

# ACT No. 412

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

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§2800.77. Liability for fentanyl ingestion

A. Any entity or foreign state engaging in or facilitating illicit fentanyl trafficking or its related commercial activity shall be liable for damages 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 illicit fentanyl trafficking or its related commercial activity, having a sufficient nexus or substantial contact with the United States and 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, whereupon the fault of the entity or foreign state is thereby established by a rebuttable presumption.

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 brought pursuant to this Section may  
6           rebut the presumption of fault established in this Section, whereupon in the event the  
7           defendant in such an action shall have the burden of proving that the defendant was  
8           not engaging in or facilitating illicit fentanyl trafficking or its related commercial  
9           activity, directly or through an agent, at the time of ingestion resulting in the injury  
10           or death, or at a time bearing a rational nexus to the ingestion, for which damages are  
11           sought under this Section.

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

14           (3) Credible information or statistical data including publications of  
15           information or statistical data provided by the United States government, its  
16           agencies, courts, or congress, or publications of information by this state, its  
17           agencies, courts, or legislature, of illicit fentanyl trafficking or its related commercial  
18           activity by an entity or foreign state, or of the nexus or contact of that trafficking or  
19           related commercial activity to the United States or to this state shall be sufficient  
20           evidence in order for the plaintiff to establish such trafficking or related commercial  
21           activity or the nexus or contact thereof to the United States or to this State to meet  
22           the burden of proof in relation thereto for the establishment of an action brought  
23           pursuant to this Section.

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

28           E. An action against an entity or foreign state for damages resulting from the  
29           illicit trafficking of fentanyl or its related commercial activity shall be subject to a

1           liberative prescription of thirty years. This prescription commences to run from the  
2           day of the injury.

3           F. For the purposes of this Section:

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

5           (a) Any activity pertaining to commerce relating to illicit fentanyl  
6           trafficking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

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