

**Testimony by
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Chairman Gannon, members of the Judiciary Committee, good afternoon.

My name is Kevin Shivers. I am the state director for the National Federation of Independent Business.

NFIB was formed nearly 60 years ago to provide a voice for America's small- and independent-business owners. We represent a broad range of small employers and independent businesses in every sector of Pennsylvania's economy. We truly are the "mom and pop" shops that you see along every street and in every town throughout Pennsylvania.

With 29,000 small-business members in Pennsylvania and more than 600,000 nationally, NFIB is, by far, the largest small-business advocacy group in Harrisburg or Washington.

Our typical member employs less than five workers and generates gross revenues of about \$300,000 annually. A typical owner earns less than \$40,000 a year. Faced with these facts, it should come as no surprise the tremendous negative financial and emotional impact on our members by the shotgun effect joint and several liability lawsuits.

Each year, NFIB polls each of its 29,000 Pennsylvania members on a variety of issues. We use the results of this statewide ballot to set our legislative agenda. This democratic method of setting policy ensures that the positions advocated by NFIB reflect the consensus views of our members. Clearly, the number one priority on the minds of small business owners is lawsuit abuse.

Relief from lawsuit abuse has been a longstanding legislative priority for small businesses. All too often, small-business owners are the targets of 'shotgun' lawsuits that seek to illicit big money awards and settlements. Take a retailer who is brought into a lawsuit simply because a product was purchased at his or her store, or the manufacturer who was sued for negligence even though a safety guard was removed by the injured plaintiff.

For many small-business owners who already are struggling to survive, the time and money needed to defend these frivolous actions can put them out of business. Moreover, these unfair claims often clog our court system, leaving Pennsylvanians with legitimate cases out-of-luck in their quest for justice.

In Pennsylvania, these frivolous actions result in higher prices for goods and services, and lead to lower wages and benefits for workers, and also can result in reduced access to critical professional services and fewer product innovations.

I appreciate the opportunity to submit testimony from two Pennsylvania small-business owners -- Bob Carnathan of Harrisburg, and Brian Landon of Canton, who very much wanted to appear before you today, but their responsibilities to their respective small businesses would not permit. Their written testimony however, offers a glimpse of how of the disastrous affects of joint and several liability can impact small, family businesses.

Bob Carnathan has been in business for over 21 years, operating a small nail and staple fastening business located just outside the City of Harrisburg.

Bob's legal nightmare began in 1996. One of the tenants in the complex was walking across the parking lot from his car to the building. It was so cold, an icy film covered the blacktop. Clearly, the wintry conditions required caution and common sense. The tenant slipped and fell flat on his back and bumped his head, requiring medical attention.

About 4 months later, Bob was served with legal papers. The man who slipped and fell in the parking lot was suing him and every other tenant in the complex as well as the landlord and the developer for \$1.75 million.

Bob's first reaction was 'Why am I being sued? I had nothing to do with this fall.'

The lawyers for the insurance company told him that because the plaintiff said he fell in front of Bob's store window, his lawyers would try to include Bob in the lawsuit -- even though he was not responsible for the maintenance of the parking lot or the facility grounds.

The lawyers told him it had nothing to do with fault. In fact, they said the goal of these types of shotgun lawsuits is to involve as many different insurance companies as possible in the suit. That way, you could work out individual settlements with each, increasing the overall settlement.

After more than two years filled with meetings, teleconference calls, paper-hunting expeditions and other non-productive events that took valuable time away from his small business, Bob's insurance attorney called with news that it was determined that his company had nothing to do with his neighbor's fall and his business was released from the lawsuit.

Three years after his release from the suit, this case was settled out of court.

Eliminating joint and several liability and replacing it with proportionate liability as proposed in Senator Piccola's Senate Bill 1376, Bob's business likely would not have been included in this lawsuit.

Proportionate liability requires defendants to pay damages proportionate to their fault in an accident. By reducing the search for the "deep pocket," a reasonable plaintiff's attorney likely would have recognized that his involvement only was that his business was located in the office complex.

Bob Carnathan is not the only small-business owner to suffer as the result of litigation. A Gallup survey in 2000 found that 24 percent of small-business owners had either been sued or were threatened with court action within the last 5 years.

Small-business owner Brian Landon, of Canton, Pennsylvania, is one of the lucky small business owners who has not been sued or threatened with court action. Brian owns a car wash and laundry that bears his name. His business also includes the re-manufacturing, installation and service of equipment used in the car wash industry.

But that does not mean that he is not a victim of lawsuit abuse. For lawsuit abuse imposes many costs or "taxes" on Brian and his small business. Some of these "taxes" are

obvious, such as the cost of liability insurance premiums -- an average of two-and-a-half cents of every dollar spent at his car wash and laundry goes towards liability insurance.

Most of the "taxes" associated with lawsuit abuse are less obvious, but no less real. The hidden "lawsuit tax" is part of everything Brian purchases for his small business. Whether it is the chemicals and equipment used to clean cars; or the cleaning supplies, washers and dryers for his laundry; or the tools -- including the notorious stepladder -- that he uses for the re-manufacturing and installing of car wash equipment, the "lawsuit tax" has already been added in.

Then there is the non-monetary tax, which comes in the form of the constant fear of being named in some "shotgun" style lawsuit with claims far exceeding any insurance coverage he has, such as the lawsuit that Mr. Carnathan experienced. A fear which inhibits innovation and growth in his small business -- and other small businesses like it.

As consumers, hidden "lawsuit taxes" increase prices on all fronts: from higher insurance rates, to the increased cost of consumer goods, to inflated healthcare costs due to the practice of "defensive medicine" and sky-high malpractice insurance rates. All totaled, these lawsuit taxes cost every Pennsylvania man, woman and child about \$1,200 every year.

As taxpayers, all of us pay the price for lawsuits filed against our schools, police and fire departments, public transportation systems and municipalities in the form of higher taxes and reduced services.

Lawsuit abuse also affects our communities. The fear of personal liability due to lawsuit abuse has discouraged many citizens from serving as community volunteers and the threat of lawsuits has deterred the activities of charities and other nonprofit organizations.

Small-business owners want a legal system that is based on fairness, common sense and personal responsibility.

The outdated legal doctrine of joint and several liability -- which can require defendants found one percent at fault in a negligence lawsuit to pay 100 percent of the awarded damages -- needs to be eliminated.

Replacing the doctrine of joint and several liability with proportionate liability -- which requires defendants to pay their fair share of the damages for which they were negligent -- would go a long way to bring fairness and common sense to our legal system -- and help bring Pennsylvania in line with virtually all other states.

Thank you for the opportunity to testify.

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