

07/30/2019 - By Lance Meyer & Dale Thornsjo

National Council of Insurance Legislators Adopts Model Act Concerning Restatement of the Law of Liability Insurance

At its annual Summer Meeting earlier this month, the National Council of Insurance Legislators (NCOIL) adopted a “Model Act Concerning Interpretation of State Insurance Laws” in response to the American Law Institute’s (ALI) soon-to-be-published Restatement of the Law of Liability Insurance (RLLI). The Model Act provides:

“A statement of the law in the American Law Institute’s Restatement of the Law, Liability Insurance does not constitute the law or public policy of this state if the statement of the law is inconsistent or in conflict with: (1) The Constitution of the United States or of this state; (2) A statute of this state; (3) This state’s case law precedent; or (4) Other common law that may have been adopted by this state.”

NCOIL adopted the Model Act over the urging of ALI to hold off on adopting model legislation until NCOIL’s members have had a chance to review the official text of the RLLI when it is published later this year. In a July 25, 2019, Press Release , NCOIL CEO Thomas B. Considine explained that while NCOIL appreciates the changes the ALI made from the initial draft of the RLLI, “[c]ertain select portions remain more of an ALI wish list than a statement of the majority rule of current law” and “NCOIL believes it is important for States to clarify when such a document is appropriate as an authority for jurists.”

As we discussed in a previous post , several state legislatures have already responded to the ALI’s approval of the RLLI for publication by introducing and in a number of cases passing laws concerning the RLLI. Of the various state responses to the RLLI to date, the Arkansas law, Ark. Code § 23-60-112 , which went into effect earlier this month, is the law that most closely tracks the NCOIL Model Act. NCOIL President Sen. Dan W. Morrish recently introduced a Resolution in Louisiana Senate that follows the approach of the Model Act. Now that NCOIL has adopted a Model Act, we may see more states follow the NCOIL approach.

Unlike the North Dakota statute discussed in our previous post, N.D.C.C. 26.1-02-34 , which arguably prohibits anyone, whether a party, attorney, or judge, from considering the RLLI in insurance cases, a state’s adoption of the NCOIL Model Act will not prevent the state’s courts from turning to the RLLI particularly in situations in which there is currently no statute, common law, or other authority on the issue in the state. And it remains to be seen whether the Model Act would prevent a state’s courts from overturning prior precedent in favor of a rule adopted by the ALI in the RLLI. In the end, it may be that the NCOIL’s adoption of the Model Act follows Ohio’s lead in sending a strong signal that the RLLI is to be approached with caution without actually preventing any states’ courts from relying upon it in resolving insurance disputes.

If you have any questions regarding the RLLI,

which we expect to finally be published this fall, NCOIL's Model Act or other state responses to the RLLI, 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.