

1 A RESOLUTION urging the American Law Institute to materially change the
2 proposed Restatement of the Law of Liability Insurance.

3 WHEREAS, the American Law Institute (ALI) is a private nonprofit organization
4 that drafts, among other things, Restatements addressed to courts; and

5 WHEREAS, ALI intends to publish a Restatement of the Law of Liability Insurance
6 (hereinafter "proposed Restatement"); and

7 WHEREAS, ALI Restatements have traditionally been held in high regard and
8 relied upon by courts as authoritative references regarding established rules and principles
9 of law; and

10 WHEREAS, according to the 2015 ALI Style Guide, these Restatements are
11 "primarily addressed to courts" and "aim at clear formulations of common law and its
12 statutory elements of variations and reflect the law as it presently stands or might
13 appropriately be stated by a court;" and

14 WHEREAS, the National Council of Insurance Legislators (NCOIL) is a legislative
15 organization comprised principally of legislators serving on state insurance and financial
16 institutions committees; and

17 WHEREAS, NCOIL has identified several areas of the proposed Restatement that,
18 contrary to ALI's stated intent, are inconsistent with well-established law and purport to
19 address matters which are properly within the legislative prerogative; and

20 WHEREAS, NCOIL, through its Chief Executive Officer, Thomas B. Considine,
21 addressed a letter dated May 4, 2017, to ALI leadership identifying particular concerns
22 and requested reconsideration of and significant changes to the proposed Restatement;
23 and

24 WHEREAS, after receipt of the letter from Mr. Considine, ALI deferred a final vote
25 on the proposed Restatement until 2018, with the recognition that the proposed
26 Restatement would benefit from another year of work; and

27 WHEREAS, the subsequent drafts of the proposed Restatement reflect only very

1 minor changes to the insurance legal rules proposed and contain no substantive changes
2 in the rules proposed on the topics of particular concern identified in the letter from
3 NCOIL; and

4 WHEREAS, during its General Session on November 16, 2017, NCOIL hosted a
5 panel presentation which included the proposed Restatement's lead Reporter, and it was
6 apparent from the Reporter's commentary that no or minimal substantive changes to the
7 proposed Restatement are anticipated before it is submitted to the ALI Council and then
8 the ALI membership for final approval;

9 NOW, THEREFORE,

10 ***Be it resolved by the House of Representatives of the General Assembly of the***
11 ***Commonwealth of Kentucky:***

12 ➔Section 1. This honorable body respectfully urges ALI leadership, members,
13 and Reporters to abide by ALI's own acknowledgement that "[a]n unelected body like The
14 American Law Institute has limited competence and no special authority to make major
15 innovations in matters of public policy," and instead afford proper respect to the
16 legislative prerogative, and the expertise and the jurisdiction of NCOIL members.

17 ➔Section 2. This honorable body respectfully urges ALI to effect meaningful
18 change to the proposed Restatement so that it is consistent with well-established
19 insurance law and respectful of the role of state legislatures in establishing insurance legal
20 standards and practice.

21 ➔Section 3. This honorable body respectfully urges that, if meaningful change to
22 the proposed Restatement does not occur prior to its final approval, the Restatement of
23 the Law of Liability Insurance should not be afforded recognition by courts as an
24 authoritative reference regarding established rules and principles of insurance law, as
25 Restatements have traditionally been afforded.

26 ➔Section 4. The Clerk of the House of Representatives is directed to send a copy
27 of this Resolution to Richard L. Revesz, Director, The American Law Institute, 4025

- 1 Chestnut Street, Philadelphia, Pennsylvania 19104; John D. Minton Jr., Chief Justice,
- 2 Kentucky Supreme Court, State Capitol, Room 231, Frankfort, Kentucky 40601; and
- 3 Nancy G. Atkins, Commissioner, Kentucky Department of Insurance, 215 West Main
- 4 Street, Frankfort, Kentucky 40601.