

2024 South Dakota Legislature

Senate Bill 96**AMENDMENT 96G
FOR THE SENATE ENGROSSED 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 chapter, 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 **Section 2. That a NEW SECTION be added to chapter 12-26:**

11 No person, with the intent to injure a candidate, may disseminate a deepfake or
12 enter into a contract or other agreement to disseminate a deepfake, within ninety days of
13 an election, if the person knows or reasonably should know the item being disseminated
14 is a deepfake and does not include with the deepfake the disclosure described in section
15 6 of this Act. A violation of this section is a Class 1 misdemeanor.

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

17 Section 2 of this Act does not apply if:

18 (1) The deepfake constitutes satire or parody;

19 (2) A radio or television broadcasting station, or cable or satellite television operator,
20 programmer, or producer:

21 (a) Broadcasts a deepfake as part of a bona fide newscast, news interview,
22 news documentary, or on-the-spot coverage of a bona fide news event, if
23 the broadcast clearly acknowledges through content or disclosure, in a

- 1 manner easily heard or read by the average listener or viewer, that there
 2 are questions about the authenticity of the deepfake; or
 3 (b) Is paid to broadcast or publish a deepfake;
 4 (3) An internet website or regularly published newspaper, magazine, or other
 5 periodical of general circulation, including an internet or electronic publication,
 6 routinely carries news and commentary of general interest and is paid to publish
 7 or otherwise disseminate a deepfake; or
 8 (4) An internet service provider, domain provider, cloud service provider, or other
 9 provider that hosts, receives, transmits, stores, or provides access or connection
 10 to a website, network, system, or other content on the internet that features a
 11 deepfake, to the extent that the provider acts in a merely technical, automatic, or
 12 intermediate nature.

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

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

18 ~~A person may be held liable by the State Board of Elections for violating section 2~~
 19 ~~of this Act without the appropriate disclosures and may be fined as follows:~~

- 20 ~~(1) If the person commits the violation within five years of one or more prior~~
 21 ~~convictions under this section, not more than ten thousand dollars;~~
 22 ~~(2) If the person commits the violation with the intent to cause violence or bodily harm,~~
 23 ~~not more than five thousand dollars; or~~
 24 ~~(3) In all other cases, not more than one thousand dollars.~~

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

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

31 Nothing in this section limits any other cause of action from being brought against
 32 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 For an image or video recording, the text of the disclosure must appear in a size that is
6 easily readable by the average viewer and no smaller than the largest font size of other
7 text appearing in the image or video recording. The disclosure must be superimposed over
8 each deepfake. For an audio recording, the disclosure must be read in a clearly spoken
9 manner and in a pitch that is easily heard by the average listener at the beginning and
10 end of the audio recording.