

**MOTOR VEHICLE - Meaning of, under Retail Installment Sales Act; MOTOR VEHICLE - Snowmobiles, trail motorcycles, all-terrain vehicles. RETAIL INSTALLMENT SALES ACT - Meaning of "motor vehicle" under. Sections 74-602 and 74-608, R.C.M. 1947.**

- HELD:**
1. A trail motorcycle is a "motor vehicle" under the provisions of the Retail Installment Sales Act contained in section 74-608, R.C.M. 1947.
  2. Snowmobiles and "all-terrain vehicles" are not "motor vehicles" under the provisions of the Retail Installment Sales Act contained in section 74-608, R.C.M. 1947.

December 12, 1972

Mr. John A. Dowdall, Director  
Department of Business Regulation  
805 North Main Street  
Helena, Montana 59601

Dear Mr. Dowdall:

You have requested my opinion as to whether the finance charge limitations on motor vehicles, contained in section 74-608, Revised Codes of Montana, 1947, apply to snowmobiles, trail motorcycles, and what are commonly known as "all-terrain vehicles".

Section 74-608, *supra*, provides in part:

"(a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

"(1) As to motor vehicles:

"Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made — seven dollars (\$7) per one hundred dollars (\$100) per year.

"Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made — nine dollars (\$9) per one hundred dollars (\$100) per year.

“Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made — eleven dollars (\$11) per one hundred dollars (\$100) per year.

“(2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11), per one hundred dollars (\$100) per year; (ii) if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); (iii) if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000).”

For the purposes of the Retail Installment Sales Act the term “motor vehicle” is defined in section 74-602, R.C.M. 1947, which provides in part:

“Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

\* \* \*

“(c) ‘Motor vehicle’ means any new or used automobile, mobile home, motorcycle, truck, trailer, semi-trailer, truck tractor, and all vehicles with any power, other than muscular power, **primarily** designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.” (Emphasis supplied)

From the foregoing definition it would appear that the specific inclusion of the term “motorcycle” in the definition of a motor vehicle is meant to encompass all of those vehicles having the general characteristics of motorcycles, including trail motorcycles. Thus, trail motorcycles should be considered a “motor vehicle” within the meaning of sections 74-602 and 74-608, *supra*.

Snowmobiles and “all-terrain vehicles”, unlike motorcycles, are not included specifically in the definition of a “motor vehicle” under section 74-602, *supra*. A determination must thus be made as to whether these are “vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a

public highway . . .”. The access of snowmobiles in Montana to our public highways is restricted by section 53-1018, R.C.M. 1947, which provides in part: “(1) No person shall operate a snowmobile upon a controlled-access highway or facility at any time . . .” Because they are restricted in the use of public highways by law, snowmobiles must be considered not to be within the definition of “motor vehicle” within the meaning of sections 74-602 and 74-608, *supra*.

“All-terrain vehicles” as the name implies are designed for use on a variety of surfaces. They are capable of use on highways but are not designed primarily for such use. In an analogous situation vehicles designed primarily for off-highway use have been held not to be “motor vehicles”. Under a definition of “motor vehicle” similar to that contained in section 74-602, *supra*, a federal court found that construction machinery was not “motor vehicles” pursuant to the New Jersey Certificate of Ownership Law. The court in **In the Matter of Ferro Contracting Co., Inc., Bankrupt**, 380 F.2d 116, said:

“We therefore believe that the definition of a ‘motor vehicle’ was not intended to embrace machinery which normally operates at construction sites even though literally it perhaps can be used to transport persons on a highway.”

To the same effect is **Rice v. Gruetzmacher**, 133 N.W.2d 401. Since the “all-terrain vehicle” is primarily designed for off-highway use and would take major design alteration to make it adaptable to use primarily upon a public highway, it must be considered not to be within the definition of a “motor vehicle” under sections 74-602 and 74-608, *supra*.

THEREFORE, IT IS MY OPINION that:

1. A trail motorcycle is a “motor vehicle” under the provisions of section 74-608, R.C.M. 1947.
2. Snowmobiles and “all-terrain vehicles” are not to be considered “motor vehicles” under the provisions of section 74-608, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General