

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1164

Introduced by Fulton, 29.

Read first time January 19, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Attorney General; to amend section 84-205,
2 Reissue Revised Statutes of Nebraska; to prohibit the
3 Attorney General from bringing an action pursuant to a
4 certain federal statute; and to repeal the original
5 section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-205, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 84-205 The duties of the Attorney General shall be:

4 (1) To appear and defend actions and claims against the
5 state;

6 (2) To investigate, commence, and prosecute any and all
7 actions resulting from violations of sections 32-1401 to 32-1417;

8 (3) To consult with and advise the county attorneys, when
9 requested by them, in all criminal matters and in matters relating to
10 the public revenue. He or she shall have authority to require aid and
11 assistance of the county attorney in all matters pertaining to the
12 duties of the Attorney General in the county of such county attorney
13 and may, in any case brought to the Court of Appeals or Supreme Court
14 from any county, demand and receive the assistance of the county
15 attorney from whose county such case is brought;

16 (4) To give, when required, without fee, his or her
17 opinion in writing upon all questions of law submitted to him or her
18 by the Governor, head of any executive department, Secretary of
19 State, State Treasurer, Auditor of Public Accounts, Board of
20 Educational Lands and Funds, State Department of Education, Public
21 Service Commission, or Legislature;

22 (5) At the request of the Governor, head of any executive
23 department, Secretary of State, State Treasurer, Auditor of Public
24 Accounts, Board of Educational Lands and Funds, State Department of
25 Education, or Public Service Commission, to prosecute any official

1 bond or any contract in which the state is interested which is
2 deposited with any of them and to prosecute or defend for the state
3 all civil or criminal actions and proceedings relating to any matter
4 connected with any of such officers' departments if, after
5 investigation, he or she is convinced there is sufficient legal merit
6 to justify the proceeding. Such officers shall not pay or contract to
7 pay from the funds of the state any money for special attorneys or
8 counselors-at-law unless the employment of such special counsel is
9 made upon the written authorization of the Governor or the Attorney
10 General;

11 (6) To enforce the proper application of money
12 appropriated by the Legislature to the various funds of the state and
13 prosecute breaches of trust in the administration of such funds;

14 (7) To prepare, when requested by the Governor, Secretary
15 of State, State Treasurer, or Auditor of Public Accounts or any other
16 executive department, proper drafts for contracts, forms, or other
17 writings which may be wanted for the use of the state and report to
18 the Legislature, whenever requested, upon any business pertaining to
19 the duties of his or her office;

20 (8) To pay all money received, belonging to the people of
21 the state, immediately upon receipt thereof, into the state treasury;

22 (9) To keep a record in proper books provided for that
23 purpose at the expense of the state, a register of all actions and
24 demands prosecuted or defended by him or her in behalf of the state
25 and all proceedings had in relation thereto, and deliver the same to

1 his or her successor in office;

2 (10) To appear for the state and prosecute and defend all
3 civil or criminal actions and proceedings in the Court of Appeals or
4 Supreme Court in which the state is interested or a party. When
5 requested by the Governor or the Legislature, the Attorney General
6 shall appear for the state and prosecute or defend any action or
7 conduct any investigation in which the state is interested or a party
8 before any court, officer, board, tribunal, or commission;

9 (11) To prepare and promulgate model rules of procedure
10 appropriate for use by as many agencies as possible. The Attorney
11 General shall add to, amend, or revise the model rules as necessary
12 for the proper guidance of agencies;

13 (12) To include within the budget of the office
14 sufficient funding to assure oversight and representation of the
15 State of Nebraska for district court appeals of administrative
16 license revocation proceedings under section 60-498.04; and

17 (13) To create a Child Protection Division to be staffed
18 by at least three assistant attorneys general who each have five or
19 more years of experience in the prosecution or defense of felonies or
20 misdemeanors, including two years in the prosecution or defense of
21 crimes against children. Upon the written request of a county
22 attorney, the division shall provide consultation and advise and
23 assist in the preparation of the trial of any case involving a crime
24 against a child, including, but not limited to, the following
25 offenses:

- 1 (a) Murder as defined in sections 28-303 and 28-304;
2 (b) Manslaughter as defined in section 28-305;
3 (c) Kidnapping as defined in section 28-313;
4 (d) False imprisonment as defined in sections 28-314 and
5 28-315;
6 (e) Child abuse as defined in section 28-707;
7 (f) Pandering as defined in section 28-802;
8 (g) Debauching a minor as defined in section 28-805; and
9 (h) Offenses listed in sections 28-813, 28-813.01, and
10 28-1463.03.

11 Any offense listed in subdivisions (a) through (h) of
12 this subdivision shall include all inchoate offenses pursuant to the
13 Nebraska Criminal Code and compounding a felony pursuant to section
14 28-301. Such crimes shall not include matters involving dependent and
15 neglected children, infraction violations, custody, parenting time,
16 visitation, or other access matters, or child support. If the county
17 attorney declines in writing to prosecute a case involving a crime
18 against a child because of an ethical consideration, including the
19 presence or appearance of a conflict of interest, or for any other
20 reason, the division shall, upon the receipt of a written request of
21 the county attorney, the Department of Health and Human Services, the
22 minor child, the parents of the minor child, or any other interested
23 party, investigate the matter and either decline to prosecute the
24 matter or initiate the appropriate criminal proceedings in a court of
25 proper jurisdiction.

1 For purposes of this subdivision, child or children shall
2 mean an individual or individuals sixteen years of age or younger.

3 The Attorney General shall not bring an action pursuant
4 to 42 U.S.C. 6304.

5 Sec. 2. Original section 84-205, Reissue Revised Statutes
6 of Nebraska, is repealed.