



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

AMENDED
FACT SHEET FOR H.B. 2394

candidates; digital impersonation; injunctive relief

Purpose

An emergency measure, effective 14 days after signature of the Governor, that allows a candidate who will appear on the ballot in Arizona or any citizen of Arizona to initiate an action against the digital impersonation of the person and outlines requirements relating to an action and a subsequent order for preliminary declaratory relief, permanent declaratory relief or injunctive relief.

Background

Generative artificial intelligence (AI) is technology that can create content, including text, images, audio, or video, when prompted by a user. Generative AI systems create responses using algorithms that are trained often on open-source information, such as text and images from the internet. Generative AI systems learn patterns and relationships from massive amounts of data, which enables them to generate new content that may be similar, but not identical, to the underlying training data ([U.S. Government Accountability Office](#)).

Arizona courts of record, within the courts' respective jurisdictions, have the power to declare rights, status and other legal relations regardless of whether further relief is or could be claimed. The declaration may be affirmative or negative in form and effect, and the declaration has the force and effect of a final judgment or decree. A person may request a declaration from the court for outlined reasons, including if the person's rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise (A.R.S. §§ [12-1831](#) and [12-1832](#)).

A judge of the superior court may grant a writ of injunction if: 1) it appears that the party applying for the injunction is entitled to the relief demanded and the relief demanded requires the restraint of an act that is harmful to the applicant; 2) pending litigation, it appears that a party is about to do an act that violates the rights of the applicant and that would render the judgement of the litigation ineffective; or 3) the applicant is entitled to an injunction under the principles of equity ([A.R.S. § 12-1801](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Allows a candidate who will appear on the Arizona ballot for public office, political party office or any citizen of Arizona to bring an action for digital impersonation of the person within two years of the person's knowledge of, or when the person exercising reasonable diligence should know, that a digital impersonation of the person was published.

2. States that the only remedy for a digital impersonation cause of action is preliminary and permanent declaratory relief unless otherwise prescribed.
3. Stipulates that a person may file a digital impersonation complaint in the superior court of the county in which the person resides, unless the person is a candidate for presidency, then the person may petition the superior court in Maricopa County or any county in which one of the candidate's appointees for elector resides.
4. Requires a plaintiff, in order to prevail on an action, to prove that:
 - a) a digital impersonation of the person was published to at least one other person without the impersonated person's consent; and
 - b) at the time of publication of the digital impersonation:
 - i. the publisher did not reasonably convey that the recording or image was a digital impersonation or that the impersonation's authenticity was disputed; or
 - ii. it would not be obvious to a reasonable person that the recording or image was a digital impersonation.
5. Allows a person bringing an action for digital impersonation to file a complaint and motion for preliminary declaratory relief.
6. Requires a plaintiff to make diligent efforts to provide service and notice to all defendants upon filing a complaint and motion for preliminary declaratory relief.
7. Allows the court to grant preliminary declaratory relief against a defendant who does not appear only if:
 - a) the plaintiff's complaint is verified; and
 - b) a declaration is filed that states why the defendant could not be served with the exercise of reasonable diligence.
8. Stipulates that if the court issues a preliminary declaration against a defendant who does not appear, then the preliminary order must:
 - a) state the date and hour the order was issued;
 - b) state the date and hour the order expires;
 - c) state the reasons why the order was issued without notice;
 - d) state any additional information that the judicial officer believes is necessary or appropriate to effectuate the order;
 - e) be filed promptly in the clerk's office; and
 - f) be entered in the record.
9. Requires the court to rule on a petition for preliminary declaratory relief within two business days after the date the complaint and motion are received by the judicial officer assigned to the case.
10. Requires the court to grant preliminary declaratory relief only if the plaintiff proves the elements of digital impersonation and if:
 - a) the person is a candidate for public or political party office and an election is scheduled for that office within 180 days of relief being requested;
 - b) the digital impersonation depicts the person unclothed as prescribed or engaging in a criminal or sexual act;

- c) the person's reputation will be irreparably harmed; or
 - d) the person may be reasonably expected to suffer significant personal hardship, financial hardship or loss of employment opportunities.
11. Stipulates that, if a digital impersonation is a paid advertisement, then a cause of action may only be brought against the person or entity that originated, ordered, placed or paid for the advertisement.
12. Prohibits a provider of an interactive computer service from being subject to a digital impersonation action for publishing information provided by another information content provider.
13. Specifies that the publisher of the alleged digital impersonation has the right to appear, be heard and present evidence before the court enters preliminary declaratory relief.
14. Specifies that a defendant's failure to appear does not preclude the court from providing preliminary declaratory relief.
15. Specifies that the plaintiff is not entitled to taxable costs if the defendant does not appear and contest the claim, and no other party intervenes as a defendant.
16. Requires the claims against a defendant to be dismissed and any preliminary relief granted by the court to expire as prescribed if:
- a) the defendant is not served within 90 days of filing the digital impersonation action; and
 - b) no party appears or intervenes as a defendant.
17. Provides a person that brings a digital impersonation action with the right to injunctive relief and damages if the person proves the elements of digital impersonation and if:
- a) the digital impersonation:
 - i. depicts the person unclothed or engaging in sexual acts;
 - ii. appeals to prurient interests; and
 - iii. offends local community standards;
 - b) the person was not a public figure at the time of the cause of action;
 - c) the publisher knew that the recording or image was a digital impersonation or the publisher failed to take reasonable corrective action within 21 days of becoming aware that the recording or image was a digital impersonation.
18. Specifies that a reasonable corrective action includes removing or disabling access to the digital impersonation and publishing a statement that the recording or image is a digital impersonation.
19. Outlines the standard of proof for digital impersonation actions as:
- a) clear and convincing evidence for preliminary declaratory relief;
 - b) clear and convincing evidence for injunctive relief and damages; and
 - c) a preponderance of the evidence for permanent declaratory relief.

20. Grants all parties to a contested digital impersonation action seeking permanent declaratory relief, injunctive relief or damages the right to a trial by jury.
21. Prohibits the trier of fact, if preliminary declaratory relief is granted, from considering any factual or legal determinations made by the court at a later stage in the proceeding process or in any other proceeding.
22. Allows a parent or guardian of a minor or an incapacitated person to seek declaratory relief on behalf of the minor or incapacitated person.
23. Specifies that the requirements relating to actions against digital impersonations:
 - a) must be narrowly construed in favor of free and open disclosure on matters of public concern and artistic expression; and
 - b) may not be construed in a manner that abrogates any other available cause of action.
24. Defines *digital impersonation* as synthetic media that:
 - a) is typically a video, audio or still image;
 - b) is digitally manipulated or otherwise simulated to convincingly replace a person's likeness or voice with that of another using deep generative methods and artificial intelligence techniques;
 - c) is created with the intention to deceive or lead a reasonable audience to believe that the content is authentic and a true and accurate depiction of something the impersonated person said or did; and
 - d) excludes commentary, parody, satire, criticism, artistic expression or media created by or with the impersonated person's consent.
25. Defines *information content provider* as any person or entity that is responsible for the creation or development of information provided through the internet or any other interactive computer service.
26. Defines *interactive computer service* as any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including:
 - a) a service or system that provides access to the internet; and
 - b) systems operated or services offered by libraries or educational institutions.
27. Defines *public office* as any office that persons are elected to at an election administered by the State of Arizona or one of the State's political subdivisions, including the office of U.S. President if the candidate for presidency's name or appointees for elector appear on the Arizona ballot.
28. Defines *political party office* as an office that persons are elected to within a political party.
29. Defines *election* as any election in Arizona.
30. Becomes effective 14 days after signature of the Governor, if the emergency clause is enacted.

Amendments Adopted by Committee of the Whole

1. Outlines notice and service requirements relating to digital impersonation complaints and subsequent relief, including requirements relating to orders for preliminary relief that are issued without notice.
2. Stipulates that, if preliminary declaratory relief is sought without notice, the plaintiff must prove the elements of digital impersonation by clear and convincing evidence before the court may grant preliminary relief.
3. Specifies that a defendant's failure to appear does not affect the court's ability to issue preliminary relief.
4. Adds to the requirements that must be met for a plaintiff to have the additional right to injunctive relief in a digital impersonation action.
5. Adds still images to the definition of *digital impersonation*.
6. Makes conforming changes.

Amendments Adopted by Additional Committee of the Whole

1. Outlines the standard of proof for actions seeking preliminary declaratory relief, permanent declaratory relief and injunctive relief and damages.
2. Replaces the requirement that a digital impersonation action be abated if the publisher fails to appear and no other party intervenes within 30 days, with the requirement that the claims against a defendant be dismissed and any preliminary relief granted by the court expire if outlined conditions apply.
3. Adds parties to an action seeking injunctive relief and damages to the parties entitled to the right to a trial by jury.
4. Modifies the requirements relating to orders for preliminary declaratory relief and applies the requirements to preliminary relief orders issued against a defendant who does not appear, rather than to preliminary relief orders issued without notice.
5. Defines terms.
6. Makes technical and conforming changes.
7. Delays the effective date to 14 days after signature of the Governor, if the emergency clause is enacted.

House Action

MOE 1/24/24 DPA 9-0-0-0
3rd Read 2/21/24 55-0-4-0-1

Senate Action

ELEC 3/4/24 DP 5-2-1