



2026 South Dakota Legislature

House Bill 1144

Introduced by: **Representative** Rehfeldt

1 **An Act to restrict the use of artificial intelligence in therapy and psychotherapy**
 2 **services and to provide a 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 a NEW CHAPTER in title 36:**

5 Terms used in this chapter mean:

6 (1) "Artificial intelligence," a machine-based system that, for explicit or implicit
 7 objectives, infers from the input it receives, how to generate predictions, content,
 8 recommendations, decisions, or other outputs that can influence physical or virtual
 9 environments;

10 (2) "Licensed professional," an individual:

11 (a) Licensed as a psychologist in accordance with chapter 36-27A;

12 (b) Licensed as a social worker, certified social worker, or certified social worker
 13 in private, independent practice, in accordance with chapter 36-26;

14 (c) Licensed as a professional counselor or a professional counselor-mental
 15 health, in accordance with chapter 36-32;

16 (d) Licensed as a marriage and family therapist in accordance with chapter 36-
 17 33;

18 (e) Licensed or certified as an addiction and prevention professional in
 19 accordance with chapter 36-34; or

20 (f) Who holds any other license issued by this state, which authorizes the
 21 individual to provide therapy or psychotherapy services, except a physician
 22 licensed in accordance with chapter 36-4;

23 (3) "Therapeutic communication," any verbal, non-verbal, or written interaction with
 24 a client, conducted in a clinical or professional setting, which is intended to
 25 diagnose, treat, or address an individual's mental, emotional, or behavioral health
 26 concerns; and

- 1 (4) "Therapy or psychotherapy services," services provided to diagnose, treat, or
2 improve an individual's mental or behavioral health.

3 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 36:**

4 A person may not:

- 5 (1) Use or permit artificial intelligence to:
6 (a) Make independent therapeutic decisions;
7 (b) Interact with individuals in any form of therapeutic communication;
8 (c) Generate therapeutic recommendations or treatment plans without review
9 and approval by a licensed professional;
10 (d) Detect emotions or mental states; or
11 (e) Record or transcribe a therapeutic session, except as provided in section 5
12 of this Act;
13 (2) Use, or permit the use of, artificial intelligence in the provision of therapy or
14 psychotherapy services, except as provided in this chapter, by a licensed
15 professional; or
16 (3) Advertise, or otherwise offer, therapy or psychotherapy services using artificial
17 intelligence, except as provided in this chapter.

18 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 36:**

19 The secretary of the Department of Health may impose a civil penalty against a
20 person for violating section 2 of this Act. The amount of the civil penalty may not exceed
21 ten thousand dollars per violation. The secretary shall forward any civil penalty collected
22 under this section to the state treasurer, for deposit in the general fund.

23 The department may investigate any actual, alleged, or suspected violation of this
24 chapter.

25 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 36:**

26 A licensed professional may use artificial intelligence only to assist in the delivery
27 of therapy or psychotherapy services as follows:

- 28 (1) Managing appointment scheduling and reminders;
29 (2) Processing billing and insurance claims;
30 (3) Managing records and organizing, tracking, and managing files or notes related to
31 an individual session with a client;

- 1 (4) Analyzing anonymized data to track client progress or identify trends;
2 (5) Identifying and organizing external resources or referrals for client use;
3 (6) Recording or transcribing a therapeutic session, as provided in section 5 of this
4 Act; and
5 (7) Performing any other administrative task, used in the delivery of therapy or
6 psychotherapy services, which does not involve therapeutic communication.

7 The licensed professional must maintain full responsibility for all interactions,
8 outputs, and data use associated with artificial intelligence used in the licensed
9 professional's practice.

10 Any licensed professional who violates this chapter is subject to disciplinary action
11 by the professional's licensure board.

12 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 36:**

13 A licensed professional may use artificial intelligence to record or transcribe a
14 therapeutic session only if the client or the client's legally authorized representative:

- 15 (1) Is informed, in writing, that artificial intelligence will be used;
16 (2) Is informed, in writing, of the specific purpose for which artificial intelligence will
17 be used; and
18 (3) Consents to the use of artificial intelligence for the stated purpose, in accordance
19 with section 6 of this Act.

20 Any consent provided to the use of artificial intelligence is revocable by the client
21 or the client's legally authorized representative.

22 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 36:**

23 The consent required by section 5 of this Act must be a clear and explicit written
24 approval that unambiguously communicates the informed and voluntary consent of the
25 client or the client's legally authorized representative.

26 The consent may not be obtained:

- 27 (1) By accepting the terms of a general or broad use agreement, or a similar document
28 that contains descriptions of artificial intelligence along with other unrelated
29 information;
30 (2) By hovering over, muting, pausing, or closing a given piece of digital content; or
31 (3) Through the use of deceptive actions.

32 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 36:**

- 1 This chapter does not apply to:
- 2 (1) Counseling services that are:
- 3 (a) Provided by a clergy member, pastoral counselor, or other religious leader
4 acting within the scope of a religious duty; and
- 5 (b) Explicitly faith-based and not represented as clinical mental health services
6 or as therapy or psychotherapy services;
- 7 (2) Peer support services that are provided by individuals with lived experience of
8 mental health conditions or recovery from substance use and which are intended
9 to offer encouragement, understanding, and guidance without clinical intervention;
- 10 (3) Self-help materials and educational resources that are available to the public and
11 do not purport to offer therapy or psychotherapy services; or
- 12 (4) Counseling or services provided by a school counselor certified by the Department
13 of Education as required by § 13-10-17.