

Tort Reform

Frivolous lawsuits and unfair liability regulations are imperiling America's small businesses

The increasingly litigious nature of American society is undermining its economic well-being. Small businesses spent \$105.4 billion on tort liability in 2008—and more than a third of that was paid out of pocket and not through insurance. This means that small-business dollars represent 81 percent of the total business tort liability costs, but small firms only received 22 percent of the revenue. It is clear that common sense must be returned to our system of civil litigation.

NSBA urges Congress to address the following areas of vital importance:

Punitive Damages: The lack of guidelines or limitations on the imposition of punitive damages results in an arbitrary decision-making process—as juries may impose awards based on the emotional impact of the case rather than the conduct of the defendants—and unpredictable and outrageously-large awards. NSBA supports the placement of a cap on the awarding of punitive damages.

Product Liability: The inconsistent and often contradictory product-liability regulations that exist across the country impose widely varying statutes of limitations, create uncertainty for businesses selling in a national marketplace, and too often allow for absurdly large awards. To restore predictability and fairness to the marketplace, NSBA supports the creation of a federal product-liability reform law, which would create nationally-uniform statutes of limitations and “standards of repose,” which would disallow lawsuits over products over a certain age. NSBA also supports reform that explicitly defines the standards on what constitutes a defect and differentiates between manufacturers and suppliers and apportions damages based on the actual level of responsibility of each defendant.

Frivolous Lawsuits: Legal liability costs have skyrocketed in recent years, due to the fact that it requires little effort or money to file lawsuits—and the awards to “victims” can be huge. Given the exorbitant legal and court fees associated with a typical lawsuit that goes to trial, individuals and businesses must spend huge sums of money just to defend themselves in court. Faced with such debilitating fees, not to mention the bad publicity of a trial, many small businesses are being forced to settle out of court, even when they have done nothing wrong. NSBA supports holding individuals and attorneys who file frivolous lawsuits accountable for their actions.

Equal Access to Justice: Loopholes in the *Equal Access to Justice Act* have allowed agencies to avoid compensating small entities for attorneys' fees and other expenses stemming from the small entity's successful challenges to charges that they violated federal laws and regulations. NSBA supports eliminating the cap on reimbursable attorneys' fees and closing the loophole that allows government agencies to avoid following the spirit of the law. Small businesses and other small entities should be reimbursed for the legal costs of defending themselves against wrongful prosecution.