



## 2026 South Dakota Legislature

# Senate Bill 41

HOUSE ENGROSSED

*Introduced by: The Chair of the Committee on Judiciary at the request of the Attorney General*

1 **An Act to revise a provision related to criminal invasions of privacy, prohibit the**  
 2 **creation and distribution of digitally fabricated material of an identifiable**  
 3 **individual, and provide penalties therefor.**

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

5 **Section 1. That § 22-21-4 be AMENDED:**

6 **22-21-4.** No person may individual, without the consent or knowledge of the  
 7 individual depicted or recorded, and with the intent to self-gratify or alarm, annoy,  
 8 embarrass, harass, invade the privacy of, threaten, or cause emotional, financial, physical,  
 9 psychological, or reputational harm to that individual, may:

- 10 (1) ~~Use~~ Intentionally use any device to photograph or visually record:  
 11 (a) ~~Any other person~~ the individual without clothing or under or through the clothing,  
 12 or with ~~another person~~ a third individual depicted in a sexual act, for the purpose  
 13 of viewing the body of, or the undergarments worn by, ~~that other person;~~  
 14 (b) ~~Without the consent or knowledge of that other person;~~ and  
 15 (c) ~~With the intent to self-gratify, to harass, or embarrass and invade the privacy of~~  
 16 ~~that other person, under circumstances in which the other person has a reasonable~~  
 17 ~~expectation of privacy~~ the individual;  
 18 (2) ~~Use, disclose, or~~ Intentionally disclose, disseminate, distribute, sell, or use, by any  
 19 means, any recording or photograph ~~in violation of~~ described in subdivision (1), ~~in~~  
 20 ~~order to self-gratify, to harass, or to embarrass and invade the privacy of that~~  
 21 ~~other person; or~~  
 22 (3) ~~Knowingly and intentionally disseminate or sell any image or recording of another~~  
 23 ~~person;~~  
 24 (a) ~~That has been intentionally manipulated to create a realistic but false image or~~  
 25 ~~recording that would cause a reasonable person to mistakenly believe that the~~  
 26 ~~image or recording is authentic;~~

- 1 ~~(b) That depicts the person as totally nude; in a state of undress to expose the genitals,~~  
 2 ~~pubic area, buttocks, or female breast; or with another person in a sexual act;~~  
 3 ~~(c) Without the consent or knowledge of the person whose image is depicted; and~~  
 4 ~~(d) With the intent to self-gratify, to harass, or embarrass and invade the privacy of~~  
 5 ~~the person whose image is depicted; or~~  
 6 (3) Knowingly and intentionally create, disclose, disseminate, distribute, or sell, by any  
 7 means, digitally fabricated material depicting the identifiable individual:  
 8 (a) In a state of nudity, as defined in § 22-24A-2, such that an ordinary person  
 9 viewing the material would conclude that the depiction is of the identifiable  
 10 individual in such a state of nudity; or  
 11 (b) Engaging in sexual contact, sexual intercourse, deviant sexual activity, or  
 12 sexually explicit conduct such that an ordinary person viewing the material  
 13 would conclude that the depiction is of the identifiable individual engaging  
 14 in sexual contact, sexual intercourse, deviant sexual activity, or sexually  
 15 explicit conduct.

16 A violation of ~~this section~~ subdivision (1) or (2) is a Class 1 misdemeanor. ~~However,~~  
 17 ~~a violation of this section is a Class 6 felony if, unless~~ the victim is seventeen years of age  
 18 or younger and the perpetrator is at least twenty-one years of age at the time the  
 19 photograph or recording is made, in which case the violation is a Class 6 felony. Any  
 20 subsequent violation of subdivision (1) or (2) is a Class 6 felony. A violation of subdivision  
 21 (3) is a Class 5 felony.

22 **Section 2. That a NEW SECTION be added to chapter 22-21:**

23 Terms used in § 22-21-4 mean:

- 24 (1) "Digitally fabricated material," an image, photograph, video, or other visual  
 25 depiction that:  
 26 (a) Appears to an ordinary person to be an authentic depiction of an identifiable  
 27 individual; and  
 28 (b) Is adapted, generated, or modified to falsely depict an individual's  
 29 appearance, conduct, or voice; and  
 30 (2) "Identifiable," recognizable as a specific individual by the individual's face, likeness,  
 31 or other distinguishing characteristics.