



The Honorable Mark Abraham

The Honorable Franklin J. Foil

May 26, 2020

**Endorsing S.B. 435 – Limited COVID-19 liability protection for reopening businesses**

Dear Senator Abraham and Senator Foil,

I am writing to endorse your legislation, S.B. 435. It would provide people and businesses in the state basic protection from liability from exposure to COVID-19 during the “public health emergency” if following “applicable government standards and guidance.”

As CEO of the leading nonprofit trade association representing the marketing research and data analytics industry,<sup>1</sup> the Insights Association, I appreciate your continued support for Louisiana’s business, large and small, including many of our members, suffering from the impact of the current crisis. We have more than 50 members in Louisiana, like JMC Enterprises in Baton Rouge, Lucid in Abita Springs, Analysand Market Research in Shreveport, and the Olinger Group, Discuss.IO, Market Dynamics Research Group, New Orleans Perspectives and Rep Data in New Orleans.

We need 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.

---

<sup>1</sup> 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.

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.<sup>2</sup> Most in-person 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,<sup>3</sup> 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.<sup>4</sup> 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.

---

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

<sup>3</sup> "Insights Association Issues Reopening Guidelines for Insights Businesses." May 7, 2020. <https://www.insightsassociation.org/article/insights-association-issues-reopening-guidelines-insights-businesses>

<sup>4</sup> "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>

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 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.

A temporary liability safe harbor against COVID-19 exposure claims 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. Louisiana 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.

S.B. 435 would specify that "no person or entity, including any local or state governmental entity or employee thereof, shall be liable for damages or personal injury resulting from or related to an actual or alleged exposure to COVID-19 in the course of or through such person or entity's business services or while engaged in the performance of such person or entity's duties, provided that the person or entity was relying on and generally followed applicable government standards and guidance related to COVID-exposure." However, "if damages resulted from or related to the actual or alleged exposure to COVID-19 is shown by clear and convincing evidence to be the result of gross negligence, willful misconduct, or intentional criminal misconduct," that protection would be negated. The bill also would "not affect the right of any person to receive benefits to which he would otherwise be entitled under the workers' compensation law."

Again, the Insights Association is pleased to endorse S.B. 435 and we look forward to assisting you in speeding its passage into law.

Sincerely,

Melanie Courtright  
Chief Executive Officer  
Insights Association

**CC: the members of the Louisiana House of Representatives**