

STATE OF SOUTH DAKOTA



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August 25, 2025

Hon. Taylor Rehfeldt
State Representative – District 14
Capitol Building, 3rd Floor
500 East Capitol Ave.
Pierre, SD 57501

OFFICIAL OPINION 25-02

Re: Official Opinion Concerning SDCL §§ 12-4-37 and 12-4-41

Dear Representative Rehfeldt,

In your capacity as State Representative, you have requested an official opinion from the Attorney General's Office on the following questions:

QUESTION:

Does the language in SDCL § 12-4-37 requiring the Secretary of State to post a weekly update of the statewide voter registration file on the Secretary of State's website conflict with the language of SDCL § 12-4-41 prohibiting information obtained from the statewide voter registration file from being placed for unrestricted access on the internet?

ANSWER:

No, the statutes can be interpreted in a manner that harmonizes their provisions and gives effect to both statutes.

FACTS:

The South Dakota Legislature passed House Bill 1062 during the 2025 legislative session. The bill, in part, requires the Secretary of State to post a weekly update of the statewide voter registration file to the Secretary of State's website. The language at issue in your request was enacted as an amendment to SDCL § 12-4-37. The language of SDCL § 12-4-41 prohibits statewide voter registration file information from being placed on the internet with unrestricted access. The question has arisen whether the duty imposed on the Secretary of State by SDCL § 12-4-37 conflicts with the prohibition found in SDCL § 12-4-41.

IN RE QUESTION:

As stated above, you have asked whether the identified provisions of SDCL §§ 12-4-37 and 12-4-41 conflict.

When interpreting statutes, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Comm’n*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “When the language in a statute is clear, certain and unambiguous, there is no reason for construction[.]” *In re Implicated Individual*, 2021 S.D. 61, ¶ 16, 966 N.W.2d 578-583. The intent of a statute “must be determined from the statute as a whole, as well as enactments relating to the same subject.” *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 807 (citations omitted).

SDCL § 12-4-37 states in part: “the secretary of state shall post a weekly update to the statewide voter registration file to the secretary of state’s website.” SDCL § 12-4-41 states in part: “[a]ny information obtained from the statewide voter registration file ... may not be sold, may not be used for any commercial purpose, and may not be placed for unrestricted access on the internet.” Upon initial review, the language of SDCL § 12-4-37 appears to conflict with the prohibition found in SDCL § 12-4-41.

“Where two statutes appear to conflict, it is [the reader’s] duty to reasonably interpret both, giving effect, if possible, to all provisions under consideration, construing them together to make them harmonious and workable.” *Faircloth v. Raven Industries, Inc.*, 2000 S.D. 158, ¶ 7, 620 N.W.2d 198, 201 (cleaned up). The implied repeal of one statute by the language of another is also strongly disfavored unless legislative intent to repeal is apparent in the legislative act. *Id.*, ¶ 10. I must also presume the Legislature was aware of the prohibition contained in SDCL § 12-4-41 when it enacted the posting

requirement in SDCL § 12-4-37. *State v. Young*, 2001 S.D. 76, ¶ 11, 630 N.W.2d 85, 89 (Legislature is presumed to be aware of prior laws when enacting new provisions).

Reviewing your question with these principles in mind, it is my opinion that SDCL § 12-4-37 and § 12-4-41 can be interpreted in a manner that harmonizes the statutes and gives effect to both provisions.

Reading the two provisions together, I conclude that it is reasonable to interpret SDCL § 12-4-37 as specifically authorizing the Secretary of State to post the weekly update of the statewide voter registration file to the Secretary's website, while SDCL § 12-4-41 operates to prohibit that information from being placed on the internet with unrestricted access. Under SDCL § 12-4-37 the Secretary of State is authorized to post the weekly update of the statewide voter registration file to the Secretary's website. But the prohibition in SDCL § 12-4-41 preexisted the recent amendment to SDCL § 12-4-37. The Legislature is presumed to have been aware of the "unrestricted access" prohibition at the time it tasked the Secretary of State with posting the statewide voter registration file online. That prohibition must and can be given its full effect.

It is my opinion, that while the Secretary of State is authorized to post the statewide voter registration file to the Secretary's website, it is reasonable for the Secretary of State to place certain requirements on accessing that file in order to give full effect to the "unrestricted access" language of SDCL § 12-4-41. Currently, the Secretary of State requires anyone seeking to access the statewide voter registration file to fill out an online request form providing that individual's contact information and their acknowledgement that they have read the provisions of SDCL §§ 12-4-9 and 12-4-41. Submittal of the form generates a onetime use link to access the statewide registration file. The link expires after twelve hours. This is a reasonable, and minimal, restriction on access to the statewide voter registration file that allows the Secretary of State to maintain compliance with the "unrestricted access" prohibition of SDCL § 12-4-41.

CONCLUSION

The language of SDCL § 12-4-37 and § 12-4-41 may initially appear to conflict, but I conclude that the statutes can be interpreted together to give full effect to the language of both statutes. As stated above, SDCL § 12-4-37 specifically authorizes the Secretary of State to post the weekly update of the statewide voter registration file on the Secretary's website, while SDCL § 12-4-41 prohibits the information from the statewide voter registration file from being

made available on the internet with unrestricted access. The Secretary of State has established a request procedure that gives full effect to the requirements of both provisions. If the Legislature intended a different result, it should clarify its intent regarding the interaction between the language identified in SDCL § 12-4-37 and § 12-4-41.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marty J. Jackley", with a long horizontal flourish extending to the right.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/SRB/dd