

2023 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 126

BY REPRESENTATIVE STEFANSKI

A CONCURRENT RESOLUTION

To express the intent of the legislature regarding the Act originating as House Bill No. 586 of the 2023 Regular Session of the Legislature.

WHEREAS, R.S. 24:177(B)(2)(b) provides that the "legislature may express the intended meaning of a law in a duly adopted concurrent resolution, by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law; and

WHEREAS, during the 2023 Regular Session of the Legislature, the Act originating as House Bill No. 586 (House Bill No. 586) provided for civil liability for any entity or foreign state engaging in or facilitating any illicit fentanyl trafficking or its related commercial activity, for serious bodily injury or death to all persons beginning January 1, 2015, resulting from the unintended ingestion of illicit fentanyl in this state if the entity or foreign state was engaging in or facilitating in illicit fentanyl trafficking or its related commercial activity; and

WHEREAS, the Legislature of Louisiana does hereby express its intent regarding the application of House Bill No. 586 to provide civil litigants who have suffered serious bodily injury or death as a result of the unintended ingestion of illicit fentanyl in this state with the broadest possible basis, consistent with the constitutions of the United States and Louisiana, to seek relief against any entity or foreign state that engages in the trafficking of illicit fentanyl into the United States, by creating a rebuttable presumption of fault of any entity or foreign state if the entity or foreign state is engaging in or facilitating illicit fentanyl trafficking or its related commercial activity having a sufficient nexus or substantial contact with this state at the time of the ingestion resulting in the injury or death or at a time bearing

a rational nexus to the ingestion, if supported by credible information or statistical data pertaining thereto, in accordance with this Act, or other evidence satisfactory to the court in an action brought pursuant to this Act. This presumption of fault is established in favor of all persons suffering serious bodily injury or death in this state as a result of unintended ingestion of illicit fentanyl beginning January 1, 2015, pursuant to credible information or statistical data pertaining to, in accordance with House Bill No. 586, and particularly as an expression of legislative intent, pertaining to the findings of the Legislature of Louisiana; and

WHEREAS, the legislature finds that in order to give credence to the stated purpose of House Bill No. 586 to provide civil litigants who have suffered serious bodily injury or death beginning January 1, 2015, as a result of the unintended ingestion of illicit fentanyl in this state with the broadest possible basis to seek relief in keeping with the stated purpose of House Bill No. 586 and particularly to facilitate the prosecution of the action established for such civil litigants by the Act; and

WHEREAS, the legislature wishes to express its intent regarding the intended meaning of the law and its application of House Bill No. 586 pertaining to its finding of credible information and statistical data of the United States government and of the state of Louisiana pertaining to illicit fentanyl trafficking. The legislature does hereby find the following to be credible information or statistical data from sources whose accuracy cannot reasonably be questioned of the United States government and of the state of Louisiana constituting sufficient evidence in order for the plaintiff to meet the burden of proof for the establishment of an action brought pursuant to House Bill No. 586:

(1) International illicit fentanyl trafficking and its related commercial activity is a serious and deadly problem that threatens the vital interests of the United States, the state of Louisiana, and the safety and health of every citizen.

(2) Illicit fentanyl is primarily produced in laboratories in Mexico by drug cartels and trafficked into the United States and Louisiana in powder and pill form, including fentanyl-laced substances, counterfeit pills, and fentanyl analogues.

(3) The People's Republic of China, hereinafter China, is the primary source country of fentanyl precursor chemicals used to manufacture the illicit fentanyl.

(4) Since 2013, China has been the principal source of the fentanyl flooding the United State illicit drug market through its production of fentanyl precursor agents and fueling the deadly drug epidemic in the history of the United States.

(5) In 2016, the United States Customs and Border Protection agency seized nearly two hundred pounds of fentanyl and other synthetic opioids, primarily from along the southwest border of the United States. This is a twenty-five-fold increase over seizures in 2015. Between 2014 and 2015, deaths involving synthetic opioids, including fentanyl, increased by seventy-two percent and took more than nine thousand five hundred American lives.

(6) The Commission on Combating Synthetic Opioid Trafficking, established under Section 7221 of the National Defense Authorization Act of Fiscal Year 2020, reported in 2022 that China, which supplied seventy to eighty percent of fentanyl seized by federal authorities between 2014 and 2019, has been surpassed by Mexico as the "dominant source" of illicit fentanyl in the United States.

(7) Illicit fentanyl is primarily trafficked by land into the United States through legal ports of entry at the Mexican border, as well as between such ports of entry, with some trafficking facilitated by domestic and foreign-based social media and encrypted communication applications.

(8) In fiscal years 2021 and 2022, the United States Customs and Border Protection agency seized over twenty four thousand pounds of fentanyl at ports of entry at the Mexican border, a two hundred percent increase from the amounts seized in fiscal years 2019 and 2020.

(9) In August 2022, the United States Department of Justice reported that Mexican cartels are increasingly manufacturing fentanyl for distribution and sale into the United States.

(10) Deaths caused by the trafficking of illicit fentanyl have reached epidemic proportions in the United States with fentanyl being involved in nearly two hundred thousand deaths in the United States between 2014 and 2020.

(11) The number of drug overdose deaths in the United States surpassed one hundred thousand during the period between May 2020 and April 2021, with sixty four thousand deaths being related to fentanyl.

(12) Fentanyl and other synthetic opioids caused approximately two thirds of the fatal overdoses in the United States in 2021.

(13) The Louisiana Department of Health reported in June 2019 that deaths involving fentanyl have increased by more than five hundred percent since the end of 2014.

(14) The Louisiana Department of Health reported in December 2022 that fentanyl-related deaths increased from fewer than two hundred statewide in 2017 to nearly one thousand in 2021, representing an approximate five hundred percent increase in fentanyl-related deaths in Louisiana.

(15) The New Orleans division of the Drug Enforcement Administration attributes the increase in the amount of fentanyl transported into Louisiana, Arkansas, Mississippi, and Alabama to the activities of China and the Mexican drug cartels Sinaloa and Jalisco.

(16) The New Orleans division of the Drug Enforcement Administration reported a seizure of over twenty million fatal doses in 2022, or enough fentanyl to wipe out the population of four states and including more than five hundred thousand pills and over six hundred pounds of powder containing fentanyl.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby express its intent regarding the intended meaning and application of the Act originating as House Bill No. 586 of the 2023 Regular Session pertaining to the credible information or statistical data constituting sufficient evidence in order for the plaintiff to meet the burden of proof for the establishment of an action brought pursuant to the Act originating as House Bill No. 586 of the 2023 Regular Session and more particularly to give credence to the stated purpose of the Act originating as House Bill No. 586 of the 2023 Regular Session, to provide civil litigants who have suffered serious bodily injury or death beginning January 1, 2015, as a result of the unintended ingestion of illicit fentanyl in this state, with the broadest possible basis to seek relief, and to provide a mechanism to facilitate an expeditious prosecution of the action established for such civil litigants by the Act originating as House Bill No. 586 of the 2023 Regular Session.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby further express its intent regarding the intended meaning and application of the Act originating as House Bill No. 586 of the 2023 Regular Session by finding, upon the foregoing credible information or statistical data, provided in this Resolution:

(1) Since 2013, China and the Mexican drug cartels have been engaging in or facilitating illicit fentanyl trafficking into the United States constituting a regular course of conduct of commercial activity within the meaning of the Federal Sovereign Immunities Act, 28 U.S.C. §1603 and 1605.

(2) Beginning January 1, 2015, the illicit fentanyl trafficking by China and the Mexican drug cartels has had substantial contact with and a direct effect in the state of Louisiana within the meaning of the Federal Sovereign Immunities Act, 28 U.S.C. §1603 and 1605, particularly, in accordance with statistics reported by the Louisiana Department of Health in June 2019 showing that fentanyl-related deaths have increased in Louisiana by more than five hundred percent since the end of 2014, and further reporting in December 2022 of an approximate five hundred percent increase of fentanyl-related deaths in Louisiana between 2017 and 2021.

(3) Illicit fentanyl trafficking, or its related commercial activity, by China and the Mexican drug cartels has continued through the date of the passage of this Act to have a substantial conduct with and a direct effect in the State of Louisiana within the meaning of the Federal Sovereign Immunities Act, 28 U.S.C. §1603 and 1605, through the date of the passage of the Act originating as House Bill No. 586 of the 2023 Regular Session, particularly pertaining to the number of fentanyl related deaths and the amount of illicit fentanyl seized in Louisiana.

(4) The illicit fentanyl trafficking by China and the Mexican drug cartels, in solidarity with each other, beginning on January 1, 2015, has played a substantial part in causing or bringing about injury or death to all persons in this state resulting from the unintended ingestion of illicit fentanyl.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby express its intent regarding the application of the Act originating as House Bill No. 586 of the 2023 Regular Session.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE