

GREEN SHEET REDIGEST

HB 586

2023 Regular Session

Stefanski

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

DIGEST

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 provides that the plaintiff may utilize credible information or statistical data provided by the United States government, its agencies, courts, or congress, or publications of information by this state, its agencies, courts, or legislature of illicit fentanyl trafficking to meet the burden of proof.

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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the reengrossed bill

1. Clarified the types of permissible evidence that may be utilized to substantiate the burden of proof.