



2024 South Dakota Legislature

Senate Bill 96

Introduced by: **Senator Larson**

1 **An Act to prohibit the use of a deepfake to influence an election, to provide a penalty**
 2 **therefor, and to declare an emergency.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to chapter 12-26:**

5 For the purposes of this chapter, the term "deepfake" means any image, audio
 6 recording, or video recording created or manipulated with the use of artificial intelligence
 7 or other digital technology that is so realistic a reasonable person would believe it depicts
 8 the speech or conduct of an actual individual who did not in fact engage in the speech or
 9 conduct.

10 **Section 2. That a NEW SECTION be added to chapter 12-26:**

11 No person, with the intent to injure a candidate or influence the result of an
 12 election, may disseminate a deepfake or enter into a contract or other agreement to
 13 disseminate a deepfake, within ninety days of an election, if the person knows or
 14 reasonably should know the item being disseminated is a deepfake. A violation of this
 15 section is a Class 1 misdemeanor.

16 **Section 3. That a NEW SECTION be added to chapter 12-26:**

17 Section 2 of this Act does not apply if:
 18 (1) The deepfake constitutes satire or parody;
 19 (2) A radio or television broadcasting station, or cable or satellite television operator,
 20 programmer, or producer:
 21 (a) Broadcasts a deepfake as part of a bona fide newscast, news interview,
 22 news documentary, or on-the-spot coverage of a bona fide news event, if
 23 the broadcast clearly acknowledges through content or disclosure, in a

1 manner easily heard or read by the average listener or viewer, that there
2 are questions about the authenticity of the deepfake; or
3 (b) Is paid to broadcast a deepfake; or
4 (3) An internet website or regularly published newspaper, magazine, or other
5 periodical of general circulation, including an internet or electronic publication, that
6 routinely carries news and commentary of general interest, publishes a deepfake,
7 if the publication clearly states the deepfake does not accurately represent the
8 speech or conduct of the individual depicted.

9 **Section 4. That a NEW SECTION be added to chapter 12-26:**

10 The attorney general, a candidate who is injured or likely to be injured by the
11 dissemination of a deepfake in violation of section 2 of this Act, or the individual depicted
12 in a deepfake disseminated in violation of section 2 of this Act may seek injunctive or
13 other equitable relief prohibiting the dissemination of the deepfake.

14 **Section 5. That a NEW SECTION be added to chapter 12-26:**

15 A person who disseminates a deepfake in violation of section 2 of this Act is liable
16 to the candidate and the individual depicted in the deepfake for damages, reasonable costs
17 and attorney fees, and any other relief the court deems proper. The plaintiff bears the
18 burden of establishing the use of a deepfake by clear and convincing evidence in any
19 action brought pursuant to this section.

20 Nothing in this section limits any other cause of action from being brought against
21 a person who disseminates a deepfake in violation of section 2 of this Act.

22 **Section 6. That a NEW SECTION be added to chapter 12-26:**

23 It is an affirmative defense for any action brought pursuant to this Act that the
24 deepfake includes a disclosure stating: "This (image/video/audio) has been digitally
25 generated or manipulated and is not an accurate representation of fact or actual events."
26 For an image or video recording, the text of the disclosure must appear in a size that is
27 easily readable by the average viewer and no smaller than the largest font size of other
28 text appearing in the image or video recording. The disclosure must be superimposed over
29 each deepfake. For an audio recording, the disclosure must be read in a clearly spoken
30 manner and in a pitch that is easily heard by the average listener at the beginning and
31 end of the audio recording.

- 1 **Section 7.** Whereas, this Act is necessary for the immediate preservation of the public peace,
- 2 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force
- 3 and effect from and after its passage and approval.