



H.B. 264

127th General Assembly
(As Introduced)

Reps. Wachtmann, Brinkman, Goodwin, Evans, Gibbs, R. McGregor, Flowers, Huffman, Bulp, Adams, Latta, Batchelder, Webster, Setzer, Fessler, Garrison, J. Hagan, Aslanides, Jones, R. Hagan, Widener, Mandel, Peterson, Seitz, Reinhard, Zehringer, Daniels, Bolon, J. Stewart, Uecker, Schindel, Schlichter, Blessing, Patton, Hottinger

BILL SUMMARY

- Creates a rebuttable presumption that a criminal defendant who raises the affirmative defense of self-defense or defense of another acted properly if the defendant or the person defended by the accused was suffering or was about to suffer a felony offense of violence or a forcible trespass upon the home of the defendant or of the person defended by the accused.
- Provides a person who properly establishes the affirmative defense of self-defense or defense of another (in a specified criminal context) with immunity from civil liability for damages in a tort action related to the acts of self-defense or defense of another.

CONTENT AND OPERATION

Rebuttable presumption of self-defense or defense of others, in certain circumstances, if raised as an affirmative defense in a criminal case

Existing law

Existing law specifies that, if a person is accused of a criminal offense: (1) the person is presumed innocent until "proven guilty beyond a reasonable doubt" (see **COMMENT 1**), (2) the burden of proof for all elements of the offense is upon the prosecution, and (3) the burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused. As used in these provisions, an "affirmative defense" is either a defense expressly designated as affirmative or a defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting

evidence (see **COMMENT 2** for a few examples of affirmative defenses). (R.C. 2901.05.)

Operation of the bill

The bill adds language to the existing affirmative defense provision to specify that, if a person accused of a criminal offense raises self-defense or defense of another as an affirmative defense and the accused or the person defended by the accused was suffering or was about to suffer an "offense of violence" (see **COMMENT 3**) that is a felony or was suffering or was about to suffer a forcible trespass upon the home of the accused or the home of the person defended by the accused, there is a rebuttable presumption that the accused acted properly in self-defense or in defense of the person defended by the accused (R.C. 2901.05(A)).

Immunity from damage in civil action

The bill provides that a person who "properly establishes the affirmative defense of self-defense or defense of another" (see below) is not liable in damages to any person in a "tort action" (see below) for injury, death, or loss to person or property allegedly caused by the person while acting in self-defense or defense of another. For purposes of this provision, the "affirmative defense of self-defense or defense of another is properly established" when any of the following occurs: (1) the prosecuting attorney declines to charge the person or moves to dismiss the charge because the prosecuting attorney believes that the person acted in self-defense or defense of another, (2) the grand jury finds that the person acted in self-defense or defense of another, or (3) the person is acquitted after trial because the court or jury finds that the person acted in self-defense or defense of another. As used in this provision, "tort action" has the same meaning as in existing R.C. 2135.01, not in the bill, as described in **COMMENT 4**. (R.C. 2305.402; see **COMMENT 5** regarding existing immunity from civil liability in self-defense scenarios.)

COMMENT

1. Existing R.C. 2901.05(D) specifies that "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 the person's own affairs.

2. Many sections of the Revised Code expressly designate affirmative defenses to charges of various criminal prohibitions. In the Criminal Code alone, 39 sections provide one or more affirmative defenses to one or more specified criminal prohibitions (the sections, none of which are in the bill, are R.C. 2903.15, 2903.34, 2903.341, 2905.05, 2905.12, 2907.31, 2907.32, 2907.35, 2907.38, 2907.39, 2913.03, 2913.04, 2913.34, 2913.49, 2919.01, 2919.12, 2919.121, 2919.21, 2919.23, 2919.27, 2921.21, 2921.34, 2921.36, 2921.51, 2921.52, 2923.01, 2923.02, 2923.03, 2923.12, 2923.121, 2923.16, 2925.04, 2925.11, 2925.24, 2925.32, 2925.58, 2927.02, 2927.022, and 2950.05).

In addition, many affirmative defenses to charges of criminal prohibitions have been established or recognized by court decisions. Included among these affirmative defenses are duress, entrapment, necessity, self-defense, and defense of family. The decisions establish criteria that must be satisfied in order to successfully establish the defense.

3. Existing R.C. 2901.01, not in the bill, provides that, as used in the Revised Code, "offense of violence" means any of the following: (a) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of R.C. 2911.12(A)(1), (2), or (3), of R.C. 2919.22(B)(1), (2), (3), or (4), or of former R.C. 2907.12, (b) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any section, division, or offense listed in clause (a) of this paragraph, (c) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, or (d) a conspiracy or attempt to commit, or complicity in committing, any offense identified in clause (a), (b), or (c) of this paragraph.

4. Existing R.C. 2135.01, not in the bill, defines "tort action" as a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for a breach of contract or another agreement between persons.

5. Ohio law provides a qualified immunity from liability in a civil action that generally recognizes the right of an individual to use force to defend the individual, the individual's family, and the individual's property. The degree of force permitted depends upon what is reasonably necessary to protect the individual from the imminent use of unlawful force or to protect the individual's property. See: *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116; *State v. Williford* (1990), 49 Ohio St.3d 247; *Allison v. Fiscus* (1951), 156 Ohio St. 120; *et al.*

Additionally, existing law provides statutory civil immunity to certain persons who use force to repel a trespasser under qualifying circumstances, as follows:

(a) R.C. 2305.40(B) provides that the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property is not liable in damages to a trespasser on the property, to a member of the trespasser's family, or to any other person in a tort action for injury, death, or loss to person or property of the trespasser that allegedly is caused by the owner, lessee, renter, or family member if, at the time the injury, death, or loss to person or property allegedly is caused, all of the following apply: (i) the owner, lessee, renter, or family member is inside a building or other structure on the property that is maintained as a permanent or temporary dwelling, (ii) the trespasser has made, is making, or is attempting to make an unlawful entry into the building or other structure, and (iii) the owner, lessee, renter, or family member uses "reasonably necessary force" to repel the trespasser from the building or other structure or to prevent the trespasser from making the unlawful entry into that building or other structure. For purposes of this immunity, "reasonably necessary force" may include taking or attempting to take the trespasser's life or causing or attempting to cause physical harm or serious physical harm to the trespasser if the owner, lessee, or renter of real property or family member who resides on the property has a reasonable good faith belief that the owner, lessee, or renter or family member is in imminent danger of death or serious physical harm to person and that the only means to escape from the imminent danger is to use deadly force or other force that likely will cause physical harm or serious physical harm to the person of the trespasser, even if the owner, lessee, renter, or family member is mistaken as to the existence or imminence of the danger of death or serious physical harm to person. In order to qualify for this immunity, an owner, lessee, or renter of real property or family member who resides on the property is not required to retreat from the building prior to using reasonably necessary force to repel a trespasser from the building or other structure or to prevent a trespasser from making an unlawful entry into the building or other structure.

(b) R.C. 2305.40(C) provides that, even if the immunity described in the preceding paragraph does not apply, the owner, lessee, or renter of real property or family member who resides on the property still is not liable in damages to a trespasser on the property, to a member of the family of the trespasser, or to any other person in a tort action for injury, death, or loss to person or property of the trespasser that allegedly is caused by the owner, lessee, renter, or family member if, at the time the injury, death, or loss allegedly is caused, none of the following applies: (i) the injury, death, or loss is caused by a physical assault of the owner, lessee, renter, or family member upon the trespasser other than in self-defense or defense of a third person, (ii) self-defense or defense of a third person is not involved, and the injury, death, or loss to person or property is caused by a vehicle

driven or otherwise set in motion, a firearm shot, or any other item of tangible personal property held, driven, set in motion, projected, or thrown by the owner, lessee, renter, or family member with the intent to cause injury, death, or loss to person or property of the trespasser or with the intent to cause the trespasser to believe that the owner, lessee, renter, or family member would cause injury, death, or loss to person or property of the trespasser, and (iii) under circumstances not described in clause (i) or (ii), above, self-defense or defense of a third person is not involved, and the owner, lessee, renter, or family member intends to create a risk of injury, death, or loss to person or property of any trespasser by direct or indirect means, including, but not limited to, the use of spring guns, traps, or other dangerous instrumentalities.

(c) R.C. 2305.40(D) provides that the immunities described in the preceding two paragraphs do not do any of the following: (i) create a new cause of action or substantive legal right against the owner, lessee, or renter of real property or a family member who resides on the property, (ii) affect any civil liability under another statute or Ohio common law of an owner, lessee, or renter of real property or a family member who resides on the property with respect to individuals other than trespassers, including, but not limited to, civil liability to invitees or licensees, (iii) affect any immunities from or defenses to civil liability established by another statute or available at common law to which the owner, lessee, or renter of real property or a family member who resides on the property may be entitled with respect to individuals other than trespassers, including, but not limited to, immunities from or defenses to civil liability to invitees or licensees, (iv) affect any criminal liability that the owner, lessee, or renter of real property or a family member who resides on the property may have for injury, death, or loss to person or property of a trespasser, invitee, or licensee on the property, or (v) affect any immunities from or defenses to civil liability established by another statute or available at common law to which an individual other than the owner, lessee, or renter of real property or a family member who resides on the property may be entitled in connection with injury, death, or loss to person or property of a trespasser on real property owned, leased, or rented by another person, including, but not limited to, self-defense or defense of third persons.

HISTORY

| ACTION | DATE |
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