Chapter 68

(Senate Bill 164)

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

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

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

Terms used in this Act mean:

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

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

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

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

A violation of this section is a Class 1 misdemeanor.

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

Section 2 of this Act does not apply:

(1) If the deepfake constitutes satire or parody;

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

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

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

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

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

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

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

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

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

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

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

It is an affirmative defense for any action brought pursuant to this Act that the deepfake includes a disclosure stating: "This (image/video/audio) has been manipulated or generated by artificial intelligence." For an image or video recording, the text of the disclosure must appear in a size that is easily readable by the average viewer and no smaller than the largest font size of other text appearing in the image or video recording. The disclosure must be superimposed over each deepfake. For an audio recording, the disclosure must be read in a clearly spoken manner and in a pitch that is easily heard by the average listener at the beginning and end of the audio recording.

Signed March 25, 2025