

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

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 sufficient nexus or substantial contact with the United States and
17 with this state at the time of the ingestion resulting in the injury or death or at a time
18 bearing a rational nexus to the ingestion, whereupon the fault of the entity or foreign
19 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".

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____