

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 449
Committee Substitute Favorable 4/29/93
Third Edition Engrossed 5/5/93

Short Title: Interest and Penalties on Refunds.

(Public)

Sponsors:

Referred to:

March 22, 1993

A BILL TO BE ENTITLED

AN ACT TO INCLUDE INTEREST AND PENALTIES IN REFUNDS OF MONIES
COLLECTED BY MISTAKE FROM BORROWERS AND CUSTOMERS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 24 of the General Statutes is amended by
adding the following new section to read:

"§ 24-10.2. Repayments to consumers to include interest and other penalties.

Where there has been a loan or extension of credit subject to this Chapter with respect to which the lender has collected money from the borrower by mistake, the borrower shall be entitled to be reimbursed the money paid to the lender by mistake, together with interest at the contract rate, for the period during which the lender had the money in excess of any period of time equal to the grace period the borrower would have been allowed during which no interest or late payment penalty would have accrued. As used in this section, 'collected money from the borrower by mistake' means collected money from the borrower in excess of those amounts agreed to by the parties to the loan or extension of credit which may include, but is not limited to, late fees, penalties and interest, but shall not include amounts paid to a lender as escrow for taxes or insurance."

Sec. 2. G.S. 24-9.1 reads as rewritten:

1 **"§ 24-9.1. Certain repayments to consumers by public utilities not subject to claim**
2 **or defense of ~~usury~~-usury; repayments not ordered by Commission to**
3 **include interest and late payment, finance or service charges.**

4 (a) Notwithstanding any other provision of this Chapter or any other provision of
5 law, any public utility, as defined by G.S. 62-3, shall pay to its customers such rate of
6 interest as may be required by order of the North Carolina Utilities Commission in
7 transactions wherein the utility is refunding to its customers funds advanced by or
8 overcollected from the customers. As to such transactions, the claim or defense of usury
9 by such public utility and its successors or anyone else in its behalf is prohibited.

10 (b) In transactions where the utility refunds to its customer funds collected in
11 error from the customer, and the refund has not been reviewed or ordered by the North
12 Carolina Utilities Commission, the Commission shall promulgate rules by January 1,
13 1994, providing for the manner in which the utility shall make the refund including the
14 full amount of interest and late payment, finance or services charges paid by the
15 customer as part of or incident to the overcollected amount, and the rate of interest to be
16 paid by the utility to the customer on the overcollected amount. A utility shall be
17 exempt from paying interest on the refund of funds collected in error if the utility does
18 not charge its customers for late payments of amounts due."

19 Sec. 3. G.S. 24-11.1(b) reads as rewritten:

20 "(b) Disclosures. – The following disclosures shall be clearly and conspicuously
21 made in or with all documents described in subsection (a) of this section:

22 (1) The annual percentage rate or, if the rate may vary, a statement that it
23 may vary, the circumstances under which the rate may increase, any
24 limitations on the increase, and the effects of the increase on the other
25 terms of the agreement.

26 (2) The date or occasion upon which the finance charge begins to accrue
27 on a transaction and the duration of any grace period.

28 (3) Whether an annual fee is charged and the amount of the fee.

29 (4) Any delinquency charge, late charge, or collection charge which may
30 be assessed for the late payment of any installment, including the
31 terms and conditions for the imposition of such charge.

32 (5) Notice to the consumer that refunds of amounts collected from the
33 consumer by mistake may include interest as required by G.S. 24-
34 10.2."

35 Sec. 4. G.S. 24-11.2(b) reads as rewritten:

36 "(b) Disclosures. – The following disclosures shall be clearly and conspicuously
37 made in or with all documents described in subsection (a) of this section:

38 (1) The annual fee and other charges, if any, applicable to the issuance or
39 use of the charge card.

40 (2) That charges incurred by the use of the charge card are due and
41 payable upon receipt of a periodic statement of charges.

42 (3) Any delinquency charge, late charge, or collection charge which may
43 be assessed for late payment, including the terms and conditions for
44 the imposition of such charge.

1 (4) Notice to the consumer that refunds of amounts collected from the
2 consumer by mistake may include interest as required by G.S. 24-
3 10.2."

4 Sec. 5. Chapter 25A of the General Statutes is amended by adding the
5 following new section to read:

6 **"§ 25A-44.1. Repayment to consumers to include interest and penalties.**

7 In consumer credit sales transactions subject to this Chapter with respect to which
8 the seller has collected money from the consumer by mistake, the consumer shall be
9 entitled to be reimbursed the money paid to the seller by mistake, together with interest
10 at the contract rate, for the period during which the seller had the money in excess of
11 any period of time equal to the grace period the consumer would have been allowed
12 during which no interest or late payment penalty would have accrued. As used in this
13 section, 'collected money from the consumer by mistake' means collected money from
14 the consumer in excess of those amounts agreed upon by the parties to the consumer
15 credit sales transaction which may include, but is not limited to, late fees, penalties and
16 interest."

17 Sec. 6. Sections 1, 2, and 5 of this act are effective upon ratification and shall
18 only apply to refunds owed which arise from overcollections made on or after the date
19 of ratification. Sections 3 and 4 of this act become effective January 1, 1994.