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Washington Bureau Report

Small businesses seek protection from landslide of legal issues

Business First of Louisville - June 8, 2007 by [Kent Hoover](#) Washington Bureau Chief

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Lawsuits and the fear of being sued cost small businesses \$98 billion a year, according to a new study by the U.S. Chamber Institute for Legal Reform.

The study tracks damage awards, settlements, legal costs, liability insurance premiums and costs incurred by insurance companies on behalf of policyholders. The \$98 billion figure, which is based on 2005 data, represents a 13 percent increase from 2002.



A separate chamber survey of small businesses found that nearly half have been threatened by a lawsuit and one-third have been sued in the past 10 years. Almost two-thirds say their business decision-making has been altered by lawsuits or the threat of lawsuits.

"We've become a sue-happy country," said Steve Kelly, president of Kelly Brothers Lumber in Covington, Ky. "It's an easy way to get a dollar."

Kelly represented the National Lumber and Building Material Dealers Association at a recent hearing on liability reform held by the U.S. House Small Business Committee. He complained about lumber dealers being sued over products they sold but didn't make.

Plaintiffs' lawyers "routinely sue anyone in the chain of distribution of a product and often force settlements out of otherwise innocent merchants," Kelly said. "Often, sellers choose to settle a case to avoid the uncertainty of a trial outcome and the bad press that often follows."

Kelly supports legislation that would exempt sellers from product liability lawsuits if they didn't design, manufacture, modify or install the product. The bill is backed by the National Federation of Independent Business (NFIB), which also wants Congress to cap punitive damages and require judges to impose sanctions on attorneys who file frivolous lawsuits.

None of these bills, however, likely will get anywhere this Congress, as Democrats strongly opposed to them chair the committees that have jurisdiction over the legislation. In fact, the House Small Business Committee hearing, which was requested by ranking Republican Steve Chabot of Ohio, may be the most action tort reform will see on Capitol Hill.

Critics deny there's a crisis

One committee Democrat, Rep. Bruce Braley of Iowa, is a former trial lawyer who presented before and after photos of a client whose face was burned severely when a fuel tank on her pickup truck exploded. He contended that Congress shouldn't substitute its judgment on how much her pain and suffering was worth for that of a jury.

Braley called the hearing another case of "powerful business lobbying groups" pursuing "well-financed campaigns of half-truths and disinformation."

Far from being a crisis, product liability and personal injury cases actually are declining, he said. A Bureau of Justice Statistics analysis of 15 states shows that tort cases -- civil lawsuits not involving contracts or property disputes -- peaked in 1996.

The committee's chairwoman, Rep. Nydia Velazquez, D-N.Y., suggested that insurance companies, not excessive litigation, are to blame for the high cost of liability insurance. A 2004 survey of NFIB members ranked the cost and availability of liability insurance as the No. 2 problem facing small businesses, just behind high health care costs. Lawsuits ranked 64th.

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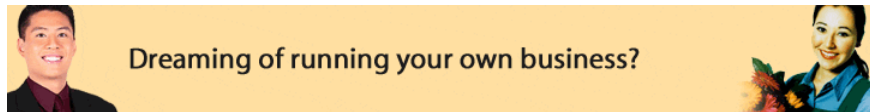
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