Chapter 104

(Senate Bill 41)

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

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

Section 1. That § 22-21-4 be AMENDED:

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

(1) ~~Use~~ Intentionally use any device to photograph or visually record~~:~~

~~(a) Any other person~~ the individual without clothing or under or through the clothing, or with ~~another person~~ a third individual depicted in a sexual act, for the purpose of viewing the body of, or the undergarments worn by, ~~that other person;~~

~~(b) Without the consent or knowledge of that other person; and~~

~~(c) With the intent to self-gratify, to harass, or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy~~ the individual;

(2) ~~Use, disclose, or~~ Intentionally disclose, disseminate, distribute, sell, or use, by any means, any recording or photograph ~~in violation of~~ described in subdivision (1)~~, in order to self-gratify, to harass, or to embarrass and invade the privacy of that other person; or~~

~~(3) Knowingly and intentionally disseminate or sell any image or recording of another person:~~

~~(a) That has been intentionally manipulated to create a realistic but false image or recording that would cause a reasonable person to mistakenly believe that the image or recording is authentic;~~

~~(b) That depicts the person as totally nude; in a state of undress to expose the genitals, pubic area, buttocks, or female breast; or with another person in a sexual act;~~

~~(c) Without the consent or knowledge of the person whose image is depicted; and~~

~~(d) With the intent to self-gratify, to harass, or embarrass and invade the privacy of the person whose image is depicted~~; or

(3) Knowingly and intentionally create, disclose, disseminate, distribute, or sell, by any means, digitally fabricated material depicting the identifiable individual:

(a) In a state of nudity, as defined in § 22-24A-2, such that an ordinary person viewing the material would conclude that the depiction is of the identifiable individual in such a state of nudity; or

(b) Engaging in sexual contact, sexual intercourse, deviant sexual activity, or sexually explicit conduct such that an ordinary person viewing the material would conclude that the depiction is of the identifiable individual engaging in sexual contact, sexual intercourse, deviant sexual activity, or sexually explicit conduct.

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

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

Terms used in § 22-21-4 mean:

(1) "Digitally fabricated material," an image, photograph, video, or other visual depiction that:

(a) Appears to an ordinary person to be an authentic depiction of an identifiable individual; and

(b) Is adapted, generated, or modified to falsely depict an individual's appearance, conduct, or voice; and

(2) "Identifiable," recognizable as a specific individual by the individual's face, likeness, or other distinguishing characteristics.

Signed March 16, 2026