

LEGISLATIVE UPDATE – Toledo Claims Association

October, 2008

LEGISLATION:

Sub. S.B. 189 – Self-defense – Residence or Vehicle (effective September 9, 2008). This bill addresses both civil and criminal issues relating to a defense of self defense when a person injures another through the use of force that is intended or likely to cause death or great bodily harm to another person if the person against whom the defensive force is used is in the process of unlawfully and without privilege entering or has entered the residence or vehicle of the person using the defensive force.

1. Criminal – The criminal impact of this bill provides a presumption in favor of the person using the force when in such a situation as described above. The presumption can be rebutted by a preponderance of the evidence. It also makes clear that a person lawfully in his/her residence has no duty to retreat before using such force in the situation described above.
2. Civil – The civil portion of the bill provides immunity from a lawsuit by what would be the criminal or criminal's estate against the person using force in self-defense or defense of property or others. It essentially attempts to prevent the scenario in which someone who breaks into an innocent person's house or car gets shot or injured and then sues the innocent person. The bill provides exceptions to the immunity for claims based upon intentionally tortious conduct, alleged violations of the U.S. Constitution or alleged violations of the United States pertaining to civil rights. **Note:** Most serious injury claims will in some way include some form of the claims that are "excepted" and therefore the practical effectiveness of this bill on the civil side will remain to be seen.

RECENT DECISIONS/JUDICIAL DEVELOPMENTS:

There was nothing of significance to report on.

Should you have any questions or have a topic of interest that you would like discussed in the legislative update, do not hesitate to contact me directly at (419) 248-2613 or tzimmerman@rcmtz.com. I will be glad to either provide you with the information you need or include something in the next monthly legislative update.