

**LSC 127 1074-5**

**127th General Assembly  
Regular Session  
2007-2008**

**Sub. S. B. No. 184**

---

**A BILL**

To amend sections 2307.60 and 2901.05 and to enact 1  
sections 2307.601 and 2901.09 of the Revised Code 2  
to bar recovery of damages in tort actions 3  
commenced by criminal offenders in specified 4  
circumstances even if the offender has not been 5  
charged with or convicted of any offense based on 6  
the offender's criminal conduct and to create a 7  
rebuttable presumption that a criminal defendant 8  
who raises the affirmative defense of self-defense 9  
or defense of another acted properly if the 10  
defendant or defended person was suffering or was 11  
about to suffer a specified serious felony while 12  
in the defendant's or defended person's residence 13  
or an occupied vehicle or a forcible trespass 14  
constituting an aggravated burglary or burglary 15  
upon the defendant's or defended person's 16  
residence or an occupied vehicle. 17

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2307.60 and 2901.05 be amended and 18  
sections 2307.601 and 2901.09 of the Revised Code be enacted to 19  
read as follows: 20

**Sec. 2307.60.** (A)(1) Anyone injured in person or property by 21  
a criminal act has, and may recover full damages in, a civil 22

action unless specifically excepted by law, may recover the costs 23  
of maintaining the civil action and attorney's fees if authorized 24  
by any provision of the Rules of Civil Procedure or another 25  
section of the Revised Code or under the common law of this state, 26  
and may recover punitive or exemplary damages if authorized by 27  
section 2315.21 or another section of the Revised Code. 28

(2) A final judgment of a trial court that has not been 29  
reversed on appeal or otherwise set aside, nullified, or vacated, 30  
entered after a trial or upon a plea of guilty, but not upon a 31  
plea of no contest or the equivalent plea from another 32  
jurisdiction, that adjudges an offender guilty of an offense of 33  
violence punishable by death or imprisonment in excess of one 34  
year, when entered as evidence in any subsequent civil proceeding 35  
based on the criminal act, shall preclude the offender from 36  
denying in the subsequent civil proceeding any fact essential to 37  
sustaining that judgment, unless the offender can demonstrate that 38  
extraordinary circumstances prevented the offender from having a 39  
full and fair opportunity to litigate the issue in the criminal 40  
proceeding or other extraordinary circumstances justify affording 41  
the offender an opportunity to relitigate the issue. The offender 42  
may introduce evidence of the offender's pending appeal of the 43  
final judgment of the trial court, if applicable, and the court 44  
may consider that evidence in determining the liability of the 45  
offender. 46

(B)(1) As used in division (B) of this section, ~~"tort:~~ 47

(a) "Tort action" means a civil action for damages for 48  
injury, death, or loss to person or property other than a civil 49  
action for damages for a breach of contract or another agreement 50  
between persons. "Tort action" includes, but is not limited to, a 51  
product liability claim, as defined in section 2307.71 of the 52  
Revised Code, and an asbestos claim, as defined in section 2307.91 53  
of the Revised Code, an action for wrongful death under Chapter 54

2125. of the Revised Code, and an action based on derivative 55  
claims for relief. 56

(b) "Residence" has the same meaning as in section 2901.05 of 57  
the Revised Code. 58

(2) Recovery on a claim for relief in a tort action is barred 59  
to any person or the person's legal representative if ~~the~~ any of 60  
the following apply: 61

(a) The person has been convicted of or has pleaded guilty to 62  
a felony, or to a misdemeanor that is an offense of violence, 63  
arising out of criminal conduct that was a proximate cause of the 64  
injury or loss for which relief is claimed in the tort action. 65

~~(3) Division~~ (b) The person suffered the injury or loss for 66  
which relief is claimed in the tort action while engaging in 67  
conduct that, if prosecuted, would constitute a felony, a 68  
misdemeanor that is an offense of violence, an attempt to commit a 69  
felony, or an attempt to commit a misdemeanor that is an offense 70  
of violence, regardless of whether the person has been convicted 71  
of or pleaded guilty to or has been charged with committing the 72  
felony, the misdemeanor, or the attempt to commit the felony or 73  
misdemeanor, or while fleeing immediately after engaging in 74  
conduct that, if prosecuted, would constitute a felony, a 75  
misdemeanor that is an offense of violence, an attempt to commit a 76  
felony, or an attempt to commit a misdemeanor that is an offense 77  
of violence, regardless of whether the person has been convicted 78  
of or pleaded guilty to or has been charged with committing the 79  
felony, the misdemeanor, or the attempt to commit the felony or 80  
misdemeanor. 81

(c) The person suffered the injury or loss for which relief 82  
is claimed in the tort action as a result of the victim of conduct 83  
that, if prosecuted, would constitute a felony, or a misdemeanor 84  
that is an offense of violence, acting against the person in 85

self-defense, defense of another, or defense of the victim's 86  
residence, regardless of whether the person has been convicted of 87  
or pleaded guilty to or has been charged with committing the 88  
felony or misdemeanor. Division (B)(2)(c) of this section does not 89  
apply if the person who suffered the injury or loss, at the time 90  
of the victim's act of self-defense, defense of another, or 91  
defense of residence, was an innocent bystander who had no 92  
connection with the underlying conduct that prompted the victim's 93  
exercise of self-defense, defense of another, or defense of 94  
residence. 95

(3) Recovery against a victim of conduct that, if prosecuted, 96  
would constitute a felony, or a misdemeanor that is an offense of 97  
violence, on a claim for relief in a tort action is barred to any 98  
person or the person's legal representative if the injury or loss 99  
for which relief is claimed in the tort action arises out of 100  
conduct the person engaged in against that victim, that, if 101  
prosecuted, would constitute a felony, or a misdemeanor that is an 102  
offense of violence, regardless of whether the person has been 103  
convicted of or pleaded guilty to or has been charged with 104  
committing the felony or misdemeanor. 105

(4) Divisions (B)(1) to (3) of this section ~~does~~ do not apply 106  
to civil claims based upon alleged intentionally tortious conduct, 107  
alleged violations of the United States Constitution, or alleged 108  
violations of statutes of the United States pertaining to civil 109  
rights. For purposes of division (B)(4) of this section, a 110  
person's act of self-defense, defense of another, or defense of 111  
the person's residence does not constitute intentionally tortious 112  
conduct. 113

**Sec. 2307.601. (A) As used in this section:** 114

(1) "Residence" and "vehicle" have the same meanings as in 115  
section 2901.05 of the Revised Code. 116

(2) "Tort action" has the same meaning as in section 2307.60 117  
of the Revised Code. 118

(B) For purposes of determining the potential liability of a 119  
person in a tort action related to the person's use of force 120  
alleged to be in self-defense, defense of another, or defense of 121  
the person's residence, if the person lawfully is in the person's 122  
residence, the person has no duty to retreat before using force in 123  
self-defense, defense of another, or defense of the person's 124  
residence, and, if the person lawfully is an occupant of the 125  
person's vehicle or lawfully is an occupant in a vehicle owned by 126  
an immediate family member of the person, the person has no duty 127  
to retreat before using force in self-defense or defense of 128  
another. 129

**Sec. 2901.05.** (A) Every person accused of an offense is 130  
presumed innocent until proven guilty beyond a reasonable doubt, 131  
and the burden of proof for all elements of the offense is upon 132  
the prosecution. The burden of going forward with the evidence of 133  
an affirmative defense, ~~and is upon the accused.~~ Except as 134  
otherwise provided in this division, the burden of proof, by a 135  
preponderance of the evidence, for an affirmative defense, is upon 136  
the accused. If the accused raises self-defense or defense of 137  
another as an affirmative defense and the accused or the person 138  
defended by the accused was suffering or was about to suffer a 139  
violation of section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 140  
2905.02, 2907.02, 2909.02, 2911.01, 2911.02, or 2917.02 or a 141  
felony violation of section 2909.24 of the Revised Code while in 142  
the residence of the accused, the residence of the person defended 143  
by the accused, or an occupied vehicle or was suffering or was 144  
about to suffer a forcible trespass in violation of section 145  
2911.11 or division (A)(1), (2), or (3) of section 2911.12 of the 146  
Revised Code upon the residence of the accused or the residence of 147  
the person defended by the accused or into an occupied vehicle 148

occupied by the accused, there is a rebuttable presumption that 149  
the accused acted properly in self-defense or in defense of the 150  
person defended by the accused, and the prosecution has the burden 151  
of proof, by a preponderance of the evidence, to rebut the 152  
presumption. In all other cases in which the accused raises 153  
self-defense or defense of another as an affirmative defense, the 154  
burden of proof, by a preponderance of the evidence, is upon the 155  
accused. 156

(B) As part of its charge to the jury in a criminal case, the 157  
court shall read the definitions of "reasonable doubt" and "proof 158  
beyond a reasonable doubt," contained in division (D) of this 159  
section. 160

(C) As used in this section, ~~an~~: 161

(1) An "affirmative defense" is either of the following: 162

~~(1)~~(a) A defense expressly designated as affirmative; 163

~~(2)~~(b) A defense involving an excuse or justification 164  
peculiarly within the knowledge of the accused, on which ~~he~~ the 165  
accused can fairly be required to adduce supporting evidence. 166

(2) "Dwelling" means a building or conveyance of any kind 167  
that has a roof over it and that is designed to be occupied by 168  
people lodging in the building or conveyance at night, regardless 169  
of whether the building or conveyance is temporary or permanent or 170  
is mobile or immobile. As used in this division, a building or 171  
conveyance includes, but is not limited to, an attached porch, and 172  
a building or conveyance with a roof over it includes, but is not 173  
limited to, a tent. 174

(3) "Residence" means a dwelling in which a person resides 175  
either temporarily or permanently or is visiting as a guest. 176

(4) "Vehicle" means a conveyance of any kind, whether or not 177  
motorized, that is designed to transport people or property. 178

(D) "Reasonable doubt" is present when the jurors, after they  
have carefully considered and compared all the evidence, cannot  
say they are firmly convinced of the truth of the charge. It is a  
doubt based on reason and common sense. Reasonable doubt is not  
mere possible doubt, because everything relating to human affairs  
or depending on moral evidence is open to some possible or  
imaginary doubt. "Proof beyond a reasonable doubt" is proof of  
such character that an ordinary person would be willing to rely  
and act upon it in the most important of ~~his~~ the person's own  
affairs.

Sec. 2901.09. (A) As used in this section, "residence" and  
"vehicle" have the same meanings as in section 2901.05 of the  
Revised Code.

(B) For purposes of any section of the Revised Code that sets  
forth a criminal offense, a person who lawfully is in the person's  
residence has no duty to retreat before using force in  
self-defense, defense of another, or defense of the person's  
residence, and a person who lawfully is an occupant of the  
person's vehicle or who lawfully is an occupant in a vehicle owned  
by an immediate family member of the person has no duty to retreat  
before using force in self-defense or defense of another.

**Section 2.** That existing sections 2307.60 and 2901.05 of the  
Revised Code are hereby repealed.