

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 §2800.77. Liability for fentanyl ingestion

11 A. Any person or foreign state engaging in or facilitating illicit fentanyl  
12 trafficking or its related commercial activity shall be liable for damages for serious  
13 bodily injury or death resulting from the unintended ingestion of illicit fentanyl in  
14 this state if the person or foreign state was engaging in or facilitating illicit fentanyl  
15 trafficking or its related commercial activity at any time within six months of the  
16 ingestion resulting in the injury or death.

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

19 C.(1) The defendant in an action for damages arising from illicit fentanyl  
20 trafficking or its related commercial activity shall have the burden of proving that the

1 defendant did not engage in or facilitate the illicit fentanyl trafficking or its related  
2 commercial activity, directly or through an agent, at any time within six months of  
3 the unintended ingestion of illicit fentanyl that produced damages under this Section.

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

6 (3) Credible information or statistical data from sources whose accuracy  
7 cannot reasonably be questioned including publications of information or statistical  
8 data provided by the United States government, its agencies, courts, or congress, or  
9 publications of information by this state, its agencies, courts, or legislature, of illicit  
10 fentanyl trafficking or its related commercial activity by a foreign state or person  
11 shall be sufficient evidence in order for the plaintiff to meet the burden of proof for  
12 the establishment of an action brought pursuant to this Section.

13 D. The actions of a person ingesting illicit fentanyl under circumstances  
14 whereby it is unlikely that the person had knowledge or awareness of the presence  
15 of illicit fentanyl being ingested shall not be attributable as comparative fault as  
16 provided by Civil Code Article 2323.

17 E. An action against a person for damages resulting from the illicit  
18 trafficking of fentanyl or its related commercial activity shall be subject to a  
19 liberative prescription of thirty years. This prescription commences to run from the  
20 day of the injury.

21 F. For the purposes of this Section:

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

23 (a) Any activity pertaining to commerce relating to illicit fentanyl  
24 trafficking.

25 (b) "Commercial activity" shall mean the same as provided by 28 U.S.C.  
26 1603.

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

28 (3) "Illicit fentanyl" means any of the following:

1           (a) A mixture or substance containing a detectable amount of fentanyl or its  
2           analogues, or carfentanil, or a mixture or substance containing a detectable amount  
3           of carfentanil, or a mixture or substance containing a detectable amount of  
4           carfentanil or its analogues, as provided by R.S. 40:967. It shall not include any  
5           substance obtained directly or pursuant to a valid prescription or order from a  
6           practitioner, as provided in R.S. 40:978, while acting in the course of the  
7           practitioner's professional practice.

8           (b) A mixture or substance containing a detectable amount of fentanyl  
9           precursor agents, licit or illicit, that can be used in the production of fentanyl.

10           (4) "Ingestion" means the taking, absorption, consumption, or exposure to  
11           illicit fentanyl.

12           (5) "Person" means a natural or juridical person and includes any  
13           association or entity, including any drug cartel or transnational criminal organization.

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

18           (7) "Trafficking" means any of the following:

19           (a) Any activity, directly or through an agent, to produce, manufacture,  
20           distribute, sell, knowingly finance, or transport illicit fentanyl or to cause or facilitate  
21           illicit fentanyl to be placed into the stream of commerce.

22           (b) Any activity, directly or through an agent to assist, conspire, or collude  
23           with any other person to carry out activity described in Subparagraph (a) of this  
24           Paragraph.

25           (c) Any activity by a foreign state, directly or through an agent, to facilitate  
26           or allow by silent acquiescence or otherwise the placement of licit or illicit fentanyl  
27           precursor agents into the stream of commerce under circumstances whereby the  
28           fentanyl precursor agents are likely to be manufactured into illicit fentanyl and  
29           transported into the United States or this state.

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

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

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#### 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)]

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HB 586 Engrossed

2023 Regular Session

Stefanski

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

Proposed law provides that any person or foreign state that engages in or facilitates any illicit fentanyl trafficking or related commercial activity, directly or through an agent, shall be liable for damages resulting from the unintended ingestion of illicit fentanyl if the ingestion results in serious bodily injury or death and if the defendant was engaging in or facilitating illicit fentanyl trafficking or its related commercial activity at any time within six months of the ingestion.

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 illicit trafficking or related commercial activity of the unintended ingestion of illicit 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 manufacturers 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", "foreign state", "illicit fentanyl", and "trafficking", "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)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Change references to fentanyl from "illegal" to "illicit".
2. Provide for a defendant's liability for damages for ingestion if the defendant was engaging in or facilitating illicit fentanyl trafficking or its related commercial activity within six months of the ingestion.
3. Provide that credible information or statistical data shall be sufficient for the plaintiff to meet the plaintiff's burden of proof in establishing the action.
4. Amend definitions of "commercial activity" and "person".
5. Remove definition of "fentanyl".
6. Add definitions of "illicit fentanyl" and "trafficking".
7. Add a statute title.
8. Make technical changes.