

CHAPTER 51-13

RETAIL INSTALLMENT SALES ACT

51-13-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Amount financed" or "unpaid balance" means the cash price of the personal property which is the subject matter of the retail installment sale, plus the amounts, if any, included in a retail installment sale for insurance and official fees, minus the amount of the buyer's downpayment in money or goods.
2. "Cash price" means the cash price stated in a retail installment contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the personal property which is the subject matter of the contract if the sale were a sale for cash instead of a retail installment sale. The cash price may include any taxes and cash prices for accessories included in a retail installment sale.
3. "Deferred payment price" means the total of the cash price and the amounts, if any, included for insurance, official fees, and finance charge.
4. "Finance charge" means the amount which the retail buyer contracts to pay or pays for the privilege of purchasing the personal property to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charges, attorney's fees, court costs, collection expenses, or official fees.
5. "Financing agency" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term includes a bank, trust company, finance company, or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of holding retail installment contracts acquired from retail buyers. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.
6. "Holder" means the seller of the personal property under or subject to the contract, or, if the contract is purchased by a financing agency or other assignee, the financing agency or other assignee.
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 retained or taken by a seller under the retail installment contract, and to file or record a release, satisfaction, or discharge of the contract, and license, certificate of title, and registration fees imposed by law.
8. "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.
9. "Retail buyer" or "buyer" means a person who buys personal property from a retail seller in a retail installment sale.
10. "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to or a lien upon the personal property, which is the subject matter of a retail installment 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, or a contract for the bailment or leasing of personal property 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 personal property upon full compliance with the terms of the contract.

11. "Retail installment sale" or "sale" means a sale, other than for the purpose of resale, of personal property by a retail seller to a retail buyer for a price payable in one or more deferred payments.
12. "Retail seller" or "seller" means a person who sells personal property to a retail buyer.
13. "Total of payments" or "time balance" means the total of the unpaid balance and the amount of the finance charge, if any, payable by the buyer.

51-13-02. Requirements as to retail installment contracts.

1. A retail installment contract must be dated and in writing, and must contain all the agreements of the parties with respect to the cost and terms of payment for the personal property, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction.
2. a. If the retail installment sale for which the retail installment contract is made is not subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], this subsection applies. The printed portion of the contract must be in at least eight-point type. The contract must contain printed or written in a size equal to at least ten-point bold type:
 - (1) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALLMENT CONTRACT".
 - (2) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.
 - (3) The following notice: "NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled-in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others: (a) to pay off in advance the full amount due and to obtain a partial refund of the finance charge; (b) to redeem the property if repossessed for a default within the time provided by law; (c) to require, under certain conditions, a resale of the property if repossessed. 4. If you desire to pay off in advance the full amount due, the amount of the refund you are entitled to, if any, will be furnished upon request."
- b. The seller shall deliver to the buyer a legible copy of the contract or any other document the seller has required or requested the buyer to sign. Until the seller does so, a buyer who has not received delivery of the personal property has an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a copy of the contract must be printed or written in a size equal to at least ten-point bold type and, if contained in the contract, must also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment of delivery of a copy of a contract is conclusive proof of such delivery and of compliance with this subdivision in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when the assignee purchases the contract.
- c. The contract must contain:
 - (1) 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 personal property including its make, year model, model and identification numbers or marks, if any, and whether it is new or used.

- (2) The cash price of the personal property which is the subject matter of the retail installment sale.
- (3) The amount of the buyer's downpayment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.
- (4) The difference between paragraphs 2 and 3, which is the unpaid balance of cash price.
- (5) The amount, if any, included for insurance, specifying the coverages.
- (6) The amount, if any, of official fees.
- (7) The amount financed, which is the sum of paragraphs 4, 5, and 6.
- (8) The amount of the finance charge, if any.
- (9) The total of payments, which is the sum of paragraphs 7 and 8, payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.
- (10) The deferred payment price, which is the sum of the amounts determined in paragraphs 2, 5, 6, and 8.
- (11) If any installment substantially exceeds in amount any prior installment other than the downpayment, the following legend printed in at least ten-point bold type or typewritten: "THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS", followed, if there be but one larger installment, by: "AN INSTALLMENT OF \$_____ WILL BE DUE ON _____", or, if there be more than one larger installment, by: "LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: _____", in such latter case inserting the amount of every larger installment and its due date.
- (12) Any balloon payments. If any payment under a contract is more than twice the amount of an otherwise regularly scheduled equal payment, the seller shall identify the amount of such payment by the term "balloon payment".

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the calculations involved in determining the amount to be paid by the buyer.

- d. If the cost of any insurance is included in the contract and a separate charge is made to the buyer for the insurance:
- (1) The contract must state whether the insurance is to be procured by the buyer or the seller.
 - (2) If the insurance is to be procured by the seller or holder, the seller or holder shall within thirty days after execution of the retail installment 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 and sold by a licensed insurance agent.

If any such policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract must be credited to the final maturing installments of the retail installment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.

- e. A contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of more than ten days in an amount equal to ten percent of the delinquent installment payment or ten dollars, whichever is less; provided, that only one such delinquency and collection charge may be collected on each installment in addition to interest accruing thereon.
 - f. No retail installment contract may be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the personal property is not made at the time of the execution of the contract, the identifying numbers or marks of the property or similar information and the due date of the first installment may be inserted in the contract after its execution.
3. If a retail installment sale is also subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], the seller may, instead of complying with the disclosure requirements of subsection 2, comply with all requirements of the Truth in Lending Act. A seller who complies with the Truth in Lending Act still must comply with the provisions of this section governing matters other than disclosure.

51-13-02.1. Retail installment contracts - Prohibited provisions. No contract may contain any provision by which:

- 1. 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 owing thereunder.
- 2. A power of attorney is given to confess judgment in this state, or an assignment of wages is given.
- 3. The buyer waives any claim for relief against the seller or holder of the contract, or other person acting on the seller's or holder's behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the personal property.
- 4. The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on the seller's or holder's behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the personal property.
- 5. The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith.
- 6. The buyer may subsequently include the title to or a lien upon any goods, other than the personal property which is the subject matter of the retail installment sale and any accessories or special or auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any thereof, as security for payment of the deferred payment price.

51-13-03. Finance charge limitation.

1. A retail seller may contract for in a retail installment contract and charge, receive, and collect the finance charge computed on the principal balance of the contract or obligation from the date thereof until paid. A retail seller who complies with the disclosure provisions of this chapter is deemed a regulated lender under section 47-14-09.
2. The finance charge must be computed on the amount financed as determined under subdivision c of subsection 2 of section 51-13-02. This finance charge may be precomputed on the amount financed calculated on the assumption that all scheduled payments will be paid when due and the effect of prepayment is governed by the provisions on rebate upon prepayment.
3. When a retail installment contract provides for unequal or irregular installments, the finance charge must be at the effective rate provided in subsection 1, having due regard for the schedule of installments.
4. The finance charge must be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense, or other charge whatsoever may be taken, received, reserved, or contracted for except as provided in this section and in subdivision e of subsection 2 of section 51-13-02 and for those items expressly provided for in the retail installment contract as set forth in subdivision c of subsection 2 of section 51-13-02.

51-13-03.1. Payment to last-known holder. Unless the buyer has notice of actual or intended assignment of a retail installment contract, payment made by the buyer to the last-known holder of the contract is binding upon all subsequent holders or assignees.

51-13-03.2. Statement of unpaid balance. Upon written request from the buyer, the holder of a retail installment 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. A buyer must be given a written receipt for any payment when made in cash.

51-13-04. Cancellation of contract. After the payment of all sums for which the buyer is obligated under a retail installment contract, and upon written demand made by the buyer, the holder of such contract shall mail to the buyer at the buyer's last-known address, good and sufficient instruments to indicate payment in full and to release all security in the personal property.

51-13-05. Prepayment of retail installment contract.

1. At any time before maturity, a buyer may pay in full the remaining principal due on a retail installment contract and is entitled to a refund of finance charges as follows:
 - a. The refund must be at least the finance charge paid in excess of that computed under the simple interest method, using the annual percentage rate disclosed under federal law to the nearest one-fourth of one percent.
 - b. For a retail installment contract in which the amount financed is not more than ten thousand dollars, an acquisition cost of at most fifteen dollars may be deducted from the refund.
 - c. For all retail installment contracts, a refund is not required if it is less than one dollar.
2. Notwithstanding section 51-13-06.2, this section applies to retail installment contracts for agricultural purposes and to retail installment contracts for more than twenty-five thousand dollars.

51-13-06. Refinancing retail installment contracts. Repealed by S.L. 1981, ch. 498, § 2.

51-13-06.1. Authority to purchase retail installment contracts. Notwithstanding any contrary provision of law:

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

51-13-06.2. Applicability. No provision of this chapter applies to a retail installment sale of personal property if:

1. The cash price of the personal property exceeds twenty-five thousand dollars; or
2. The personal property is to be used primarily for a business, commercial, or agricultural purpose, not a personal, family, or household purpose.

51-13-07. Penalties. Any person who willfully violates this chapter is guilty of a class A misdemeanor. A willful violation of section 51-13-02 or 51-13-03 by any person bars that person's recovery of any finance charge or delinquency or collection charge on the retail installment contract involved.

51-13-08. Waiver. Any waiver of the provisions of this chapter is unenforceable and void.