Chapter 83

1981 REPLACEMENT PART

Retail Instalment Contracts

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GOODS AND SERVICES

83.010 Definitions for ORS 83.010 to 83.190. As used in ORS 83.010 to 83.190 unless the context requires otherwise:

(1) "Cash sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail instalment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration and license fees and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements.

(2) "Goods" means all chattels personal, other than motor vehicles as defined in ORS 83.510, when purchased primarily for personal, family or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. "Goods" includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom.

(3) "Official fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting, and releasing or satisfying, a retained title, lien or other security interest created by a retail instalment transaction.

(4) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail instalment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees.

(5) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other instalment period, yields the amount of the service charge for such month or period.

(6) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtains services or agrees to have services rendered or furnished, from a retail seller.

(7) "Retail charge agreement," "revolving charge agreement" or "charge agreement" means an agreement entered into or performed in this state prescribing the terms of retail instalment transactions which may be made thereunder from time to time and under the terms of which a service charge is to be computed in relation to the buyer's unpaid balance from time to time.

(8) "Retail instalment contract" or "contract" means a contract, other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail instalment transaction. "Retail instalment contract" includes a chattel mortgage, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease.

(9) "Retail instalment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail instalment contract or a retail charge agreement which provides for a service charge and under which the buyer agrees to pay the unpaid balance in one or more instalments.

(10) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers.

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in instalments over a period of time. "Service charge" does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees.

(12) "Services" means work, labor or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods and includes repairs, alterations or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to

be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer or official of either as in the case of transportation services.

(13) "Time balance" means the principal balance plus the service charge. [1963 c.489 §1]

83.020 Retail instalment contract to be single document, dated and signed; exceptions. (1) Except as provided in subsections (2) and (3) of this section, every retail instalment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in ORS 83.040, 83.050 and 83.140.

(2) Where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage.

(3) In a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to ORS 83.010 to 83.190.

(4) The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in ORS 83.050 and 83.060. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least 8-point type. [1963 c.489 §2]

83.030 Contents of contract. The retail instalment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below; however, additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer:

(1) The cash sale price of each item of goods or services;

(2) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in;

(3) The difference between subsections (1) and (2) of this section;

(4) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(5) The aggregate amount of official fees;

(6) The principal balance, which is the sum of subsections (3), (4) and (5) of this section;

(7) The dollar amount or rate of the service charge;

(8) The amount of the time balance owed by the buyer to the seller, which is the sum of subsections (6) and (7) of this section, if subsection (7) is stated in a dollar amount; and

(9) The maximum number of instalment payments required, the amount of each instalment and the due date of each payment necessary to pay such balance. However, if instalment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final instalment payment does not substantially exceed the scheduled amount of each preceding instalment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final instalment payment may be stated as the remaining unpaid balance. The due date of the first instalment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation. [1963 c.489 §4]

83.040 Subsequent purchases under original contract. A retail instalment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by ORS 83.030 and shall constitute the retail instalment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement

may at the option of the seller constitute the memorandum required by ORS 83.140. [1963 c 489 §5]

83.050 Contracts completed by mail and based on catalog of seller. (1) Retail instalment contracts negotiated and entered into by mail without personal solicitation by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of ORS 83.010 to 83.190 with respect to retail instalment contracts shall be applicable to such sales, except that the retail instalment contract, when completed by the buyer need not contain the items required by ORS 83.030.

(2) When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by ORS 83.030 to be included in a retail instalment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in ORS 83.070, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first instalment payable under the contract. However, if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sale prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services. [1963 c 489 §6]

83.060 Filling blanks. The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in ORS 83.050. However, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first instalment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. [1963 c 489 §7]

83.070 Delivery of copy of contract to buyer. The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail instalment contract, a copy of the contract as accepted by the seller. Until the seller does so, the buyer shall be obligated to pay only the cash sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature. [1963 c 489 §3]

83.080 Informing buyer of service charge and right to prepay; monthly statement. (1) At or prior to the time a retail charge agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally, that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his total unpaid balance. If this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to him at his address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the cash sale price and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his total unpaid balance. [1963 c 489 §12]

83.090 Service charge to include other fees. The service charge shall be inclusive of all charges incident to investigating and making the retail instalment contract or charge agreement and for the privilege of making the instalment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor. [1963 c.489 §13]

83.100 Extra charges prohibited; miscellaneous provisions of contract. (1) The holder of any retail instalment contract or retail charge agreement may not collect any delinquency or collection charges, including any attorney's fee and court costs and disbursements, unless the contract or charge agreement so provides. In such cases, the charges shall be reasonable, and no attorney's fee may be recovered unless the contract or charge agreement is referred for collection to an attorney not a salaried employe of the holder.

(2) The contract or charge agreement may contain other provisions not inconsistent with the purposes of ORS 83.010 to 83.190, including but not limited to provisions relating to refinancing, transfer of the buyer's equity, construction permits and title reports. [1963 c.489 §9]

83.110 Insurance. (1) If the cost of any insurance is included in the retail instalment contract or retail charge agreement:

(a) The contract or agreement shall state the nature, purpose, term and amount of such insurance.

(b) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller.

(c) The amount included for such insurance shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than $1.

(2) Except as provided in ORS 743.579, if the insurance is to be procured by the seller or holder, he shall, within 45 days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured. [1963 c 489 §14, 1967 c.359 §676]

83.120 Receipts; schedule of payments. A buyer shall be given a written receipt for any payment when made in cash. Upon written request of 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 and the total amount unpaid under the contract. Such a statement shall be given the buyer once without charge. If any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of $1 for each additional statement so supplied. [1963 c 489 §10]

83.130 Voluntary prepayment by buyer; refund. (1) Notwithstanding the provisions of any retail instalment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date. If the buyer does so, and if the contract is not in default more than two months under any term or condition of the contract, the buyer shall receive a refund credit of the unearned portion of the service charge for the prepayment. The amount of the refund credit shall be not less than the total service charge contracted for to maturity, less the greater of:

(a) Ten percent of the amount financed or $75, whichever is less; or

(b) The service charge earned to the instalment due date nearest the date of prepayment, computed by applying the effective rate on the contract to the actual principal balances outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate computations under this paragraph, the instalment due date preceding the date of prepayment shall be considered to be nearest if prepayment occurs 15 days or less after that instalment date. If prepayment occurs more than 15 days after the preceding instalment due date, the next succeeding instalment due date shall be considered to be nearest to the date of prepayment. In determining the effective rate, the seller may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to the accrued and unpaid service charges and any amount remaining is applied to reduction of the principal balance.

(2) When the amount of the refund credit is less than $2, no refund need be made. [1963 c 489 §8, 1981 c 910 §1]

Note: The amendments to 83 130 by section 1, chapter 910, Oregon Laws 1981, take effect October 1, 1982 See section 9, chapter 910, Oregon Laws 1981 83 130 (1979 Replacement Part) is set forth for the users' convenience

83.130. Notwithstanding the provisions of any retail instalment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, and if the contract is not in default under any term or condition of the contract

more than two months, he shall receive a refund credit of the unearned portion of the service charge for such prepayment The amount of such refund credit shall be computed according to the "rule of seventy-eighths," that is it shall represent at least as great a proportion of the original service charge, after deducting therefrom a maximum of $10 where the cash sale price is $100 or less, $15 where the cash sale price is $250 or less, $25 where the cash sale price is $500 or less, or $50 where the cash sale price is more than $500, as the sum of the monthly or lesser periodic time balances beginning one month or lesser period after prepayment is made, bears to the sum of all the monthly or lesser periodic time balances under the schedule of payments in the contract Where the amount of such refund credit is less than $1, no refund need be made.

83.140 Consolidation of purchases with prior contract. (1) If, in a retail instalment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail instalment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of ORS 83.010 to 83.190 with respect to retail instalment contracts shall be applicable to such subsequent purchases except as otherwise provided in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail instalment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of ORS 83.020, 83.030 and 83.070 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum or otherwise, such memorandum shall set forth, with respect to each subsequent purchase, items required in ORS 83.030 (1) to (7), and in addition, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised instalments applicable to the consolidated time balance, if any, in accordance with ORS 83.030. The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first instalment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases; and

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase.

(3) The provisions of subsection (2) of this section shall not apply to cases where such previous and subsequent purchases involve equipment, parts or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request. [1963 c 489 §11]

83.150 Unenforceable contract provisions. No provision of a retail instalment contract or retail charge agreement shall be valid:

(1) By which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale.

(2) That provides for a wage assignment. [1963 c 489 §15; 1971 c 232 §1]

83.160 Waiver of ORS 83.010 to 83.190 invalid. No act or agreement of the retail buyer before or at the time of the making of a retail instalment contract, retail charge agreement or purchases thereunder shall constitute a valid waiver of any of the provisions of ORS 83.010 to 83.190 or of any remedies granted to the buyer by law. [1963 c 489 §16]

83.170 Effect of violation of ORS 83.010 to 83.190 by seller. Any seller who enters into any contract or agreement which does not comply with the provisions of ORS 83.010 to 83.190 or who violates any provision of ORS 83.010 to 83.190 except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees or any delinquency or collection charge under or in connection with the related retail instalment contract or purchases under a retail charge agreement; but the seller may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to the seller of any insurance included in the transaction. [1963 c.489 §18]

83.180 Enforcement of ORS 83.010 to 83.190. The Attorney General of the State of Oregon or a district attorney may bring an action in the name of the state against any person to restrain and prevent any violation of

ORS 83.010 to 83.190. [1963 c 489 §§19, 20; 1975 c 437 §6]

83.190 Civil penalties. Any person who violates any order or injunction issued pursuant to ORS 83.010 to 83.190 shall forfeit and pay a civil penalty of not more than $1,000. For the purpose of this section the circuit court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the state may petition for the recovery of civil penalties. [1963 c 489 §21]

MOTOR VEHICLES; MOBILE HOMES

83.510 Definitions for ORS 83.510 to 83.560 and 83.580 to 83.680. As used in ORS 83.510 to 83.560 and 83.580 to 83.680 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) "Mobile home" means a structure, transportable in one or more sections, which is eight body feet or more in width and 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. The term includes the plumbing, heating, air conditioning and electrical systems contained within the structure.

(6) "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, mobile home or trailer home. The term does not include tractors, power shovels, road machinery, agricultural machinery, boat trailers 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.

(7) "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.

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

(9) "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.

(10) "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.

(11) "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.

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

(13) "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; 1979 c.304 §1; 1979 c.816 §1a]

83.520 Form and contents of retail instalment contract. (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 8-point type. The contract shall contain in printing or writing of a size equal to at least 10-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 ORS 83.510 (7).

(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; 1979 c.816 §2]

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 10-point bold type and, if contained in the contract, shall also appear directly above the legend required above the buyer's signature by ORS 83.520 (2)(a). [1957 c 625 §4]

83.550 [1957 c 625 §8; repealed by 1961 c 458 §1]

83.560 Finance charge. A retail seller may, in a retail instalment contract, contract for and charge, receive and collect a finance charge agreed upon by the seller and buyer. [1957 c 625 §§19, 20, 21; 1979 c 816 §3; 1981 c 412 §2]

83.565 Computing finance charge by actuarial method; requirements; notice. (1) Notwithstanding any other provision of ORS 83.510 to 83.560, 83.580 to 83.680 and 83.820 to 83.895, a retail seller, in a retail instalment contract, may contract for and charge, receive and collect a finance charge computed by the actuarial method.

(2) When a retail instalment contract provides for a finance charge computed by the actuarial method:

(a) The retail instalment contract may provide for any other charge, cost or fee allowed under ORS 83.510 to 83.560, 83.580 to 83.680 and 83.820 to 83.895, in addition to the finance charge.

(b) The amount to be disclosed as the finance charge and used as the finance charge component of the other amounts disclosed pursuant to ORS 83.510 to 83.560, 83.580 to 83.680 and 83.820 to 83.895 shall be the amount of the finance charge to be paid assuming all payments are made exactly as agreed.

(c) The retail instalment contract for the sale of a mobile home may provide that the holder may refuse to accept prepayments of less than the entire amount owed under the retail instalment contract if the prepayments:

(A) Are tendered on dates other than a specified date each month; and

(B) Are not in amounts equal to the principal portion of one or more of the earliest unmatured monthly instalments.

(d) The contract shall contain the following notice in printing or writing of a size equal to at least 10-point bold type, in lieu of the notice required by ORS 83.520 (2)(c):

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 motor 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 in advance the full amount due and if you do so you may save a portion of the finance charge.

(e) The refund credit provisions of ORS 83.620 shall not apply. [1981 c 910 §4]

83.570 [1957 c.625 §22; repealed by 1981 c 412 §24]

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 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) Except as provided in ORS 743.579, 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; 1967 c 359 §677]

83.590 Delinquency and collection charges. The holder of a retail instalment contract, if the contract so provides, may 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. In addition to the delinquency charge, the retail instalment contract may provide for the payment of reasonable collection costs. The collection costs may include the payment of reasonable attorney fees, if the 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; 1981 c.552 §1]

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 or other security agreement, as defined in ORS 79.1050, and upon written demand made by the buyer, the holder of such contract or agreement 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 or of ORS 79.1010 to 79.5070. [1957 c 625 §23; 1961 c 726 §400]

83.620 Voluntary prepayment by buyer; refund. (1) 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 the premature payment, the buyer shall receive a refund credit. The amount of the refund credit shall not be less than the total finance charge to maturity provided for in the contract, less the greater of:

(a) Ten percent of the amount financed or $50, whichever is less; or

(b) The finance charge earned to the instalment due date nearest the date of prepayment, computed by applying the effective rate on the contract to the actual principal balances outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate computations under this paragraph, the instalment due date preceding the date of prepayment shall be considered to be nearest if prepayment occurs 15 days or less after that instalment date. If prepayment occurs more than 15 days after the preceding instalment due date, the next succeeding instalment due date shall be considered to be nearest to the date of prepayment. In determining the effective rate, the holder may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to the accrued and unpaid finance charges and any amount remaining is applied to reduction of the principal balance.

(2) When the amount of the credit for premature payment is less than $2, no refund need be made.

(3) 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, 1977 c 692 §1, 1981 c 910 §2]

Note: The amendments to 83 620 by section 2, chapter 910, Oregon Laws 1981, take effect October 1, 1982 See section 9, chapter 910, Oregon Laws 1981

83 620 (1979 Replacement Part) is set forth for the users' convenience

83.620. (1) 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

(2) If the original scheduled maturity of the contract is 62 months or less, 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

(3) If the original scheduled maturity of the contract is more than 62 months, the amount of the refund credit shall not be less than the total finance charge to maturity provided for in the contract, less the finance charge earned to the date of prepayment, computed by applying the effective rate on the contract to the actual principal balances outstanding, for the periods of time such balances were actually outstanding In determining the effective rate, the holder may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to the accrued and unpaid finance charges and any amount remaining is applied to the reduction of principal balance

(4) When the amount of the credit for premature payment is less than $1, no refund need be made.

(5) This section does not prohibit the holder of a retail instalment contract from collecting any charge, cost or fee under ORS 83.590.

83.630 Extension of scheduled due date; deferment of scheduled payment; refinance charge. The holder of a retail instalment contract, upon agreement with the buyer, may 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 the extension or deferment, a flat service fee not to exceed $5 and a total additional charge on the balance being extended not exceeding an amount equal to one-twelfth of the annual percentage rate originally charged on the agreement for each month the payments on the agreement are being extended or deferred. [1957 c.625 §25; 1981 c 552 §2]

83.640 [1957 c.625 §§10, 11; repealed by 1961 c.726 §427]

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 provisions 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 ORS 83.510 to 83.560 and 83.580 to 83.680 void. Any waiver of the provisions of ORS 83.510 to 83.560 and 83.580 to 83.680 shall be unenforceable and void. [1957 c.625 §28]

HOME SOLICITATION SALES

83.710 Definitions for ORS 83.710 to 83.750. (1) As used in ORS 83.710 to 83.750, a sale of goods or services as defined in ORS 83.010 is:

(a) A "home solicitation sale" if:

(A) The seller or a person acting for the seller engages in a personal solicitation of the sale at a residence other than that of the seller; and

(B) The buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller.

(b) A "telephone solicitation sale" if:

(A) The seller or person acting for the seller engages in a solicitation conducted by telephone to a residence;

(B) The transaction is initiated by the seller or person acting for the seller and is in no way solicited by the buyer;

(C) The buyer's agreement or offer to purchase is given over the telephone to the seller or person acting for the seller; and

(D) There is no personal contact between the buyer and the seller or person acting for the seller prior to delivery of goods or performance of services.

(2) The provisions of ORS 83.710 to 83.750 relating to home solicitation sales do not apply to:

(a) A sale made pursuant to a preexisting revolving charge account;

(b) A contract in writing for the sale or lease of a house or business property or the construction of a new house or business property;

(c) A sale made pursuant to prior business negotiations relevant to such sale between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale;

(d) A sale for cash or check in the amount of less than $25; or

(e) A sale of insurance, farm equipment or motor vehicles.

(3) The provisions of ORS 83.710 to 83.750 relating to telephone solicitation sales apply only to a sale of periodicals, magazines or any other reading material with or without illustrations that the buyer is to receive at fixed intervals and do not apply to sales of newspaper subscriptions or advertising and sales in which the buyer is offered reasonable opportunity to preview and return reading material without contractual obligation. [1971 c 744 §21 (1); 1977 c 170 §1, 1979 c 503 §1]

83.715 Telephone solicitation sale; contract required; contents. (1) Except as provided in this section, no enforceable agreement may be formed by a telephone solicitation sale.

(2) To form a binding agreement by telephone solicitation sale, the seller must receive from the buyer a signed, written contract that contains all of the terms of the agreement between the seller and the buyer. The seller must provide a copy of the completed contract to the buyer.

(3) Any term or agreement between a buyer and seller in a telephone solicitation sale is void and unenforceable unless it is contained in the contract required by subsection (2) of this section.

(4) A contract required by subsection (2) of this section shall contain the following notice on a separate sheet that contains no other provision:

This contract is a contract made pursuant to a telephone solicitation sale regulated by Oregon Revised Statutes 83.710 to 83.750. The person offering to buy goods or services under this contract understands that:

(1) No discussions or agreements between the buyer and the person offering to sell goods or services formed a binding agreement except as provided by this contract;

(2) There is no binding agreement between the buyer and seller until the seller receives a copy of this contract signed by the buyer; and

(3) All of the terms of the agreement between the buyer and the seller are contained, in writing, in this contract.

[1979 c 503 §3]

83.720 Cancellation of home solicitation sale; notice; exception. (1) Except as provided in subsection (5) of this section, in addition to any other right to revoke an offer or rescind a transaction which the buyer may have, the buyer has the right to cancel a home solicitation sale until 12 midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with ORS 83.710 to 83.750 or pays by cash or check.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by a form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer in a separate signed writing not furnished by the seller requests the seller to provide goods or services without delay because of an emergency, and

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(b) In case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer. [1971 c 744 §21 (2)]

83.730 Disclosure of buyer's right to cancel; form; effect of failure to comply. (1) In a home solicitation sale the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's right which complies with subsection (2) of this section.

(2) The statement must be in conspicuous type, 8-point or larger, and must read as follows:

BUYER'S RIGHT TO CANCEL

If this agreement was solicited at a residence other than that of the seller and you do not want the goods or services, you may cancel this agreement without any penalty, cancellation fee or other financial obligation by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before 12 midnight of the third business day after you sign this agreement. The notice must be mailed to: _____

(insert name and mailing address of seller)

However: You may not cancel if you have requested the seller to provide goods or services without delay because of an emergency, and

(1) The seller in good faith makes a substantial beginning of performance of the contract before you give notice of cancellation, and

(2) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

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(3) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel. [1971 c 744 §21 (3), 1977 c 170 §2]

83.740 Duties of seller upon cancellation of sale or revocation of offer to purchase. (1) The seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness within 10 days after a home solicitation sale has been canceled or an offer to purchase has been revoked.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The buyer may retain possession of goods delivered to him by the seller, and has a lien on the goods in his possession or control for any recovery to which he is entitled, until the seller has complied with the obligations imposed by this section. [1971 c.744 §21 (4); 1977 c 170 §3]

83.750 Rights and duties of buyer upon cancellation of sale or revocation of offer to purchase. (1) Except as provided by ORS 83.740 (3), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer must tender to the seller upon demand any goods delivered by the seller pursuant to the sale, but he is not obliged to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this subsection, 20 days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation. [1971 c 744 §21 (5), 1977 c 170 §4]

MISCELLANEOUS

83.810 Compliance with federal Truth in Lending Act constitutes compliance with state disclosure requirements. Any retail instalment contract or security agreement which complies with the disclosure requirements of Title I of the Federal Consumer Protection Act (P.L. 90-321, 82 Stat. 146, 15 U.S.C. 1601), which is also known as the Truth in Lending Act, as of the date upon which said retail instalment contract or security agreement is executed, shall be deemed to comply with the disclosure provisions of ORS 83.010 to 83.560, 83.580 to 83.840 and 83.990 and no other disclosure is necessary. [1969 c 392 §2, 1977 c 274 §7]

83.820 Consumer paper not negotiable; exception; rights and liabilities of assignees. (1) In any contract for the sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer, such contract, note or any instrument or evidence of indebtedness of the buyer shall have printed on the face thereof the words "consumer paper," and such contract, note, instrument or evidence of indebtedness with the words "consumer paper" printed thereon shall not be a negotiable instrument within the meaning of the Uniform Commercial Code-Commercial Paper. However, this section shall have no force or effect on the negotiability of any contract, promissory note, instrument or other evidence of indebtedness owned or guaranteed or insured by any state or federal governmental agency even though said contract, note, instrument or other evidence of indebtedness shall contain the wording required by this subsection.

(2) Notwithstanding the absence of such notice on a contract, note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this section. The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. The restrictions imposed hereby shall not apply with respect to any promissory note, contract, instrument or other evidence of indebtedness owned or guaranteed or insured by any state or federal governmental agency even though said note, contract, instrument or other evidence of indebtedness shall contain the words required by subsection (1) of this section.

(3) An assignee of "consumer paper" who in good faith enforces a security interest in property held by the buyer or lessee shall not be liable to such buyer or lessee for punitive damages in an action for wrongful repossession. The fact that a seller or lessor has broken his warranties with regard to the property sold or leased shall not, of itself, make an assignee's repossession wrongful.

(4) Notwithstanding the absence of notice as provided in subsection (1) of this section, an assignee of the rights of the seller or lessor who loans money to the buyer or lessee for the purpose of paying off the amount owing to the assignee under the contract, note, instrument or evidence of indebtedness is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. The assignee's liability under this subsection may not exceed the amount that would be owing to the seller or lessor under the contract, note, instrument or evidence of indebtedness at the time the claim or defense is asserted had the obligation not been paid off. Assignee shall include a parent,

subsidiary or other business entity similarly related to the assignee, and the assignee's liability shall extend to anyone who holds the buyer's or lessee's new instrument or evidence of indebtedness. [1971 c 744 §2; 1977 c 195 §11]

83.830 Buyer liability on deficiency after default in contract or charge agreement; limitation on deficiency judgments and repossession. (1) Notwithstanding any other provision of law:

(a) If the buyer defaults in the performance of a retail instalment contract or retail charge agreement subject to ORS 83.010 to 83.190, 83.510 to 83.560 or 83.580 to 83.680 which is for the sale of consumer goods or motor vehicles, and if the seller repossesses or voluntarily accepts surrender of the goods or motor vehicles, and if at the time of default the unpaid time balance or time sale price is less than $1,250, the buyer shall not be personally liable to the seller for any deficiency between the amount of the buyer's unpaid obligation and the amount realized by the seller on resale or other disposition of the goods or motor vehicles. However, the buyer is liable in damages to the seller for any repossessed or surrendered goods or motor vehicles that have been wrongfully damaged.

(b) If the unpaid time balance or time sale price at the time of default is $1,250 or more, the seller may recover from the buyer any deficiency that results from deducting the fair market value of the goods or motor vehicles from the unpaid time balance or time sale price. However, the action by the seller against the buyer for the recovery of the deficiency must be commenced not later than 180 days after the date on which the seller repossessed or voluntarily accepted surrender of the goods or motor vehicles, or 30 days after the date on which the seller sells or otherwise disposes of the repossessed or surrendered goods or motor vehicles, whichever date is earlier. For the purposes of this section, an action is commenced on the date the complaint for the action is filed, if the summons is served on the buyer not later than 60 days after the filing of the complaint.

(c) If the seller brings an action and obtains judgment against the buyer for the unpaid time balance or time sale price without having first repossessed or voluntarily accepted surrender of the goods or motor vehicles, and if under the provisions of paragraph (a) of this subsection the seller would not be entitled to a deficiency judgment, the seller may not repossess the goods or motor vehicles after obtaining judgment for the unpaid time balance or time sale price.

(2) As used in this section:

(a) "Unpaid time balance or time sale price" means that amount the buyer would have been required to pay if the buyer's obligation had been paid in full at the time of default.

(b) "Seller" includes the assignee of the seller.

(c) "Motor vehicles" means a motor vehicle as defined in ORS 83.510 purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes. [1971 c 744 §3, 1973 c 350 §1,1981 c 573 §3]

83.840 Borrower liability on unpaid loan; limitations on deficiency judgments and repossession. (1) Notwithstanding any other provision of law:

(a) If the borrower defaults in the repayment of a loan that was made for the purchase of goods or motor vehicles, and if the lender repossesses or voluntarily accepts surrender of the goods or motor vehicles, and if the unpaid balance of the loan obligation at the time of default is less than $1,250, the borrower shall not be personally liable to the lender for any deficiency between the amount of the borrower's unpaid loan obligation and the amount realized by the lender on resale or other disposition of the goods or motor vehicles. However, the borrower is liable in damages to the lender for any repossessed or surrendered goods or motor vehicles that have been wrongfully damaged.

(b) If the amount of the borrower's unpaid loan obligation at the time of default in the repayment of a loan made for the purchase of goods or motor vehicles is $1,250 or more, the lender may recover from the borrower any deficiency that results from deducting the fair market value of the goods or motor vehicles from the amount of the unpaid loan obligation. However, the action by the lender against the borrower for the recovery of the deficiency must be commenced not later than 180 days after the date on which the lender repossessed or voluntarily accepted surrender of the goods or motor vehicles for the purchase of which the loan was made, or 30 days after the date on which the lender sells or otherwise disposes of the repossessed or surrendered goods or motor vehicles, whichever date is earlier For the purposes of this section, an

action is commenced on the date the complaint for the action is filed, if the summons is served on the borrower not later than 60 days after the filing of the complaint.

(c) If the lender brings an action and obtains judgment against the borrower for the amount of the unpaid loan obligation without having first repossessed or voluntarily accepted surrender of the goods or motor vehicles, and if under the provisions of paragraph (a) of this subsection the lender would not be entitled to a deficiency judgment, the lender may not repossess the goods or motor vehicles after obtaining judgment for the unpaid loan obligation.

(2) As used in this section:

(a) "Goods" has the meaning for that term provided in ORS 83.010.

(b) "Motor vehicles" means a motor vehicle as defined in ORS 83.510 purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes.

(c) "Lender" includes the assignee of the lender. [1971 c 744 §4, 1973 c.350 §2, 1981 c 573 §4]

83.850 Definitions for ORS 83.850 and 83.860. As used in ORS 83.850 and 83.860:

(1) "Goods" has the meaning for that term provided in ORS 83.010.

(2) "Motor vehicle" means a motor vehicle as defined in ORS 83.510 purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes.

(3) A loan is made "in close connection with a sale of goods or motor vehicles" if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction; or

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower; or

(c) The lender is related to the seller by blood or marriage; or

(d) The seller directly and materially assists the buyer in obtaining the loan; or

(e) The seller prepares documents which are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the consumer in obtaining the loan.

(4) Credit extended pursuant to a credit card issued by a lender is not a loan "in close connection with a sale of goods or motor vehicles" unless the credit card is issued contemporaneously with the extension of the credit. [1973 c.626 §1]

83.860 Lender and holder of instrument in sale of goods or motor vehicles subject to defenses of borrower when loan made in close connection with sale. (1) If a lender makes a loan in close connection with the sale of goods or motor vehicles, the lender is subject to all claims and defenses of the borrower that the borrower as buyer has against the seller arising out of the sale, notwithstanding any agreement to the contrary. However, the lender's liability to the borrower shall not exceed the amount owing to the lender, exclusive of unearned interest, at the time the claim or defense is asserted.

(2) If a lender who makes a loan in close connection with a sale of goods or motor vehicles negotiates any note or other instrument taken as evidence of the obligation of the borrower, the holder of the note or other instrument shall be subject to the claims or defenses of the borrowers set forth in subsection (1) of this section. However, the liability of the holder of the note or other instrument to the borrower shall not exceed the amount owing to the lender exclusive of unearned interest at the time the claim or defense is asserted. [1973 c 626 §2]

83.875 Definitions for ORS 83.875, 83.880, 83.890 and 83.895. As used in ORS 83.875, 83.880, 83.890 and 83.895:

(1) "Goods" has the meaning for that term provided in ORS 83.010.

(2) "Services" has the meaning for that term provided in ORS 83.010.

(3) "Motor vehicles" means a motor vehicle as defined in ORS 83.510, purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes.

(4) "Retail charge agreement" has the meaning for that term provided by ORS

83.010, and includes a revolving charge agreement or charge agreement.

(5) "Retail instalment contract" or "contract" means a retail instalment contract for the sale of motor vehicles, goods or services. [1977 c 274 §5; 1981 c 910 §5]

83.880 Sales of motor vehicles, goods or services as time sale rather than loans. A retail instalment contract or retail charge agreement for the sale of motor vehicles, goods or services constitutes a bona fide time sale rather than a loan or a use of money if the contract clearly and specifically discloses both a cash price, using the term "cash price" or "cash sale price," and a deferred payment price, using the term "deferred payment price" or "time sale price," or if the agreement complies with ORS 83.080, notwithstanding that the contract is intended to be transferred, or is transferred, to a holder pursuant to a business relationship characterized by one or more of the following:

(1) All or any part of the seller's contracts are transferred to the holder;

(2) The holder provides contract forms to the seller and instructions for the use of the forms;

(3) The holder investigates the credit worthiness of the buyer before or after the sale;

(4) The price the holder pays the seller for the contract is more than, equal to, or less than that which the retail buyer has contracted to pay to the seller;

(5) The transfer to the holder takes place concurrently with or within a short time of the sale;

(6) The transfer is with or without recourse to the seller; or

(7) The seller purchases services or borrows money from the holder. [1977 c 274 §2, 1981 c 910 §6]

83.885 Sales of motor vehicles, personal property or services for business or commercial purposes as time sale rather than loan. A retail instalment contract for the sale of motor vehicles, other personal property or services purchased primarily for business or commercial purposes, which discloses both a cash price and a deferred payment or time price, constitutes a bona fide time sale rather than a loan or use of money, notwithstanding that the contract is intended to be transferred, or is transferred, to a holder pursuant to a business relationship however characterized. [1977 c 274 §6]

83.890 Notice required in contract when seller intends to transfer contract. (1) If the seller intends to transfer the retail instalment contract to a holder, who has agreed with the seller to collect payments directly from the retail buyer, the contract shall contain the following notice which shall be in at least 8-point type, or elite typewriter type, and be located on the same side of the page as the customer's signature:

NOTICE: The seller intends to sell this contract to (insert name and mailing address of holder) which, if it buys the contract, will become the owner of the contract and your creditor. After the sale of this contract, all questions concerning either terms of the contract or payments should be directed to the buyer of the contract at the address indicated above.

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(2) If the contract is transferred to a holder other than the one identified in the notice, or is retained by the seller, the seller shall cause notice in writing of the name and address of the actual holder to be delivered to the retail buyer within 10 days of the decision. [1977 c 274 §3]

83.895 Effect of seller's failure to provide notice. Any seller who violates ORS 83.890 shall be subject to the provisions contained in ORS 83.170. [1977 c 274 §4]

PENALTIES

83.990 Penalties. (1) Any person who wilfully and intentionally violates any provision of ORS 83.510 to 83.560 or 83.580 to 83.680 shall, upon conviction, be punished by a fine not to exceed $500.

(2) A wilful violation of ORS 83.520 to 83.560, 83.580 to 83.600 or 83.650 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 subsections (1) to (3) of this section, any failure to comply with any provision of ORS 83.510 to 83.560 or 83.580 to 83.680 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.

(4) Any person who wilfully and intentionally violates any provision of ORS 83.010 to 83.190 shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or both. Violation of any order or injunction issued pursuant to ORS 83.010 to 83.190 shall constitute prima facie proof of a violation of this subsection. [1957 c.625 §27; 1961 c.725 §401; subsection (4) enacted as 1963 c.489 §17]

CHAPTERS 84 AND 85
[Reserved for expansion]