

## Innocent Sellers Fairness Act – Liability Relief for America’s Building Suppliers

**Objective:** Enact the **Innocent Sellers Fairness Act (H.R. 989)**, to provide targeted liability protection for product sellers.

**Background:** Unfounded and unfair lawsuits are increasingly having a negative effect on the ability of lumber and building material dealers to run their business and contribute to their communities. A winter 2005 survey of NLBMDA members found that more than 1 in 4 had been involved in product liability lawsuits within the past 5 years; 65 percent of those had been involved in more than one. The high costs of defending such lawsuits (\$50,000 - \$100,000 according to the SBA) typically force building material dealers to settle, regardless of the merits of the case.

Current law imposes liability without wrongdoing on sellers, and exposes them to all of the damages allegedly suffered by a plaintiff, even though other defendants may have played the critical role in causing the damages. The “mistake” may have been in the manufacture or design of the product, or in a customer’s improper use of the product, however the seller is oftentimes faced with some or all of the liability. No amount of care can free a seller from disproportionate product liability, and plaintiffs’ lawyers know this—they routinely sue anyone in the chain of distribution of a product, often forcing settlements out of otherwise innocent merchants.

These abusive product liability cases are part of a growing litigation burden on our nation’s small businesses and our economy. According to a 2007 study by the U.S. Chamber Institute for Legal Reform (ILR), small businesses bear 69 percent of business tort liability costs. For a typical building material supplier with \$1 million a year in revenue, the average tort liability cost is \$20,000 per year. These costs drive up the price of building materials, ultimately increasing the cost of a new home. The general public overwhelmingly supports lawsuit reform such as H.R. 989. According to the Institute for Legal Reform Election Night Survey (2006), 85 percent of voters feel frivolous lawsuits are a serious problem, and 74 percent believe lawyers benefit more than victims in the current judicial system. Enactment of H.R. 989 would significantly reduce the burden of frivolous lawsuits on our courts, our businesses and our consumers.

Since 1986 a handful of states have passed product liability laws that include limits to liability for product sellers, including Iowa, Georgia, Indiana, New Jersey, Delaware, North Dakota, Texas, Mississippi and Michigan. While these state reforms are positive steps, a federal solution is important to ensure uniformity for dealers who often operate in multiple states.

**Case Examples:** These are just a few of the abusive lawsuits building material dealers have faced.

- A dealer in Ohio sold slate-style shingles to a customer. The shingles were shipped directly from the wholesaler to the jobsite; the dealer never saw nor touched the product. The coating later wore off some of the shingles, resulting in a spotty appearance, and the dealer was forced to pay \$16,000 in a settlement.
- A dealer sold bricks, manufactured independently of the dealer, to a customer. The dealer was named a codefendant in a lawsuit claiming manufacturing defects.
- A dealer sold a hammer to his attorney. The attorney’s son went out and hammered rocks, and injured his eye. The customer-a attorney sued the dealer.
- In Texas, a lumber dealer sold a 2x10x24 board to a contractor who improperly used it for scaffolding. While two people were standing on it, the board broke. One of the individuals was able to catch himself, but the other fell and was hurt. They are suing the lumber company for selling them a “defective” board, even though it was never suitable for scaffolding purposes. The case is still pending and has already cost the lumber dealer thousands of dollars to defend.

**Solution:** The “Innocent Sellers Fairness Act” would, in short, provide the following:

- that sellers/retailers do not take on liability for a product merely by selling that product; and
- that if sellers are negligent with respect to certain, specific non-sale activities, they will be responsible for the harm that their negligence causes.

Briefly stated, the legislation holds sellers responsible in proportion to their wrongdoing, and frees sellers from liability who have done nothing wrong. If you make a mistake you should pay; if you don’t, you won’t. What could be fairer than that?

**Action:** H.R. 989, the Innocent Sellers Fairness Act, was introduced by Representatives Dan Boren (D-OK) and Steve Chabot (R-OH) on February 12, 2007, and had nearly 60 cosponsors as of year end. On behalf of the 6,000 lumber and building material dealers across the U.S., we urge you to cosponsor the bipartisan **Innocent Sellers Fairness Act (H.R. 989)**.