, by the United States; or

(b) Any loan on which the maximum rate of interest is controlled by any Federal Reserve Bank of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or any corporation wholly owned, directly or indirectly, by the United States.

(2) In no case may the interest charged on a loan made under subsection (1) of this section exceed the total of the rate charged, established or otherwise allowed by the entity guaranteeing, securing or insuring the loan plus any fees, discounts or other charges, including, but not limited to, mortgage insurance premiums, service fees, assumption fees, participation fees, loan origination fees, discount fees and points that are permitted, required or not prohibited by the entity guaranteeing, securing or insuring the loan. [1975 c.625 §2, 1977 c 791 §2]

82.117 Usury defense not applicable to loan from retirement plan. The defense of usury shall not apply to a loan permitted under applicable federal law and regulations from a tax qualified retirement plan to a person then a participant under the plan. [1979 c 638 §2]

Note: Section 3, chapter 638, Oregon Laws 1979, provides.

Sec. 3. Section 2 of this Act applies only to loans made on or after the effective date of this Act [July 24, 1979]

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 if the remedy sought by the plaintiff is legal in nature, and at the discretion of the court if the remedy sought by the plaintiff is equitable in nature, 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 if the remedy sought by the plaintiff is legal in nature, and by the court or by a jury if the remedy sought by the plaintiff is equitable in nature, in the discretion of the court. In either case the verdict of the jury shall have the same force and effect as in civil actions, and the 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 the accommodation indorser, guarantor or surety of the borrower; 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 the borrower or for the account of the borrower.

(4) This chapter does not apply to bona fide sales or resales of securities or commercial paper, nor does it apply to interest charges by broker-dealers registered under the Securities Exchange Act of 1934 for carrying a debit balance in an account for a customer if

the debit balance is payable on demand and secured by stocks or bonds.

(5) If it is ascertained in any action 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 the lender or creditor, either by the borrower or debtor, or by any person for the borrower or debtor, 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 action is brought. The court in which such action 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 the county, and against the plaintiff for costs of action. [Amended by 1975 c 321 §1; 1979 c 284 §90]

82.125 Transactions to which defense of usury applies. Notwithstanding any other provision of this chapter, the defense of usury applies only to transactions that involve an amount of \$50,000 or less. [1971 c 214 §2]

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.

REPAYMENT RESTRICTIONS

82.150 Definitions for ORS 82.160 and 82.170. As used in ORS 82.160 and 82.170:

(1) "Loan" means a loan of money made by a person who is regularly engaged in the business of lending money.

(2) "Loan agreement" means the written document issued in connection with a loan that sets forth the terms upon which the loan is made. [1973 c.611 §3]

82.160 Notice to borrower of penalty for repayment prior to date for repayment in loan agreement. (1) If a loan agreement provides for a penalty to be charged for repaying the loan prior to the date provided for repayment in the loan agreement, the loan agreement shall contain in printing or writing of a size equal to at least 10-point bold type substantially the following notice:

NOTICE TO THE BORROWER

Do not sign this loan agreement before you read it. This loan agreement provides for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the loan agreement.

(2) If a loan agreement does not contain a notice as required by subsection (1) of this section, a lender shall not collect from the borrower a penalty for payment of the loan prior to the date provided for repayment. [1973 c.611 §1]

82.170 Notice to borrower of lender's authority to refuse to accept repayment prior to date for repayment in loan agreement. (1) If a loan agreement authorizes the lender to refuse to accept repayment of the loan prior to the date provided for repayment in the loan agreement, the loan agreement shall contain in printing or writing of a size equal to at least 10-point bold type substantially the following notice:

loan prior to the date provided for repayment in the loan agreement.

NOTICE TO THE BORROWER

Do not sign this loan agreement before you read it. This loan agreement authorizes the lender to refuse to accept repayment of the

(2) If a loan agreement does not contain a notice as required by subsection (1) of this section, a lender shall not refuse to accept repayment of the loan by the borrower prior to the date provided for repayment. [1973 c.611 §2]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel