

Product Liability Reform

The nation's inconsistent and often contradictory product liability regulations need reform

America's civil justice system is the most expensive in the world. In 1972, legal fees constituted 0.9 percent of the nation's Gross Domestic Product (GDP). By 2001, that number had more than doubled to 2.04 percent of the GDP. This means that the average American family of four paid a "litigation tax" of nearly \$2,900 in increased prices for products and services resulting from deluge of lawsuits assailing businesses across the U.S.

In 1997, more than 15 million lawsuits were filed in state courts—one every two seconds. The small-business owners that comprise NSBA warn that the costs and risks of frivolous lawsuits, outrageous punitive damages, unfair product-liability regulations, and skyrocketing health-care costs are threatening the very existence of their businesses—stifling innovation, hindering their ability to attract and retain employees and compete with big businesses, and undermining their ability to turn a profit. Small businesses employ half of all private sector employees in the country and generated 60 to 80 percent of all net new jobs over the last decade. Therefore, it is imperative that Congress address this matter of vital national importance. Common sense must be returned to our system of civil litigation, especially in regard to product liability.

The inconsistent and often contradictory product liability regulations that exist across the 50 states impose widely varying statutes of limitations, create uncertainty for businesses selling in a national marketplace, and too often allow for absurdly large awards. Moreover, the product liability regulations in most states do not differentiate between the manufacturers and suppliers of defective goods and obligate both to compensate users for injuries resulting from the use of those goods.

The result is that many small-retail businesses are unfairly included in lawsuits against the manufacturers of defective goods, despite the fact that as suppliers they are unaware of the defects and have no way of discovering them. The risk associated with these lawsuits is severe and disproportionate. In 2004, the median jury award in product-liability cases was \$1.8 million, and the plaintiff success rate was 61 percent.

NSBA supports product liability reform that explicitly defines the standards on what constitutes a defect and clearly stipulates that damages are only to be granted when a plaintiff demonstrates that a product was actually defective and that the defect resulted in harm. NSBA believes that courts should be required to take the personal behavior of plaintiffs into account when determining liability—businesses should not be liable for injuries resulting from the misuse or alteration of their products.

NSBA also supports product liability reform that would create nationally-uniform statutes of limitations and "standards of repose," which would disallow lawsuits over products over a certain age. Finally, NSBA supports a product liability standard that differentiates between manufacturers and suppliers and apportions damages based on the actual level of responsibility of each defendant.