

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. 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 country. In 1997, more than 15 million lawsuits were filed in state courts—one every two seconds. It is imperative that Congress address this matter of vital national importance. Common sense must be returned to our system of civil litigation.

Having attempted to address the class-action scourges of "Judicial Hellholes," forum shopping, and coupon settlements with the *Class Action Fairness Act of 2005*, NSBA suggests that Congress now turn its attention to 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: Inconsistent and often contradictory, the product liability regulations that exist across the 50 states impose widely-varying statutes of limitations, create uncertainty for businesses selling in a national marketplace, too often allow for absurdly large awards, and frequently do not differentiate between the manufacturers and suppliers of defective goods. 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 the establishment of a nationally-uniform statute of limitations and a product liability standard that differentiates between manufacturers and suppliers.*

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. From 1993 to 1999, the median jury award in the U.S. swelled from \$500,000 to \$1.8 million (not including punitive damages). With the legal and court fees associated with a typical lawsuit that goes to trial now exceeding \$100,000, 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.*