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NCOIL CEO STATEMENT ON ALI ‘RESTATEMENT’ OF LIABILITY INSURANCE LAW

Passage Infringes on Legislative Prerogatives

Manasquan, NJ – Commissioner Tom Considine, NCOIL CEO issued the following statement regarding passage of the American Law Institute (ALI) Restatement of Liability Insurance Law:

“For more than a year we have been working with the ALI to ensure that legislative prerogatives were respected. This vote makes clear that the ALI has indeed departed from the path that has caused it to amass such respect with its earlier restatements in the areas of Contracts, Torts etc. Previously, I called it a ‘NEWstatement’ and while we have had positive dialogue with the ALI leadership, and there have been some positive changes made to it along the way, the final version passed by the ALI does not alter that general view.”

NCOIL President Sen. Jason Rapert of Arkansas stated “NCOIL will not allow the constitutionally protected legislative prerogatives in each state to be infringed upon by an unelected body. Legislative action includes both the passage as well as the consideration and non-passage of bill language. We will examine all necessary steps to rectify this overreach, including the necessity for a model law that accurately states what the law is on certain liability insurance law topics”.

Rapert continued, “in the meantime, judges around the country should recognize this Restatement is as much a drafters’ wish list as an authoritative reference regarding established rules and principles of liability insurance law.”

NCOIL has devoted considerable time to discussing this issue, including most recently on an interim Executive Committee call earlier this month, at the 2018 Spring Meeting in Atlanta and the 2017 Annual Meeting in Phoenix, where a Resolution was introduced, and later adopted, urging the ALI to significantly change the Restatement. Past relevant releases can be viewed below:

<http://ncoil.org/wp-content/uploads/2017/12/ALI-Res-FINAL.pdf>
<http://ncoil.org/wp-content/uploads/2018/01/ALI-Res-Exec-Cmte-release-FINAL.pdf>

This issue will be discussed at the 2018 NCOIL Summer Meeting in Salt Lake City from July 12 – 15.

NCOIL is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees around the nation. NCOIL writes Model Laws in insurance and financial services, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Act seventy years ago and to serve as an educational forum for public policy makers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making state policy when it comes to insurance and educate state legislators on current and perennial insurance issues.