



## 2022 South Dakota Legislature

# Senate Bill 121

Introduced by: **Senator** Castleberry

1 **An Act to restrict the distribution of deceptive images or recordings with the intent**  
 2 **to influence the outcome of an election.**

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

4 **Section 1. That chapter 12-1 be amended with a NEW SECTION:**

5 For purposes of sections 1 to 11, inclusive, of this Act, the term, materially  
 6 deceptive media, means an image, an audio recording, or a video recording of a  
 7 candidate's appearance, speech, or conduct that has been intentionally manipulated to  
 8 create a realistic but false image, audio, or video that produces:

9 (1) A depiction that would cause a reasonable person to believe the image or recording  
 10 is of the authentic candidate in appearance, action, or speech; and

11 (2) A fundamentally different understanding or impression of the appearance, action,  
 12 or speech than a reasonable person would have from the unaltered, original version  
 13 of the image, audio recording, or video recording.

14 The term does not include any image, audio recording, or video recording that  
 15 constitutes satire or parody.

16 **Section 2. That chapter 12-1 be amended with a NEW SECTION:**

17 Except as provided in sections 3 to 8, inclusive, of this Act, a person may not, on  
 18 the day of an election at which a voter will vote for one or more candidates on the ballot  
 19 or within ninety days before election day, with knowledge of falsity or with reckless  
 20 disregard as to truth or falsity, publish or distribute materially deceptive media of a  
 21 candidate on the ballot with the intent to injure the candidate's reputation or to deceive a  
 22 voter into voting for or against the candidate.

23 **Section 3. That chapter 12-1 be amended with a NEW SECTION:**

1           A person may, on the day of an election at which a voter will vote for one or more  
2           candidates on the ballot or within ninety days before election day, publish or distribute an  
3           image that would otherwise qualify as materially deceptive media of a candidate on the  
4           ballot, if the image is accompanied by the disclosure that the image has been manipulated.  
5           The disclosure must be printed immediately adjacent to the image in a font size that is  
6           easily readable by the average viewer and that is no smaller than the largest font size of  
7           other text, if any, published or distributed with the image.

8           **Section 4. That chapter 12-1 be amended with a NEW SECTION:**

9           A person may, on the day of an election at which a voter will vote for one or more  
10          candidates on the ballot or within ninety days before election day, publish or distribute a  
11          video recording that would otherwise qualify as materially deceptive media of a candidate  
12          on the ballot, if the video recording contains the disclosure that the video has been  
13          manipulated. The disclosure must appear for the duration of the video recording in a font  
14          size that is easily readable by the average viewer and that is no smaller than the largest  
15          font size of other text, if any, included in the video recording.

16          **Section 5. That chapter 12-1 be amended with a NEW SECTION:**

17          A person may, on the day of an election at which a voter will vote for one or more  
18          candidates on the ballot or within ninety days before election day, publish or distribute an  
19          audio recording that would otherwise qualify as a materially deceptive media of a  
20          candidate on the ballot, if the audio recording contains the disclosure that the audio has  
21          been manipulated. The disclosure must be read in a clearly spoken manner and in a pitch  
22          that can be easily heard by the average listener, at the beginning and end of the audio  
23          recording and, if the audio recording is longer than two minutes, interspersed within the  
24          audio recording at intervals of no greater than two minutes.

25          **Section 6. That chapter 12-1 be amended with a NEW SECTION:**

26          A radio or television broadcasting station, or a cable or satellite television operator,  
27          programmer or producer, may broadcast materially deceptive media as part of a bona fide  
28          newscast, news interview, news documentary, or on-the-spot coverage of a bona fide  
29          news event if the broadcast includes in a clear statement that can be easily heard or read  
30          by the average listener or viewer that there are questions about the authenticity of the  
31          materially deceptive media.

1 **Section 7. That chapter 12-1 be amended with a NEW SECTION:**

2 A radio or television broadcasting station, or a cable or satellite television operator,  
3 programmer or producer, may broadcast materially deceptive media if it is paid to do so.

4 **Section 8. That chapter 12-1 be amended with a NEW SECTION:**

5 The owner of a publicly accessible website or the publisher or printer of a regularly  
6 published newspaper, magazine, other periodical of general circulation, or electronic  
7 publication, that routinely carries news and commentary of general interest may publish  
8 materially deceptive media, if the media is accompanied by a clear statement that the  
9 media does not accurately represent the speech or conduct of a candidate whose  
10 appearance, speech, or conduct is manipulated.

11 **Section 9. That chapter 12-1 be amended with a NEW SECTION:**

12 A candidate whose voice or image appears in a materially deceptive media  
13 published or distributed in violation of section 2 of this Act, may seek a temporary  
14 restraining order and injunction prohibiting publication or distribution of the materially  
15 deceptive media. The candidate bears the burden of proving a violation by clear and  
16 convincing evidence.

17 **Section 10. That chapter 12-1 be amended with a NEW SECTION:**

18 A candidate whose voice or image appears in materially deceptive media published  
19 or distributed in violation of section 2 of this Act may bring a civil action against the person  
20 that published or distributed the materially deceptive media for the recovery of general or  
21 special damages and reasonable attorney's fees and court costs. The candidate bears the  
22 burden of proving a violation of this section by clear and convincing evidence. Nothing in  
23 this section prohibits a candidate from seeking monetary or equitable relief through other  
24 actions as permissible by law.

25 **Section 11. That chapter 12-1 be amended with a NEW SECTION:**

26 Sections 1 to 11, inclusive, of this Act may not be construed to alter any rights,  
27 obligations, or immunities of an interactive computer service under 47 U.S.C. § 230, as  
28 of January 1, 2021.