



January 4, 2005

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## HOUSE BILL No. 1021

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DIGEST HB 1021 (Updated January 4, 2005 2:57 pm - DI 101)

**Citations Affected:** IC 24-9; noncode.

**Synopsis:** Lending acts and practices. Specifies that a reference in Indiana's home loan practices law to rescission rights granted for a violation of law refers only to a violation of the federal Truth in Lending Act.

**Effective:** January 1, 2005 (retroactive).

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**Burton, Bardon**

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January 4, 2005, read first time and referred to Committee on Financial Institutions.  
January 4, 2005, reported — Do Pass.

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HB 1021—LS 6368/DI 51+



January 4, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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## HOUSE BILL No. 1021



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation and consumer credit.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-9-5-4 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 4. (a) A  
3 person who violates this article is liable to a person who is a party to  
4 the home loan transaction that gave rise to the violation for the  
5 following:

- 6 (1) Actual damages, including consequential damages. A person  
7 is not required to demonstrate reliance in order to receive actual  
8 damages.
- 9 (2) Statutory damages equal to two (2) times the finance charges  
10 agreed to in the home loan agreement.
- 11 (3) Costs and reasonable attorney's fees.

12 (b) A person may be granted injunctive, declaratory, and other  
13 equitable relief as the court determines appropriate in an action to  
14 enforce compliance with this chapter.

15 (c) The right of rescission granted under 15 U.S.C. 1601 et seq. for  
16 a violation of ~~law~~ **the federal Truth in Lending Act (15 U.S.C. 1601**  
17 **et seq.)** is available to a person acting only in an individual capacity by

HB 1021—LS 6368/DI 51+



1 way of recoupment as a defense against a party foreclosing on a home  
2 loan at any time during the term of the loan. Any recoupment claim  
3 asserted under this provision is limited to the amount required to  
4 reduce or extinguish the person's liability under the home loan plus  
5 amounts required to recover costs, including reasonable attorney's fees.  
6 This article shall not be construed to limit the recoupment rights  
7 available to a person under any other law.

8 (d) The remedies provided in this section are cumulative but are not  
9 intended to be the exclusive remedies available to a person. Except as  
10 provided in subsection (e), a person is not required to exhaust any  
11 administrative remedies under this article or under any other applicable  
12 law.

13 (e) Before bringing an action regarding an alleged deceptive act  
14 under this chapter, a person must:

- 15 (1) notify the homeowner protection unit established by
- 16 IC 4-6-12-2 of the alleged violation giving rise to the action; and
- 17 (2) allow the homeowner protection unit at least ninety (90) days
- 18 to institute appropriate administrative and civil action to redress
- 19 a violation.

20 (f) An action under this chapter must be brought within five (5)  
21 years after the date that the person knew, or by the exercise of  
22 reasonable diligence should have known, of the violation of this article.

23 (g) An award of damages under subsection (a) has priority over a  
24 civil penalty imposed under this article.

25 SECTION 2. [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]  
26 **The general assembly intends the amendment of IC 24-9-5-4(c)**  
27 **made by this act to be construed together with P.L.73-2004,**  
28 **SECTION 33, and to apply as if the language of IC 24-9-5-4(c), as**  
29 **amended by this act, had been part of P.L.73-2004, SECTION 33.**

30 SECTION 3. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1021, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

WOODRUFF, Chair

Committee Vote: yeas 9, nays 0.

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