

As Introduced

133rd General Assembly

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H. B. No. 796

Representative Koehler

Cosponsors: Representatives Abrams, Baldrige, Becker, Callender, Carfagna, Carruthers, Edwards, Fraizer, Ginter, Green, Hillyer, Hoops, Jones, Kick, Lang, Lipps, McClain, Perales, Plummer, Powell, Richardson, Riedel, Seitz, Smith, T., Stephens, Stoltzfus, Wiggam, Wilkin, Zeltwanger

A BILL

To amend sections 2307.601, 2901.05, and 2901.09 of
the Revised Code to expand the locations at
which a person has no duty to retreat before
using force under both civil and criminal law.

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

Section 1. That sections 2307.601, 2901.05, and 2901.09 of
the Revised Code be amended to read as follows:

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

(1) "Residence" ~~and "vehicle" have~~ has the same ~~meanings~~
meaning as in section 2901.05 of the Revised Code.

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

(B) For purposes of determining the potential liability of
a person in a tort action related to the person's use of force
alleged to be in self-defense, defense of another, or defense of
the person's residence, ~~if the person lawfully is in that~~

~~person's residence,~~ the person has no duty to retreat before 16
using force in self-defense, defense of another, or defense of 17
that person's residence, ~~and, if the person lawfully is an~~ 18
~~occupant of that person's vehicle or lawfully is an occupant in~~ 19
~~a vehicle owned by an immediate family member of the person, the~~ 20
~~person has no duty to retreat before using force in self-defense~~ 21
~~or defense of another if that person is in a place in which the~~ 22
person lawfully has a right to be. 23

(C) A trier of fact shall not consider the possibility of 24
retreat as a factor in determining whether or not a person who 25
used force in self-defense, defense of another, or defense of 26
that person's residence reasonably believed that the force was 27
necessary to prevent injury, loss, or risk to life or safety. 28

Sec. 2901.05. (A) Every person accused of an offense is 29
presumed innocent until proven guilty beyond a reasonable doubt, 30
and the burden of proof for all elements of the offense is upon 31
the prosecution. The burden of going forward with the evidence 32
of an affirmative defense, and the burden of proof, by a 33
preponderance of the evidence, for an affirmative defense other 34
than self-defense, defense of another, or defense of the 35
accused's residence presented as described in division (B)(1) of 36
this section, is upon the accused. 37

(B)(1) A person is allowed to act in self-defense, defense 38
of another, or defense of that person's residence. If, at the 39
trial of a person who is accused of an offense that involved the 40
person's use of force against another, there is evidence 41
presented that tends to support that the accused person used the 42
force in self-defense, defense of another, or defense of that 43
person's residence, the prosecution must prove beyond a 44
reasonable doubt that the accused person did not use the force 45

in self-defense, defense of another, or defense of that person's residence, as the case may be. 46
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(2) Subject to division (B)(3) of this section, a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force. 48
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(3) The presumption set forth in division (B)(2) of this section does not apply if either of the following is true: 56
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(a) The person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle. 58
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(b) The person who uses the defensive force uses it while in a residence or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle. 61
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(4) The presumption set forth in division (B)(2) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence, provided that the prosecution's burden of proof remains proof beyond a reasonable doubt as described in divisions (A) and (B)(1) of this section. 64
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(C) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division ~~(D)~~(E) of this section. 69
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(D) As used in this section: 73

(1) An "affirmative defense" is either of the following:	74
(a) A defense expressly designated as affirmative;	75
(b) A defense involving an excuse or justification	76
peculiarly within the knowledge of the accused, on which the	77
accused can fairly be required to adduce supporting evidence.	78
(2) "Dwelling" means a building or conveyance of any kind	79
that has a roof over it and that is designed to be occupied by	80
people lodging in the building or conveyance at night,	81
regardless of whether the building or conveyance is temporary or	82
permanent or is mobile or immobile. As used in this division, a	83
building or conveyance includes, but is not limited to, an	84
attached porch, and a building or conveyance with a roof over it	85
includes, but is not limited to, a tent.	86
(3) "Residence" means a dwelling in which a person resides	87
either temporarily or permanently or is visiting as a guest.	88
(4) "Vehicle" means a conveyance of any kind, whether or	89
not motorized, that is designed to transport people or property.	90
(E) "Reasonable doubt" is present when the jurors, after	91
they have carefully considered and compared all the evidence,	92
cannot say they are firmly convinced of the truth of the charge.	93
It is a doubt based on reason and common sense. Reasonable doubt	94
is not mere possible doubt, because everything relating to human	95
affairs or depending on moral evidence is open to some possible	96
or imaginary doubt. "Proof beyond a reasonable doubt" is proof	97
of such character that an ordinary person would be willing to	98
rely and act upon it in the most important of the person's own	99
affairs.	100
Sec. 2901.09. (A) As used in this section, "residence" and	101
"vehicle" <u>has</u> the same meanings <u>meaning</u> as in section	102

2901.05 of the Revised Code. 103

(B) For purposes of any section of the Revised Code that 104
sets forth a criminal offense, a person ~~who lawfully is in that~~ 105
~~person's residence~~ has no duty to retreat before using force in 106
self-defense, defense of another, or defense of that person's 107
residence, ~~and a person who lawfully is an occupant of that~~ 108
~~person's vehicle or who lawfully is an occupant in a vehicle~~ 109
~~owned by an immediate family member of the person has no duty to~~ 110
~~retreat before using force in self defense or defense of another~~ 111
if that person is in a place in which the person lawfully has a 112
right to be. 113

(C) A trier of fact shall not consider the possibility of 114
retreat as a factor in determining whether or not a person who 115
used force in self-defense, defense of another, or defense of 116
that person's residence reasonably believed that the force was 117
necessary to prevent injury, loss, or risk to life or safety. 118

Section 2. That existing sections 2307.601, 2901.05, and 119
2901.09 of the Revised Code are hereby repealed. 120