

2024 South Dakota Legislature

Senate Bill 96**AMENDMENT 96B
FOR THE INTRODUCED BILL**

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 ~~and does not include~~
15 ~~with the deepfake the disclosure described in section 6 of this Act.~~ A violation of this
16 section is a Class 1 misdemeanor.

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

18 Section 2 of this Act does not apply if:

19 (1) The deepfake constitutes satire or parody;

20 (2) A radio or television broadcasting station, or cable or satellite television operator,
21 programmer, or producer:

22 (a) Broadcasts a deepfake as part of a bona fide newscast, news interview,
23 news documentary, or on-the-spot coverage of a bona fide news event, if
24 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~~ and has made a good faith effort to
 4 establish that the depiction is not a deepfake;

5 (3) An internet website or regularly published newspaper, magazine, or other
 6 periodical of general circulation, including an internet or electronic publication, that
 7 routinely carries news and commentary of general interest, publishes a deepfake,
 8 if the publication clearly states the deepfake does not accurately represent the
 9 speech or conduct of the individual depicted; or

10 (4) An internet service provider, domain provider, cloud service provider, or other
 11 provider that hosts, receives, transmits, stores, or provides access or connection
 12 to a website, network, system, or other content on the internet that features a
 13 deepfake, to the extent that the provider acts in a merely technical, automatic, or
 14 intermediate nature.

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

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

20 A person may be held liable by the State Board of Elections for violating section 2
 21 of this Act without the appropriate disclosures and may be fined as follows:

22 (1) If the person commits the violation within five years of one or more prior
 23 convictions under this section, not more than ten thousand dollars;

24 (2) If the person commits the violation with the intent to cause violence or bodily harm,
 25 not more than five thousand dollars; or

26 (3) In all other cases, not more than one thousand dollars.

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

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

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

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

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

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