

2023 Regular Session

HOUSE BILL NO. 586

BY REPRESENTATIVE STEFANSKI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/CLAIMS: Provides for civil liability for actions related to fentanyl

1 AN ACT

2 To enact R.S. 9:2800.77, relative to civil actions; to provide relative to civil liability for
3 actions related to fentanyl ingestion; to provide relative to fentanyl trafficking or
4 related commercial activity; to provide for attorney fees, court costs, and exemplary
5 damages; to provide for burden of proof; to provide for exceptions; to provide
6 relative to comparative fault; to provide relative to prescription; to provide for
7 definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2800.77 is hereby enacted to read as follows:

10 A. Any person or foreign state engaging in or facilitating any illegal fentanyl
11 trafficking or its related commercial activity directly or through an agent shall be
12 liable for damages resulting from the unintended ingestion of illegal fentanyl if the
13 ingestion results in serious bodily injury or death.

14 B. A plaintiff in an action brought pursuant to this Section shall be entitled
15 to damages, including exemplary damages, court costs, and reasonable attorney fees.

16 C.(1) The defendant in an action for damages arising from illegal fentanyl
17 trafficking or its related commercial activity, directly or through an agent, shall have
18 the burden of proving that the defendant did not engage in or facilitate the illegal
19 trafficking or its related commercial activity, directly or through an agent, of the
20 unintended ingestion of illegal fentanyl that produced damages under this Section.

1 (2) This Subsection shall not apply to any manufacturer of fentanyl that is
2 registered with the United States Attorney General pursuant to 21 U.S.C. 822.

3 D. The actions of a person ingesting fentanyl under circumstances whereby
4 it is unlikely that the person had knowledge or awareness of the presence of illegal
5 fentanyl being ingested shall not be attributable as comparative fault as provided by
6 Civil Code Article 2323.

7 E. An action against a person for damages resulting from the illegal
8 trafficking of fentanyl or its related commercial activity shall be subject to a
9 liberative prescription of thirty years. This prescription commences to run from the
10 day of the injury.

11 F. For the purposes of this Section:

12 (1) "Commercial activity" shall mean any of the following:

13 (a) Any activity pertaining to commerce, including but not limited to,
14 producing, manufacturing, distributing, selling, or knowingly financing or
15 transporting illegal fentanyl.

16 (b) The engaging or facilitating of any activity pertaining to commerce,
17 including but not limited to, producing, manufacturing, distributing, selling, or
18 knowingly financing or transporting illegal fentanyl through an agent.

19 (c) The facilitation or allowing by silent acquiescence or otherwise of the
20 placement of fentanyl or its precursor agents, legal or illegal, into the stream of
21 commerce.

22 (d) "Commercial activity" shall mean the same as provided by 28 U.S.C.
23 1603.

24 (2) "Fentanyl" is defined as a mixture or substance containing a detectable
25 amount of fentanyl or its analogues, or carfentanil, or a mixture or substance
26 containing a detectable amount of carfentanil or its analogues, as provided by R.S.
27 40:967. It shall not include any substance obtained directly or pursuant to a valid
28 prescription or order from a practitioner, as provided in R.S. 40:978, while acting in
29 the course of the practitioner's professional practice.

1 (3) "Foreign state" shall mean the same as provided in 28 U.S.C. 1603.

2 (4) "Ingestion" means the absorption, consumption, or exposure to illicit
3 fentanyl.

4 (5) "Person" means a natural or juridical person and includes any foreign
5 government or entity, including any drug cartel or transnational criminal
6 organization.

7 (6) "Serious bodily injury" means a bodily injury which involves
8 unconsciousness, extreme physical pain, protracted and obvious disfigurement,
9 protracted loss, or impairment of a bodily member, organ, or mental faculty, or a
10 substantial risk of death.

11 (7) "Trafficking" means the selling, transporting, distribution, importing, or
12 exporting of illegal fentanyl or its precursor agents.

13 Section 2. The purpose of this Act is to provide a civil remedy for damages to
14 persons injured through the ingestion of illegal fentanyl, and this Act is specifically intended
15 to hold accountable foreign entities who manufacture and distribute fentanyl or its precursor
16 agents.

17 Section 3. This Act shall be known and may be cited as "JaJa's Law".

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 586 Original

2023 Regular Session

Stefanski

Abstract: Provides for civil liability of persons engaging or facilitating illegal fentanyl trafficking or commercial activity.

Proposed law provides that any person or foreign state that engages in or facilitates any illegal fentanyl trafficking or related commercial activity, directly or through an agent, shall be liable for damages resulting from the unintended ingestion of illegal fentanyl if the ingestion results in serious bodily injury or death.

Proposed law provides that available damages include punitive damages, court costs, and reasonable attorney fees.

Proposed law provides that the defendant in an action brought pursuant to proposed law shall have the burden of proving that it did not engage in or facilitate the illegal trafficking or related commercial activity of the unintended ingestion of illegal fentanyl that produced damages.

Proposed law exempts manufacturers of fentanyl that are registered with the U.S. attorney General pursuant to 21 U.S.C. 822.

Present law (21 U.S.C. 822) provides that every person who manufactures or distributes any controlled substance shall obtain an annual registration issued by the U.S. attorney general.

Proposed law provides that the actions of a person ingesting fentanyl shall not be attributable as comparative fault.

Present law (C.C. Art. 2323) provides that in an action where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury shall be determined.

Proposed law provides that an action brought pursuant to proposed law shall be subject to a liberative prescription of 30 years commencing to run from the day of injury.

Proposed law defines "commercial activity", "fentanyl", "foreign state", "ingestion", "person", "serious bodily injury", and "trafficking".

Present law (28 U.S.C. 1603) provides for immunities and liabilities of foreign states.

Proposed law provides for legislative intent.

Proposed law provides that proposed law shall be known and cited as "JaJa's Law".

(Adds R.S. 9:2800.77)