

2025 South Dakota Legislature

Senate Bill 164**AMENDMENT 164C
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 Terms used in this~~
6 ~~Act mean:~~

7 ~~(1) "Artificial intelligence," any machine-based system that, for any explicit or implicit~~
8 ~~objective, infers from the inputs received by the system how to generate content,~~
9 ~~decisions, predictions, recommendations, or other outputs, which can influence~~
10 ~~physical or virtual environments; and~~

11 ~~(2) "Deepfake," any image, audio recording, or video recording created or manipulated~~
12 ~~with the use of artificial intelligence or other digital technology that is so realistic,~~
13 ~~a reasonable person would believe it depicts the speech or conduct of an actual~~
14 ~~individual who did not in fact engage in the speech or conduct.~~

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

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

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

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

23 Section 2 of this Act does not apply:

24 (1) If the deepfake constitutes satire or parody;

1 (2) To a radio or television broadcasting system, or cable or satellite television
2 operator, programmer, or producer that:

3 (a) Broadcasts a deepfake as part of a bona fide newscast, news interview,
4 news documentary, or on-the-spot coverage of a bona fide news event, if
5 the broadcast clearly acknowledges through content or disclosure, in a
6 manner easily heard or read by the average listener or viewer, that there
7 are questions about the authenticity of the deepfake; or

8 (b) Is paid to broadcast or publish a deepfake;

9 (3) To an internet website or regularly published newspaper, magazine, or other
10 periodical of general circulation, including an internet or electronic publication, that
11 routinely carries news and commentary of general interest and is paid to publish
12 or otherwise disseminate a deepfake; or

13 (4) To an ~~internet computer service, as defined in 47 U.S.C. § 230 (January 3, 2024),~~
14 internet service provider, domain provider, cloud service provider, or other
15 provider that hosts, receives, transmits, stores, or provides access or connection
16 to a website, network, system, or other content on the internet that features a
17 deepfake, to the extent that the provider acts in a merely technical, automatic, or
18 intermediate nature.

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

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

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

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

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

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

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