

2025 South Dakota Legislature

Draft 132

Requested by: The Interim Committee on Artificial Intelligence and Regulation of Internet Access by Minors

1 **An Act to define artificial intelligence and other associated terms.**

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

3 **Section 1. That a NEW SECTION be added to chapter 2-14:**

4 As used in the South Dakota Codified Laws, the following terms mean:

5 (1) "Algorithm," a computational or machine learning process that consists of a set of
6 steps used to accomplish a determined task and informs human decision making;

7 (2) "Algorithmic discrimination," any condition in which the use of an automated
8 decision system or artificial intelligence results in an unlawful differential treatment
9 or impact that disfavors an individual or group of individuals on the basis of their
10 actual or perceived age, color, disability, ethnicity, genetic information, limited
11 proficiency in the English language, national origin, race, religion, reproductive
12 health, sex, veteran status, or other classification protected under the laws of this
13 state or under federal law. The term does not mean:

14 (a) An offer, license, or use of a high-risk artificial intelligence by a developer
15 or deployer for the sole purpose of the self-testing by the developer or
16 deployer to identify, mitigate, or prevent discrimination or otherwise ensure
17 compliance with state or federal law;

18 (b) An offer, license, or use of a high-risk artificial intelligence by a developer
19 or deployer for the sole purpose of expanding an applicant, customer, or
20 participant pool to increase diversity or redress historical discrimination; or

21 (c) An act or omission by or on behalf of a private club or other establishment
22 that is not open to the public;

23 (3) "Artificial intelligence," any machine-based system that, for any explicit or implicit
24 objective, infers from the inputs received by the system how to generate content,
25 decisions, predictions, recommendations, or other outputs, that can influence
26 physical or virtual environments;

27 (4) "AI-generated content," any image, video, audio, multimedia, or text content that
28 is substantially created or modified by generative artificial intelligence so that the
29 use of generative artificial intelligence alters the meaning or significance that a

reasonable person would take away from the content. The term excludes: an image, video, audio, multimedia, or text content that is minimally edited, adjusted, or enhanced by generative artificial intelligence so that the use of the generative artificial intelligence does not materially alter the meaning or significance that a reasonable person would take away from the content;

(5) "Automated decision system," any system that is used to make or assist in decisions that impact the lives of individuals that is substantially based on artificial intelligence, machine learning, computerized algorithms, automated statistical or probabilistic modeling, or other similar techniques;

(6) "Consequential decision," a decision that has a material legal or similarly significant effect on the provision or denial to any individual of, or the cost or terms of:

(a) Education enrollment or an education opportunity;

(b) Employment or an employment opportunity;

(c) A financial or lending service;

(d) An essential government service;

(e) Healthcare services;

(f) Housing;

(g) Insurance; or

(h) A legal service;

(7) "Deepfake," an image, video, audio, or multimedia AI-generated content that falsely appears to be authentic or truthful and features a depiction of an individual appearing to say or do something that the individual did not say or do;

(8) "Generative artificial intelligence," an artificial intelligence capable of generating novel image, video, audio, multimedia, or text content based on prompts or other forms of data provided by an individual;

(9) "High-risk artificial intelligence," any artificial intelligence that, when deployed, makes or is a substantial factor in making consequential decisions. The term does not include the following technologies, unless the technology, when deployed, makes, or is a substantial factor in making a consequential decision:

(a) An artificial intelligence if the system is intended to perform a narrow procedural task or detect decision-making patterns or deviations from prior decision-making patterns and is not intended to replace or influence a previously completed human assessment without sufficient human review;

(b) Any anti-fraud technology that does not use facial recognition technology;

(c) Anti-malware software;

- 1 (d) Anti-virus software;
2 (e) Any artificial intelligence-enabled video game;
3 (f) Calculator;
4 (g) Cybersecurity;
5 (h) Database;
6 (i) Data storage;
7 (j) Firewall;
8 (k) Internet domain registration;
9 (l) Internet website loading;
10 (m) Networking;
11 (n) Spam-filtering;
12 (o) Robocall-filtering;
13 (p) Web caching;
14 (q) Spell-checking;
15 (r) Spreadsheet;
16 (s) Web hosting; or
17 (t) Technology that communicates with an individual in a natural language for
18 the purpose of providing the individual with information, making a referral
19 or recommendation, or answering a question and is subject to an accepted
20 use policy that prohibits generating content that is discriminatory or
21 harmful;
22 (10) "Metadata," structural or descriptive information about data; and
23 (11) "Predictive model," a process of using mathematical or computational methods that
24 examine current and historical data sets for underlying patterns and calculate the
25 probability of an outcome.
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