

March 14, 2019

Mr. Chairman and members of the committee,

Thank you for the opportunity to lend NAMIC's comments regarding the American Law Institute's Restatement of the Law, Liability Insurance (RLLI) and the resultant discussions at NCOIL regarding an affirmative response the RLLI's overreaching and inappropriate attempts to infringe upon the legislative branch.

NAMIC is the oldest property/casualty insurance trade association in the country, with more than 1,400-member companies representing 39 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers.

NAMIC member companies serve more than 170 million policyholders and write more than \$230 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets.

NAMIC has worked with the American Property Casualty Insurance Association to jointly retain expert counsel in this area to ensure that we are unified as an industry and positioned to respond to this unprecedented attempt to create law by an unelected and unappointed private entity.

As part of that collaborative effort, we have advocated at state legislatures undertaking a response to the RLLI already in 2019. As a result, language has developed as a point of agreement between interested parties that:

- a) addresses appropriately the egregious infringement that the RLLI seeks to make into insurance law,
- b) does not open section of established liability statute that may create opportunities to alter the purpose of the legislation, and
- c) satisfies constitutional requirements regarding language so as not to infringe upon separation of powers between the judicial and legislative branches in the states.

That language is as follows:

"In any action governed by the law of this State, concerning the rights and obligations arising in connection with, under or from a liability insurance policy, the United States and [name of state] constitutions, the law expressed in the statutes and regulations of this State, and the common law and case law precedent from this State shall apply. The American Law Institute's "Restatement of the Law, Liability Insurance" is not a source of [name of state] law, and shall not be afforded recognition as an authoritative reference regarding [name of state's] liability insurance law."



This language, or a similarly worded version of this language has been either adopted or introduced in Ohio, Michigan, North Dakota, Texas, Arkansas, Idaho, and Alaska with more states imminently drafting still in 2019.

While it is feasible that some states may face a unique political calculus that enables an approach as outlined by the draft *Model Act Regarding Interpretation of an Insurance Policy*, it is NAMIC's position that model language should satisfy the three points of consideration discussed above. For those reasons, NAMIC encourages the committee to adopt the language contained herein as the text of the NCOIL model should the committee find it appropriate to seek a national model response to the RLLI.

Sincerely,

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