

**SEVERAL MORE STATES RESPOND TO THE  
ALI'S RESTATEMENT OF LIABILITY INSURANCE  
(April 23, 2019)**

In a recent article in *Minnesota Defense* ([available here](#)) regarding the American Law Institute's Restatement of the Law of Liability Insurance ("RLLI"), we noted that Ohio and Tennessee had enacted statutes in response to the ALI's approval of the RLLI in May 2018. But they are no longer alone. North Dakota and Michigan have followed their lead and enacted statutes of their own in response to the RLLI. And Arkansas, Texas, Idaho, and others may soon follow.

The Ohio statute, [Ohio Rev. Cod. § 3901.82](#), states:

The "Restatement of the Law, Liability Insurance" that was approved at the 2018 annual meeting of the American Law Institute does not constitute the public policy of this state and is not an appropriate subject of notice.

We cautioned, however, that while the statute sends a strong signal that Ohio's political branches do not think very highly of the RLLI, the statute likely does not go far enough to prevent Ohio's appellate courts from looking to or adopting rules set forth in the RLLI as the common law of Ohio. To highlight this point, we contrasted the Ohio statute with Tennessee's amendment of [Tenn. Code Ann. § 56-7-102](#) to add additional language regarding the interpretation of insurance policies in order to preempt the RLLI's handling of policy interpretation.

North Dakota recently joined Ohio in rejecting the RLLI, but the North Dakota statute goes a step further than its Ohio counterpart and is likely to be more effective as a result. On March 20, 2019, the Governor of North Dakota signed a bill into law that will prohibit the use of the RLLI "as an authoritative reference regarding interpretation of North Dakota laws, rules, and principles of insurance law." The complete text of [HB 1142](#), which will become a new section in [Chapter 26.1-02 of the North Dakota Century Code](#), states as follows:

**Rules of interpretation.**

In addition to the rules of interpretation under chapters 1-01 and 1-02, in interpreting this title, a person, including the courts of this state, shall apply the Constitution of the United States of America and the Constitution of North Dakota, this code, and the common law of this state. A person may not apply, give weight to, or afford recognition to, the American Law Institute's "Restatement of the Law, Liability Insurance" as an authoritative reference regarding interpretation of North Dakota laws, rules, and principles of insurance law.

Despite its title, which suggests the statute may only address policy interpretation like the Tennessee amendments, the North Dakota statute goes much further as it broadly prohibits a

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person from using the RLLI in the interpretation of “principles of insurance law.” In other words, the statute arguably prohibits anyone, whether a party, attorney, or judge, from considering the RLLI in insurance cases. Given its breadth, it will be interesting to see how it is interpreted and what sort of challenges it faces when it is first cited to counteract the RLLI in North Dakota.

Ohio, Tennessee, and North Dakota are not alone. Michigan added the following section to its [Insurance Code](#) in late 2018:

In an action brought in a court in this state, the court shall not apply a principle from the American Law Institute’s “Restatement of the Law, Liability Insurance” in ruling on an issue in the case unless the principle is clearly expressed in a statute of this state, the common law, or case law precedent of this state.

[Mich. Comp. Laws Ann. § 500.3032](#). The prohibition goes into effect January 1, 2020. Several other states are currently considering legislation in response to the ALI’s approval of the RLLI. Similar to Ohio, the Arkansas Legislature recently passed [SB565](#), which, if signed by the governor, will add a new section to the [Arkansas Insurance Code](#) that provides:

A statement of the law in the American Law Institute's Restatement of the Law, Liability Insurance does not constitute the public policy of this state if the statement of the law is inconsistent or in conflict with, or otherwise not addressed by:

- (1) A statute of the State of Arkansas;
- (2) The common law and statute law of England as adopted in Arkansas under § 1-2-119; or
- (3) Arkansas case law precedent.

In Texas, [HB 2757](#) would amend [Civ. Prac. & Rem. Code § 5.001](#) to add the following provision, “In any action governed by the laws of this state concerning rights and obligations under the law, the American Law Institute's Restatements of the Law are not controlling.” And, in Idaho, [SB 1176](#) would amend [Idaho Code Ann. § 73-116](#) to add the following provision:

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 constitution of the United States and the constitution of the state of Idaho, the law expressed in the statutes and rules 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 Idaho law and

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shall not be afforded recognition as an authoritative reference regarding Idaho's liability insurance law.

On April 22, 2019, a [Concurrent Resolution](#) was introduced in the Indiana House of Representatives that, if approved by the House and Senate, would state "that the Restatement of the Law, Liability Insurance that was approved at the 2018 annual meeting of the American Law Institute does not reflect the determination of the State of Indiana's public policy, is not a faithful statement of existing law of the State of Indiana, is not an appropriate subject of notice, and should not be afforded recognition by courts as an authoritative reference regarding established rules and principles of insurance law." The author of the Concurrent Resolution, Rep. Matt Lehman, is a member of the National Council of Insurance Legislators and its Property & Casualty Insurance Committee, which is [currently exploring](#) ways to respond to the RLLI, including through the development of [guidance](#) and [Model Legislation](#).

So far, we are not aware of any legislative efforts in Minnesota or the surrounding states (besides North Dakota) to respond to the RLLI. But we expect the RLLI to at least become a topic of discussion in the near future considering the growing response to the RLLI from state legislatures around the country as the RLLI heads toward publication later this year.

If you have any questions regarding the RLLI, how various states are responding to its approval, or any other insurance-related issues, please contact [Dale Thornsjo](#), [Lance Meyer](#), or one of the other members of our Firm's [Insurance Coverage Practice Group](#) at 952.831.6544.

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