

CHAPTER 54-12 ATTORNEY GENERAL

54-12-01. Attorney general - Duties.

The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.
15. Attend to and perform any other duties which from time to time may be required by law.
16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
18. Repealed by S.L. 1991, ch. 637, § 9.
19. Give written opinions to public entities as defined in subdivision a or b of subsection 12 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1.

54-12-01.1. Attorney general to prepare eminent domain pamphlets - Copy to landowner.

The attorney general, with the cooperation of appropriate state agencies, shall prepare pamphlets in readable format describing the eminent domain laws of this state. The pamphlets must include the reasons for condemnation, the procedures followed by condemnors as defined by section 32-15-01, how citizens may influence the condemnation process, and the rights of property owners and citizens affected by condemnation. The attorney general shall make copies of the pamphlets available to all condemnors who must be charged a price for the pamphlets sufficient to recover the costs of production. A condemnor shall present a copy of the pamphlet to a property owner prior to making an offer to purchase and initiating a condemnation action.

54-12-01.2. Regulation of gaming schools.

Repealed by S.L. 2011, ch. 397, § 1.

54-12-01.3. Judicial officers - Legal defense - Indemnification.

The attorney general shall appear and defend any supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or director of juvenile court of this state in any action founded upon an act or omission arising out of performance of an official duty. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the judicial officer, the attorney general shall employ a special assistant attorney general to represent the judicial officer. The state shall indemnify the supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or director of juvenile court of this state for all reasonable costs, including attorney's fees, incurred by or awarded against the judicial officer in the action.

54-12-01.4. Limitation of effect of certain opinions of attorney general.

Any opinion of the attorney general, or any other public official other than a court of competent jurisdiction, that sections 16.1-01-13, 16.1-01-13.1, and 16.1-01-14 are unconstitutional, is not binding on any other public official, and all other public officials are free to act in accordance with the wishes of the people of North Dakota as expressed in sections 16.1-01-13, 16.1-01-13.1, and 16.1-01-14.

54-12-02. Attorney general may institute action in which state is a party.

The attorney general and the attorney general's assistants are authorized to institute and prosecute all cases in which the state is a party, whenever in their judgment it would be for the best interests of the state so to do.

54-12-03. Attorney general may make investigation in county - How expenses paid.

The attorney general may make an investigation in any county in this state to the end that the laws of the state shall be enforced therein and all violators thereof brought to trial, when:

1. The attorney general deems it necessary for the successful enforcement of the laws of the state in such county;
2. Requested by a majority of the members of the board of county commissioners of the county; or
3. Petitioned by twenty-five taxpaying citizens of the county.

The necessary expenses incurred in making the investigation or in prosecuting any resulting case, as determined by the attorney general and not otherwise specifically provided by law, must be paid by the county out of the state's attorney's contingent fund. All such expenses paid from the state's attorney's contingent fund must be paid by the county treasurer upon the warrant of the county auditor. The warrant must be executed and delivered by the auditor in an amount and to the person designated therein upon the written order of the attorney general.

54-12-04. Attorney general to investigate and prosecute criminal matters in counties on demand of district judge - How expenses paid.

Upon the written demand of a judge of the district court, with or without the consent and approval of the state's attorney of the county wherein such duties are to be performed, the attorney general, either personally or through the attorney general's assistants, shall be required to make a full and complete investigation of any criminal matter or complaint referred to in the demand. The attorney general shall take full charge of and shall conduct any criminal prosecution in any county within the district of said district judge to the same effect and with like power and authority as the duly elected state's attorney of that county. All expenses, including mileage as now provided by law for state officers, and disbursements for subsistence while performing those duties incurred by the attorney general, must be paid and allowed by the county in which the said duties were performed in the manner in which claims against the county are allowed and paid, after an itemized statement thereof has been approved by the judge who requested that the same be performed.

54-12-04.1. Attorney general to make investigation on Indian reservation - Expenses.

The attorney general may make a full and complete investigation of any complaint alleging the deprivation of any constitutional, civil, or legal right of an individual residing on an Indian reservation upon the written request of the state's attorney of the county of residence of the aggrieved individual. The attorney general may conduct and take full charge of any criminal prosecution that results from the investigation. The necessary expenses incurred in making the investigation or in prosecuting any resulting case, as determined by the attorney general, must be allowed and paid by the county in which the investigation was requested in the same manner in which claims against the county are allowed and paid.

54-12-04.2. Child sexual abuse investigation and prosecution.

The child sexual abuse investigation and prosecution team consists of an assistant attorney general and an agent of the state bureau of criminal investigation. On request of any state's attorney, the team shall assist, within the limits of legislative appropriation and available staff resources, with the investigation and prosecution of child sexual abuse cases.

54-12-05. Biennial report.

1. The attorney general shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must provide:
 - a. A summary of the types of actions prosecuted or defended by the attorney general on behalf of the state.
 - b. The aggregate cost of prosecuting or defending actions on behalf of the state.
 - c. The amount of fines and penalties collected.
2. The attorney general also shall direct attention to any defect in the practical operations of the law relating to revenue and criminal offenses and shall suggest amendments and changes as in the attorney general's judgment are necessary to subserve the public interest.

54-12-06. Assistant attorneys general - Attorney general may appoint.

The attorney general may appoint assistant attorneys general whose appointment must be in writing and filed in the office of the secretary of state.

54-12-07. Salary of assistant attorneys general.

The salary of the assistant attorneys general must be within the amount appropriated for salaries by the legislative assembly and are payable in the same manner as other departmental payrolls.

54-12-08. Assistant and special assistant attorneys general - Appointment - Revocation - Compensation.

After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. Workforce safety and insurance, the department of transportation, the state tax commissioner, the public service commission, the insurance commissioner, the board of higher education, and the securities commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. The attorney general may revoke the appointment only for good cause or upon the request of the entity. Good cause means an inadequate level of experience, competence, or ethical standards. The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, unless the powers are limited specifically by the terms of the appointment. Except as otherwise provided by this section, an appointment is revocable at the pleasure of the attorney general. The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, the compensation must be paid out of the funds appropriated therefor. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, and the state hospital.

54-12-08.1. Contingent fee arrangements.

The attorney general may not appoint or allow to be employed a special assistant attorney general in a civil case in which the amount in controversy exceeds one hundred fifty thousand dollars and the special assistant attorney general is compensated by a contingent fee arrangement, unless the contingent fee arrangement is approved by the emergency commission. A state governmental entity may not contract for legal services that are compensated by a contingent fee arrangement, unless the entity receives an appointment from the attorney general for a special assistant attorney general for each case in which there is a contingent fee arrangement. Any proceeding or information used by the emergency commission under this section is not subject to sections 44-04-18 and 44-04-19, unless made public by order of the emergency commission.

54-12-09. Assistant attorney general for board of university and school lands - Appointment - Revocation - Oath.

The attorney general shall appoint an assistant attorney general to act under the direction and supervision of the attorney general as attorney for the board of university and school lands. The appointment is revocable at the pleasure of the attorney general. Such assistant attorney general upon appointment and before assuming the person's duties shall take the oath prescribed for civil officers.

54-12-09.1. Salary of assistant attorney general for board of university and school lands.

Repealed by S.L. 1953, ch. 306, § 1.

54-12-10. Assistant attorney general for board of university and school lands - Execution of certificates and documents.

All certificates and documents executed, signed, or certified to by the assistant attorney general appointed to act as attorney for the board of university and school lands, must be executed, signed, or certified to in substantially the following form:

Attorney General
By _____
Assistant Attorney General

54-12-11. Salary of attorney general.

The annual salary of the attorney general is one hundred thirty-four thousand one hundred thirty-five dollars through June 30, 2012, and one hundred thirty-eight thousand one hundred fifty-nine dollars thereafter.

54-12-12. Licensing department - Inspectors - Powers and duties.

Repealed by S.L. 1967, ch. 116, § 2.

54-12-13. Special assistant attorneys general report of salaries and expenses.

All departments that pay salaries or expenses of special assistant attorneys general shall report all such expenditures monthly to the attorney general upon such forms as must be prescribed by the attorney general. And all such salaries and expenses must be approved by the attorney general.

54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation.

The attorney general assets forfeiture fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law, and amounts received from a multijurisdictional drug task force as defined in section 54-12-26. The amount of deposits into the fund which do not come from legislative appropriation or from a multijurisdictional drug task force and are not payable to another governmental entity may not exceed two hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.

5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.
6. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary accounting procedures for the use of the fund, and shall personally approve, in writing, all requests from the director of the bureau of criminal investigation or the director of the drug enforcement unit for the use of the fund.

54-12-14.1. Loans for law enforcement activities.

The attorney general may obtain unsecured loans from any financial institution in this state for the purpose of conducting the activities listed in subsection 1 of section 54-12-14. Any funds obtained under this section must be repaid at the end of each biennium and are not subject to appropriation limitations.

54-12-15. Drug enforcement unit - Personnel - Duties.

Repealed by S.L. 2009, ch. 125, § 4.

54-12-16. Powers of drug enforcement unit personnel.

Repealed by S.L. 2009, ch. 125, § 4.

54-12-17. Consumer protection and antitrust division.

A consumer protection and antitrust division is created under the attorney general. This division consists of a director and such other personnel as may be appointed by the attorney general. The division shall act to enforce the consumer fraud laws and act with regard to the use or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, and shall make full investigation of such activities and maintain adequate facilities for filing reports, examining persons and merchandise in regard thereto, and storing impounded books, records, accounts, papers, and samples of merchandise relating to same. The division shall cooperate with other governmental agencies, national, state, or local, and with all peace officers of the state in regard thereto. The division also shall investigate antitrust violations and enforce antitrust laws.

54-12-18. Special fund established - Continuing appropriation.

A special fund is established in the state treasury and designated as the attorney general refund fund. The attorney general shall deposit all moneys recovered by the consumer protection division for refunds to consumers in cases where persons or parties are found to have violated the consumer fraud laws, all costs, expenses, attorney's fees, and civil penalties collected by the division regarding any consumer protection or antitrust matter, all cash deposit bonds paid by applicants for a transient merchant's license who do not provide a surety bond, and all funds and fees collected by the gaming section for licensing tribal gaming and for the investigation of gaming employees, applicants, organizations, manufacturers, distributors, or tribes involved in state or tribal gaming. The moneys in the fund are appropriated, as necessary, for the following purposes:

1. To provide refunds of moneys recovered by the consumer protection and antitrust division on behalf of specifically named consumers;
2. To pay valid claims against cash deposit bonds posted by transient merchant licensees;

3. To refund, upon expiration of the two-year period after the expiration of the transient merchant's license, the balance of any cash deposit bond remaining after the payment of valid claims;
4. To pay costs, expenses, and attorney's fees and salaries incurred in the operation of the consumer protection division; and
5. To pay the actual costs of background investigations, licensing, and enforcement of gaming in the state or pursuant to Indian gaming compacts.

At the end of each biennium any moneys in the fund in excess of the amounts required for subsections 1, 2, 3, and 5 must be deposited in the general fund. The attorney general, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for use of the attorney general refund fund, particularly with respect to expenditures under subsection 4.

54-12-19. Block house defined.

Repealed by S.L. 2007, ch. 75, § 4.

54-12-20. Block house program.

Repealed by S.L. 2007, ch. 75, § 4.

54-12-21. Recovery of funds - Limitations.

All funds recovered by the attorney general as a result of negotiated settlements or court proceedings must be deposited in a special fund in the state treasury and may be appropriated only by the legislative assembly, except when:

1. A specific fund or special account is otherwise designated by law; or
2. The options open to the attorney general leave no choice as to the disposition of the proceeds if the state is to recover funds in a multistate settlement.

54-12-22. Accessibility of sexual offender and crimes against children registration information.

The attorney general shall provide to a law enforcement dispatch center access to registration information on individuals required to register under section 12.1-32-15 through any feasible electronic means that includes direct access to a computerized registration information database. The attorney general shall provide the information in a form that is referenced by driver's license number or number plate characters. The department of transportation shall provide the necessary information to the attorney general in any feasible form requested by the attorney general. The attorney general may require the cooperation of the state radio broadcasting system to provide the access required by this section.

54-12-23. Special operations team reimbursement fund - Continuing appropriation.

The attorney general may establish a special operations team reimbursement fund of up to two hundred fifty thousand dollars consisting of federal funds and moneys obtained from cities and counties. The funds are appropriated as a standing and continuing appropriation to the attorney general for reimbursement to city and county governments that provide special operations team services to rural areas. The attorney general shall develop guidelines for the reimbursement of expenses to city and county governments providing special operations team services.

54-12-24. State crime laboratory division.

1. A state crime laboratory is created as a division of the office of the attorney general. This division consists of a director, the state toxicologist, and such other personnel as may be appointed by the attorney general. The state crime laboratory may establish and charge fees for services rendered. The state crime laboratory must be administratively separated from the bureau of criminal investigation. The director serves at the pleasure of the attorney general and is entitled to receive a salary set by the attorney general within the limits of legislative appropriation.

2. The state crime laboratory shall employ the services of a qualified toxicologist who must be the state toxicologist. The attorney general shall appoint the state toxicologist. The attorney general may appoint such qualified deputy state toxicologists as may be necessary to exercise the authority and responsibility prescribed by law for the state toxicologist. The results of toxicological or chemical testing or analysis, other than provided for in section 39-20-13, made by the state toxicologist at the request of law enforcement agencies for criminal investigation may not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the attorney general to anyone other than the person or agency requesting the test or analysis or to any other person upon whom the toxicological or chemical test was performed or the person's authorized representative, except the state toxicologist may permit the inspection of the reports of any such test or analysis results by any other person having a proper interest therein as determined by the director of the state crime laboratory.
3. Upon the request of the state forensic examiner, any state's attorney, sheriff, chief of police, coroner, or other local, state, or federal law enforcement official, the attorney general may make available to the requesting official the state crime laboratory's facilities and personnel to assist in the investigation or detection of crimes and the apprehension or prosecution of criminals.

54-12-25. Attorney general may provide counsel to boards of health.

The attorney general, upon the request of a board of health established under chapter 23-35, may provide legal counsel or a written legal opinion to the board of health. The attorney general may enter an agreement with a board of health for reimbursement of expenses incurred by the attorney general in providing legal counsel to the board of health.

54-12-26. Attorney general multijurisdictional drug task force grant fund - Continuing appropriation.

1. The attorney general may establish a multijurisdictional drug task force grant fund. The fund consists of funds appropriated by the legislative assembly. The funds are appropriated as a standing and continuing appropriation to the attorney general for the purpose of defraying the expenses and operating costs incurred by a multijurisdictional drug task force. The attorney general shall develop guidelines for the qualifications for receipt of grant funds, the disbursement of grant funds, and the necessary accounting procedures for the use of grant funds. In this section, "multijurisdictional drug task force" means a law enforcement task force:
 - a. Organized and created in this state by a written mutual aid or joint powers agreement;
 - b. Comprised of persons who are employed by, or acting under the authority of, different governmental entities, including federal, state, county, or municipal governments, or any combination of these agencies; and
 - c. Operated and established to enhance and facilitate interagency coordination, acquisition of intelligence information, and investigations of controlled substance and other drug-related crimes.
2. If the attorney general receives federal funds in excess of the year 2006 level of Byrne grant funding that may be used to defray the expenses and operating costs incurred by a multijurisdictional drug task force during the 2007-09 biennium, the attorney general may seek emergency commission approval to receive and spend the additional federal funds but may not spend moneys from the funds appropriated by the legislative assembly to the extent of the additional federal funds received for this purpose for the biennium beginning July 1, 2007, and ending June 30, 2009.

54-12-27. Twenty-four seven sobriety program.

The attorney general may establish a statewide twenty-four seven sobriety program. The sobriety program involves coordination among state, county, and municipal agencies to implement procedures as alternatives to incarceration for offenders charged with, or convicted

of, driving under the influence of alcohol or controlled substances, domestic violence, abuse or neglect of a child, or for other offenses in which alcohol or controlled substances are involved.

54-12-28. Twenty-four seven sobriety program guidelines and program fees.

The attorney general, in cooperation with law enforcement, the judiciary, the department of corrections and rehabilitation, and the traffic safety division of the department of transportation, may develop guidelines, policies, and procedures to administer the twenty-four seven sobriety program and to test offenders to enforce compliance with the sobriety program, including sobriety testing twice per day seven days per week, electronic monitoring, including home surveillance and remote electronic alcohol monitoring, urine testing and drug patch testing, and to establish program fees, all of which are not subject to chapter 28-32.

54-12-29. Twenty-four seven sobriety program fund - Continuing appropriation.

There is created the twenty-four seven sobriety program fund to be administered by the attorney general. The fund includes appropriated funds; moneys received from grants from the United States; agencies of this state; private grants, gifts, or donations; and program fees. The funds are appropriated as a continuing appropriation to the attorney general for expenses necessary for the administration and operation of the sobriety program, including staff support, training and travel costs, computer software and hardware, testing equipment, and supplies.

54-12-30. Twenty-four seven sobriety program fees.

A criminal justice agency may collect program fees from offenders participating in the twenty-four seven sobriety program, including fees for twice per day breath alcohol testing, urine testing, drug patch testing, installation and deactivation fees for remote electronic alcohol monitoring devices, and remote electronic alcohol monitoring daily fees. The criminal justice agency shall pay all program fees into the general fund of the governing body. The fees may only be applied to twenty-four seven sobriety program support services, equipment maintenance and replacement, and compliance with the program. The governing body shall pay any daily fees collected for remote electronic alcohol monitoring to the twenty-four seven sobriety program fund.

54-12-31. Bond conditions.

A district or municipal court of this state may order an offender charged with a violation of section 39-08-01 or equivalent ordinance, domestic violence, abuse or neglect of a child, or other offense in which alcohol or controlled substances are involved to participate in the twenty-four seven sobriety program as a condition of bond.