

2023 Regular Session

HOUSE BILL NO. 586

BY REPRESENTATIVES STEFANSKI, ADAMS, AMEDEE, BAGLEY, BUTLER, WILFORD CARTER, CORMIER, DAVIS, EDMONDS, FIRMENT, GAROFALO, GOUDEAU, HORTON, MIKE JOHNSON, MOORE, ROBERT OWEN, PIERRE, SCHEXNAYDER, STAGNI, THOMPSON, AND WHITE

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, expert witness fees and  
5 expenses, court costs, and exemplary damages; to provide for burden of proof; to  
6 provide for exceptions; to provide relative to comparative fault; to provide relative  
7 to prescription; to provide for 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 entity 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 to all persons beginning January 1, 2015, resulting from the  
14 unintended ingestion of illicit fentanyl in this state if the entity or foreign state was  
15 engaging in or facilitating illicit fentanyl trafficking or its related commercial  
16 activity, having a substantial contact with the United States and with the state at the  
17 time of the ingestion resulting in the injury or death or at a time bearing a rational  
18 nexus to ingestion.

1           B. A plaintiff in an action brought pursuant to this Section shall be entitled  
2           to damages, including exemplary damages, expert witness fees and expenses, court  
3           costs, and reasonable attorney fees.

4           C.(1) The defendant in an action for damages arising from illicit fentanyl  
5           trafficking or its related commercial activity shall have the burden of proving that the  
6           defendant did not engage in or facilitate the illicit fentanyl trafficking or its related  
7           commercial activity, directly or through an agent, at any time within six months of  
8           the unintended ingestion of illicit fentanyl that produced damages under this Section.

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

11          (3) Credible information or statistical data from sources whose accuracy  
12          cannot reasonably be questioned including publications of information or statistical  
13          data provided by the United States government, its agencies, courts, or congress, or  
14          publications of information by this state, its agencies, courts, or legislature, of illicit  
15          fentanyl trafficking or its related commercial activity by an entity or foreign state,  
16          or of the nexus of that trafficking or related commercial activity to the United States  
17          or this state shall be sufficient evidence in order for the plaintiff to establish such  
18          commercial activity or nexus to meet the burden of proof in relation thereto for the  
19          establishment of an action brought pursuant to this Section.

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

24          E. An action against an entity or foreign state for damages resulting from the  
25          illicit trafficking of fentanyl or its related commercial activity shall be subject to a  
26          liberative prescription of thirty years. This prescription commences to run from the  
27          day of the injury.

28          F. For the purposes of this Section:

29          (1) "Commercial activity" means any of the following:

1           (a) Any activity pertaining to commerce relating to illicit fentanyl  
2           trafficking.

3           (b) "Commercial activity" means the same as provided by 28 U.S.C. 1603.

4           (2) "Entity" means a natural or juridical person and includes any association  
5           or entity, including any drug cartel or transnational criminal organization.

6           (3) "Foreign state" means the same as provided in 28 U.S.C. 1603.

7           (4) "Illicit fentanyl" means any of the following:

8           (a) A mixture or substance containing a detectable amount of fentanyl or its  
9           analogues, or carfentanil, or a mixture or substance containing a detectable amount  
10           of carfentanil, or a mixture or substance containing a detectable amount of  
11           carfentanil or its analogues, as provided by R.S. 40:967. It shall not include any  
12           substance obtained directly or pursuant to a valid prescription or order from a  
13           practitioner, as provided in R.S. 40:978, while acting in the course of the  
14           practitioner's professional practice.

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

17           (5) "Ingestion" means the taking, absorption, consumption, or exposure to  
18           illicit fentanyl.

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

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

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

27           (b) Any activity, directly or through an agent to assist, conspire, or collude  
28           with any other entity or foreign state to carry out activity described in Subparagraph  
29           (a) of this Paragraph.

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

6           Section 2. The purpose of this Act is to provide a civil remedy for damages with the  
 7           broadest possible basis consistent with the Constitution of the United States to persons  
 8           suffering serious bodily injury or death through the unintended ingestion of illicit fentanyl,  
 9           and this Act is specifically intended to hold accountable any entity or foreign state engaging  
 10          in or facilitating illicit fentanyl trafficking or its related commercial activity by creating a  
 11          presumption of fault of such entity or foreign state if engaging in or facilitating illicit  
 12          fentanyl trafficking or its related commercial activity having a substantial contact with this  
 13          state at the time of the ingestion resulting in the injury or death or at a time bearing a rational  
 14          nexus to the ingestion, if supported by credible information or statistical data pertaining  
 15          thereto, in accordance with this Act, or other evidence satisfactory to the court in an action  
 16          brought pursuant to this Act.

17          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 Reengrossed

2023 Regular Session

Stefanski

**Abstract:** Provides for civil liability of entities and foreign states engaging in or facilitating illicit fentanyl trafficking or commercial activity.

Proposed law provides that any entity or foreign state engaging in or facilitating illicit fentanyl trafficking or its commercial activity shall be liable for damages for serious bodily injury or death of persons beginning Jan. 1, 2015.

Proposed law provides that the entity or foreign state must be engaging in or facilitating illicit fentanyl trafficking or its related commercial activity, and the entity or foreign state had a substantial contact with the United States and the state at the time of the ingestion or at a time bearing a rational nexus to ingestion.

Proposed law provides that available damages include punitive damages, expert witness fees and expenses, 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 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", "entity", "foreign state", "illicit fentanyl", "ingestion", "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.

The House Floor Amendments to the engrossed bill:

1. Change reference of "person or foreign state" to "entity or foreign state".
2. Limit action to serious bodily injuries or death of persons beginning Jan. 1, 2015.
3. Change the requirement that the entity or foreign state was engaging in or facilitating illicit fentanyl trafficking or related commercial activity from within six months of the ingestion to having substantial contact with the U.S. or this state at the time of ingestion or at a time bearing a rational nexus to ingestion.
4. Add expert witness fees and expenses to the plaintiff's recovery.
5. Add a definition for "entity" and remove the definition of "person".
6. Add to the legislative intent.
7. Make technical changes.