

2025 South Dakota Legislature

Senate Bill 164**AMENDMENT 164A
FOR THE INTRODUCED BILL**

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

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 Act, 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 (1) ~~Appears to a reasonable person to depict a real individual saying or doing~~
11 ~~something that did not actually occur in reality; or~~

12 (2) ~~Provides a reasonable person a fundamentally different understanding or~~
13 ~~impression of an individual's appearance, action, or speech than the person would~~
14 ~~have from an unaltered, original version of the image, audio recording, or video~~
15 ~~recording.~~

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

17 No person, with the intent to injure a candidate, may disseminate a deepfake or
18 enter into a contract or other agreement to disseminate a deepfake, within ninety days of
19 an election, if the person knows or reasonably should know the item being disseminated
20 is a deepfake and does not include with the deepfake the disclosure described in section
21 6 of this Act.

22 A violation of this section is a Class 1 misdemeanor.

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

24 Section 2 of this Act does not apply:

- 1 (1) If the deepfake constitutes satire or parody;
2 (2) To a radio or television broadcasting system, or cable or satellite television
3 operator, programmer, or producer that:
4 (a) Broadcasts a deepfake as part of a bona fide newscast, news interview,
5 news documentary, or on-the-spot coverage of a bona fide news event, if
6 the broadcast clearly acknowledges through content or disclosure, in a
7 manner easily heard or read by the average listener or viewer, that there
8 are questions about the authenticity of the deepfake; or
9 (b) Is paid to broadcast or publish a deepfake;
10 (3) To an internet website or regularly published newspaper, magazine, or other
11 periodical of general circulation, including an internet or electronic publication, that
12 routinely carries news and commentary of general interest~~and is paid to publish~~
13 ~~or otherwise disseminate, that publishes~~ a deepfake, ~~if the publication clearly~~
14 ~~states the deepfake does not accurately represent the speech or conduct of the~~
15 ~~individual depicted in the deepfake; or~~
16 (4) To an internet service provider, domain provider, cloud service provider, or other
17 provider that hosts, receives, transmits, stores, or provides access or connection
18 to a website, network, system, or other content on the internet that features a
19 deepfake, to the extent that the provider acts in a merely technical, automatic, or
20 intermediate nature.

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

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

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

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

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

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

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