



General Assembly

January Session, 2011

Raised Bill No. 6649

LCO No. 5165

* _____HB06649JUD___041511_____*

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING A MODEL LITIGANT POLICY FOR
ATTORNEYS WHO REPRESENT THE STATE GOVERNMENT IN CIVIL
ACTIONS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2011*) (a) There is established a
2 model litigant policy for attorneys who represent the state and its
3 agencies in civil actions. The model litigant policy set forth in this
4 section and section 2 of this act is a statement of principles and is
5 intended to reflect existing law. The model litigant policy is not
6 intended to impose additional legal or professional obligations on the
7 state and its agencies, attorneys admitted to practice in this state or
8 other individuals.

9 (b) The model litigant policy applies to civil actions involving the
10 state or its agencies, including arbitration and other alternative dispute
11 resolution processes.

12 (c) Each agency or department head shall ensure that the agency
13 complies with the model litigant policy and shall ensure that attorneys
14 who represent the agency are aware of the requirements of the model
15 litigant policy.

16 (d) Issues relating to an agency's compliance with the model litigant
17 policy shall be referred to the agency or department head.

18 (e) The model litigant policy supplements but does not replace the
19 Rules of Professional Conduct applicable to such civil actions.

20 Sec. 2. (NEW) (*Effective October 1, 2011*) (a) The state and its agencies
21 shall act as a model litigant in the conduct of civil actions.

22 (b) The requirement to act as a model litigant pursuant to subsection
23 (a) of this section includes the requirement that the state and its
24 agencies act with propriety, fairly and in accordance with the highest
25 professional standards, which shall consist of more than merely acting
26 honestly and in accordance with the law and rules of court.

27 (c) The requirement to act honestly and fairly pursuant to
28 subsection (b) of this section includes:

29 (1) Handling claims promptly and not causing unnecessary delay in
30 the handling of claims and civil actions;

31 (2) Paying legitimate claims without requiring a claimant to pursue
32 a civil action, including making partial settlements of claims or interim
33 payments, where it is clear that liability is at least as much as the
34 amount to be paid;

35 (3) Acting consistently in the handling of civil actions;

36 (4) Endeavoring to avoid litigation, wherever possible;

37 (5) When it is not possible to avoid litigation, minimizing the costs
38 of litigation by:

39 (A) Not requiring the other party to prove a matter which the state
40 or an agency knows to be true; and

41 (B) Not contesting liability if the state or an agency knows that only
42 the amount of recovery is in dispute;

43 (6) Not taking advantage of a claimant who lacks the resources to
44 litigate a civil action;

45 (7) Not relying on procedural defenses unless the interests of the
46 state or an agency would be prejudiced by the failure to comply with a
47 particular requirement;

48 (8) Not undertaking and pursuing appeals unless the state or an
49 agency believes that it has reasonable prospects for success or the
50 appeal is otherwise justified in the public interest. The commencement
51 of an appeal may be justified in the public interest where it is necessary
52 to avoid prejudice to the interest of the state or an agency pending the
53 receipt or proper consideration of legal advice, provided a decision
54 whether to continue the appeal is made as soon as practicable; and

55 (9) Apologizing when the state or agency is aware that it or its
56 attorneys have acted wrongfully or improperly.

57 (d) The requirement to act as a model litigant pursuant to this
58 section does not require that the state or agency be prevented from
59 acting properly to protect its interests. Such requirement does not
60 prohibit all legitimate steps being taken in pursuing a civil action, or
61 from defending claims made. Specifically, such requirement does not
62 prevent the state or agency from:

63 (1) Enforcing money judgments or seeking to recover money
64 judgments;

65 (2) Relying on claims of attorney-client privilege or other forms of
66 privilege and sovereign immunity;

67 (3) Pleading statute of limitation defenses;

68 (4) Seeking recovery for costs;

69 (5) Opposing unreasonable or oppressive claims or processes;

70 (6) Requiring opposing parties to comply with procedural

71 obligations; or

72 (7) Filing motions to dismiss claims that are untenable or frivolous.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	New section
Sec. 2	<i>October 1, 2011</i>	New section

JUD *Joint Favorable*