



ARIZONA HOUSE OF REPRESENTATIVES

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House: MOE DPA 9-0-0-0

HB 2394: candidates; digital impersonation; injunctive relief

Sponsor: Representative Kolodin, LD 3

House Engrossed

Overview

An emergency measure that outlines the process for a person to bring an action for declaratory and injunctive relief for a published act of digital impersonation.

History

Any person involved in legal documents such as deeds or contracts, or those impacted by statute, municipal ordinance or agreements have the right to seek resolution for any questions about the interpretation or validity of the documents. This legal process allows them to obtain a formal declaration concerning their rights, status or other legal relationships specified in those documents ([A.R.S. § 12-1832](#)).

There are three main evidentiary standards used in Arizona law: 1) proof *beyond a reasonable doubt*; 2) proof *by a preponderance of the evidence*; and 3) proof *by clear and convincing evidence*. The preponderance of evidence standard requires that the fact-finder determine whether a fact sought to be proved is more probable than not. Clear and convincing evidence, by contrast, reflects a heightened standard of proof that indicates that the thing to be proved is highly probable or reasonably certain. The clear and convincing evidence standard is an intermediate standard, between proof beyond a reasonable doubt and proof by a preponderance of the evidence (*Kent K. v. Bobby M.*, 210 Ariz. 279, 2005).

Provisions

1. Allows a person running for public office or any citizen of this state to take action for digital impersonation within two years from the date that the person becomes aware, or with reasonable diligence should have become aware, that a digital impersonation of the person was published. (Sec. 1)
2. States that the remedy for the cause of action of digital impersonation is preliminary and permanent declaratory relief except as otherwise provided in this section of statute. Sec. 1)
3. Requires, to prevail in a cause of action for digital impersonation, the plaintiff to prove all of the following by a preponderance of evidence:
 - a) that a digital impersonation of the person was published without the person's consent; and
 - b) that upon publication, the publisher did not reasonably convey to the audience that the recording or image was a digital impersonation or that its authenticity was disputed, or it was not otherwise obvious that the publication was a digital impersonation. (Sec. 1)

Prop 105 (45 votes) Prop 108 (40 votes) Emergency (40 votes) Fiscal Note

4. Specifies that if the digital impersonation is part of a paid advertisement, the cause of action for declaratory judgement can only be brought against the person or entity that originated, ordered, placed or paid for the advertisement. (Sec. 1)
5. Prohibits, for the purposes of this law, a provider of an interactive computer service from being treated as the publisher or speaker of any information provided by another information content provider.
6. Allows a person bringing an action for digital impersonation to petition the superior court, within two business days after the petition is filed, for a preliminary judicial declaration that a recording or image is a digital impersonation:
 - a) in the county the person resides;
 - b) in Maricopa County Superior Court if the person is a candidate for President; or
 - c) in any county in which one of the candidate's appointees for elector resides. (Sec. 1)
7. Mandates that preliminary declaratory relief can only be granted if the person proves by a preponderance of evidence the elements of digital impersonation explained above and if any of the following are met:
 - a) the person is a candidate for public office in an election that is scheduled within 180 days of the date that the relief is requested;
 - b) the digital impersonation depicts the person engaging in a sexual act or depicts specified body parts of the person as unclothed;
 - c) the digital impersonation depicts the person engaging in a criminal act;
 - d) in the absence of expedited relief, it is reasonably expected that the person will suffer significant personal or financial hardship or loss of employment opportunities;
 - e) in the absence of expedited relief, the persons reputation will be irreparably harmed;
or
 - f) the interests of justice otherwise require. (Sec. 1)
8. States that the publisher of the alleged digital impersonation has the right to appear, be heard and present evidence prior to the court's entry of a preliminary declaratory judgement. (Sec. 1)
9. Instructs the plaintiff to make all reasonable efforts to provide service and notice immediately upon filing the complaint. (Sec. 1)
10. Prohibits the plaintiff from being entitled to taxable costs if the publisher does not appear and no other party intervenes as a defendant. (Sec. 1)
11. Stipulates that actions in which the petitioner is a candidate, public official or public figure are to be deemed as having been abated if the publisher does not appear and no other party intervenes as a defendant within 30 days of the court's issuance of a preliminary declaratory judgement. (Sec. 1)
12. Specifies that if this subsection or its application is held invalid, that invalidity must not affect other provisions or applications of the act. (Sec. 1)
13. Entitles a person bringing an action for digital impersonation the right to recover injunctive relief and damages if the following are met:
 - a) the digital impersonation depicts the person engaging in a sexual act or depicts specified body parts of the person as unclothed;
 - b) the person was not a public figure at the time the cause of action accrued;

- c) the elements of digital impersonation explained above are proven by clear and convincing evidence; and
 - d) the person proves by clear and convincing evidence that the publication was made with actual knowledge that the recording or image was a digital impersonation or, if published without actual knowledge, the publisher failed to take *reasonable corrective action* within 21 days after learning that the recording or image was a digital impersonation. (Sec. 1)
14. Classifies *reasonable corrective action* as removing or disabling access to the digital impersonation or publishing a statement that the publication was a digital impersonation to the appropriate audience. (Sec. 1)
 15. Prohibits any factual determinations made by the court in a request for preliminary relief from being considered by the trier of fact at any later stage of the proceeding. (Sec. 1)
 16. Adds that a parent or guardian of a minor child or incapacitated person can seek relief under this section on the minor child's or incapacitated person's behalf. (Sec. 1)
 17. Specifies that this section be construed in favor of free and open discourse on the matters of public concern and artistic expression and should not be construed to deny any cause of action otherwise available. (Sec. 1)
 18. Stipulates that this section must not be construed to limit a party's constitutional right to trial by jury. (Sec. 1)
 19. Entitles both parties to actions seeking permanent declaratory relief the right to trial by jury. (Sec. 1)
 20. Defines the terms *appear on the ballot in this state, digital impersonation, election, information content provider, interactive computer service, public figure* and *public office*. (Sec. 1)
 21. Contains an emergency clause. (Sec. 2)