

LSC 127 1074-1

127th General Assembly  
Regular Session  
2007-2008

. B. No.

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**A BILL**

To amend section 2901.05 and to enact section 1  
2305.402 of the Revised Code to provide a criminal 2  
defendant who properly establishes the affirmative 3  
defense of self-defense or defense of another with 4  
immunity from civil liability for damages related 5  
to the acts of self-defense or defense of another 6  
and to create a rebuttable presumption that a 7  
criminal defendant who raises the affirmative 8  
defense of self-defense or defense of another 9  
acted properly if the defendant or the person 10  
defended by the accused was suffering or was about 11  
to suffer a felony offense of violence or a 12  
forcible trespass upon the home of the defendant 13  
or of the person defended by the accused. 14

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

**Section 1.** That section 2901.05 be amended and section 15  
2305.402 of the Revised Code be enacted to read as follows: 16

**Sec. 2305.402.** (A) A person who properly establishes the 17  
affirmative defense of self-defense or defense of another is not 18  
liable in damages to any person in a tort action for injury, 19  
death, or loss to person or property allegedly caused by the 20  
person while acting in self-defense or defense of another. 21

(B) For purposes of division (A) of this section, the 22  
affirmative defense of self-defense or defense of another is 23  
properly established when any of the following occurs: 24

(1) The prosecuting attorney declines to charge the person or 25  
moves to dismiss the charge because the prosecuting attorney 26  
believes that the person acted in self-defense or defense of 27  
another. 28

(2) The grand jury finds that the person acted in 29  
self-defense or defense of another. 30

(3) The person is acquitted after trial because the court or 31  
jury finds that the person acted in self-defense or defense of 32  
another. 33

(C) As used in this section, "tort action" has the same 34  
meaning as in section 2135.01 of the Revised Code. 35

**Sec. 2901.05.** (A) Every person accused of an offense is 36  
presumed innocent until proven guilty beyond a reasonable doubt, 37  
and the burden of proof for all elements of the offense is upon 38  
the prosecution. The burden of going forward with the evidence of 39  
an affirmative defense, and the burden of proof, by a 40  
preponderance of the evidence, for an affirmative defense, is upon 41  
the accused. If the accused raises self-defense or defense of 42  
another as an affirmative defense and the accused or the person 43  
defended by the accused was suffering or was about to suffer an 44  
offense of violence that is a felony or was suffering or was about 45  
to suffer a forcible trespass upon the home of the accused or the 46  
home of the person defended by the accused, there is a rebuttable 47  
presumption that the accused acted properly in self-defense or in 48  
defense of the person defended by the accused. 49

(B) As part of its charge to the jury in a criminal case, the 50  
court shall read the definitions of "reasonable doubt" and "proof 51

beyond a reasonable doubt," contained in division (D) of this 52  
section. 53

(C) As used in this section, an "affirmative defense" is 54  
either of the following: 55

(1) A defense expressly designated as affirmative; 56

(2) A defense involving an excuse or justification peculiarly 57  
within the knowledge of the accused, on which ~~he~~ the accused can 58  
fairly be required to adduce supporting evidence. 59

(D) "Reasonable doubt" is present when the jurors, after they 60  
have carefully considered and compared all the evidence, cannot 61  
say they are firmly convinced of the truth of the charge. It is a 62  
doubt based on reason and common sense. Reasonable doubt is not 63  
mere possible doubt, because everything relating to human affairs 64  
or depending on moral evidence is open to some possible or 65  
imaginary doubt. "Proof beyond a reasonable doubt" is proof of 66  
such character that an ordinary person would be willing to rely 67  
and act upon it in the most important of ~~his~~ the person's own 68  
affairs. 69

**Section 2.** That existing section 2901.05 of the Revised Code 70  
is hereby repealed. 71