



The Honorable Nancy Pelosi
Speaker of the House

The Honorable Kevin McCarthy
Republican House Leader

The Honorable Mitch McConnell
Senate Majority Leader

The Honorable Chuck Schumer
Senate Minority Leader

May 26, 2020

RE: Liability Limitation for Reopening Businesses

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer,

I am writing to urge you to approve, as soon as possible, temporary and targeted liability limitations for businesses as we slowly reopen America, to provide well-intentioned businesses that are making a reasonable effort to follow government and public health guidelines a safe harbor from unwarranted COVID-19-related lawsuits.

As CEO of the leading nonprofit trade association representing the marketing research and data analytics industry,¹ the Insights Association, I appreciate your continued support for American business, large and small, including many of our members, suffering from the impact of the current crisis. We represent nearly 5,400 company and individual members across the U.S.

Our industry has taken a beating from the pandemic, with three quarters of our community in a recent survey reporting revenues somewhat or significantly decreased.² Most in-person

¹ Our \$35 billion industry in the United States includes qualitative research, quantitative research, and data analytics. Both the private and public sectors rely upon the insights generated by our work. We are the world's leading producers of intelligence, analytics and insights defining the needs, attitudes and behaviors of consumers, organizations, employees, students and citizens. With that essential understanding, leaders can make intelligent decisions and deploy strategies and tactics to build trust, inspire innovation, realize the full potential of individuals and teams, and successfully create and promote products, services and ideas.

² "Impact of COVID-19 on the MR Community." May 21, 2020. <https://www.insightsassociation.org/article/impact-covid-19-mr-community>

insights business locations have been forced to shut their doors and cease operations, particularly many qualitative focus group facilities and telephone call centers. While a lot of marketing research and data analytics operations can be transitioned to function remotely, nowhere near all of them can. Reopening those businesses safely and responsibly is a top priority for the insights industry.

The Insights Association's recent guidelines for reopening insights businesses,³ including in-person qualitative research facilities, were an important step in limiting risk to our businesses, staff, clients, and participants. However, adequate government-provided liability protection will still be needed for our industry to return to anything approaching prosperity.

Despite most for-profit and non-profit businesses' best attempts to follow public health recommendations and government guidelines, many are concerned that they will need to defend themselves against a rash of coronavirus-related litigation. More than a thousand such suits have already emerged and many more will follow.⁴ Concerns about such lawsuit liability, whether from a business' own staff or from potential marketing research and data analytics participants, are impeding many people's return to work in our industry. Those businesses that do manage to reopen could be temporarily sidelined or put permanently out of business by even a single unwarranted lawsuit, despite any good faith and practices on the part of those businesses.

IA members are doing all they can to try to get work done safely and responsibly. Still, we worry that, given the highly contagious nature of the coronavirus, some staff or participants will contract the disease, regardless of any efforts on the part of our members and perhaps with zero relationship to any exposure from our members' businesses.

Variable information about COVID-19 and federal, state, and local guidelines drive some of this legal uncertainty, such that organizations diligently implementing safety protocols and relying in good faith on public health experts' recommendations may still face substantial

³ "Insights Association Issues Reopening Guidelines for Insights Businesses." May 7, 2020.

<https://www.insightsassociation.org/article/insights-association-issues-reopening-guidelines-insights-businesses>

⁴ "States, companies set up their own COVID-19 legal shields." BY JOHN KRUZEL. The Hill. 05/22/20. "To date, nearly 1,300 covid-related lawsuits of all varieties have been filed, according to the law firm Hunton Andrews Kurth. Additionally, more than 14,000 pandemic-era complaints and referrals have been filed nationwide to the U.S. Occupational Safety and Health Administration (OSHA), the federal agency charged with overseeing workplace safety." <https://thehill.com/regulation/court-battles/499072-states-companies-set-up-their-own-covid-19-legal-shields>

litigation. Such lawsuits won't stop the spread of the disease, but they may threaten the viability of our industry's return to work and any jobs rebound.

The temporary liability safe harbor against COVID-19 exposure claims we propose should remain in place for the duration of the pandemic and response, and cover businesses that make a reasonable effort to follow applicable government guidance to control the spread of the disease. Congress should allow litigation to focus on deterring and punishing bad actors, such as people recklessly or intentionally disregarding available guidance, rather than letting good actors be held liable for events beyond their control.

There are already three bills introduced that might help in this regard and which present a myriad of approaches. We encourage you to approve them or build upon them:

- The Employer and Employee COVID Protection Act (H.R. 6844) would provide limited immunity from civil lawsuits to reopening businesses if an employee gets COVID-19, but also establish a structure for fairly handling employees' safety concerns about resuming work;
- H.R. 6601 would instruct juries in federal court trials for COVID-19-related negligence lawsuits to treat the reopening of businesses as "reasonable," among other standards; and
- The Service Assurance Act of 2020 (just introduced) would protect well-intentioned nonprofits, following reasonable procedures, from coronavirus-related civil suits and preempt state and local laws.

Thank you for your urgent consideration of the Insights Association's request for a temporary limited safe harbor from COVID-19 liability for businesses and organizations operating in good faith and in reasonable compliance with applicable standards and guidelines. We hope you will include such a safe harbor in the next available legislative package.

Sincerely,

Melanie Courtright
Chief Executive Officer
Insights Association