



# ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature  
Second Regular Session

House: MOE DPA 9-0-0-0 | 3<sup>rd</sup> Read: 55-0-4-0-1

Senate: ELEC DP 5-2-1-0 | 3<sup>rd</sup> Read: 29-0-1-0

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## **HB 2394: candidates; digital impersonation; injunctive relief**

**Sponsor: Representative Kolodin, LD 3**

**Senate 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 political party office, who will appear on the ballot or any Arizona citizen to bring an action for digital impersonation within two years after the date the person knows or should know that a digital impersonation of the person bringing the action was published. (Sec. 1)
2. Specifies, unless otherwise allowed by this act, the sole remedy for this cause of action is preliminary and declaratory relief. (Sec. 1)
3. Asserts that to prevail in an action for declaratory relief, a plaintiff must prove all of the following:
  - a) The digital impersonation was published to one or more other persons without the person's consent; and
  - b) Either the publisher did not reasonably convey that the recording or image was a digital impersonation or that its authenticity was disputed; or it would not be obvious to a reasonable person that the recording or image was a digital impersonation. (Sec. 1)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input checked="" type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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4. Stipulates that if the digital impersonation is or is part of a paid advertisement, the cause of action for digital impersonation can only be brought against the person or entity that originated, ordered, placed or paid for the advertisement. (Sec. 1)
5. Specifies a provider of an interactive computer service cannot be subject to an action for digital impersonation for publishing information that is provided by another information content provider. (Sec. 1)
6. Authorizes a person bringing an action for digital impersonation to file a complaint and a motion for preliminary declaratory relief in the superior court. (Sec. 1)
7. Instructs the plaintiff to make diligent efforts to serve and provide prompt, actual notice of an action for digital impersonation to all defendants. (Sec. 1)
8. Clarifies that although a defendant has the right to appear, be heard and present evidence before the court enters a judgement of preliminary declaratory relief, the defendant's failure to appear does not preclude the court from granting preliminary declaratory relief. (Sec. 1)
9. Directs the court to rule on a motion for preliminary declaratory relief within two days after the complaint and motion are received by the judicial officer assigned to the case, excluding weekends and court holidays. (Sec. 1)
10. Clarifies that preliminary declaratory relief may be granted against a defendant that fails to appear if the plaintiff's complaint is verified and a declaration is filed that explains why, with the exercise of reasonable diligence, the defendant could not be served. (Sec. 1)
11. Establishes specified information that must be filed in the clerk's office and entered in the record following a court's order of preliminary declaratory relief against a defendant that does not appear. (Sec. 1)
12. Specifies preliminary declaratory relief can only be granted if the plaintiff proves the elements of digital impersonation and at least one of the following:
  - a) The person is a candidate for public office or political party office and an election is scheduled to be held for that office within 180 days of the date the relief is requested;
  - b) The digital impersonation depicts the person engaging in a sexual act or depicts the unclothed breasts, buttocks or genitals of the person;
  - c) The digital impersonation depicts the person engaging in a criminal act;
  - d) In the absence of preliminary declaratory relief, the person can reasonably be expected to suffer significant personal or financial hardship or loss of employment opportunities; or
  - e) In the absence of preliminary declaratory relief, the person's reputation will be irreparably harmed. (Sec. 1)
13. Specifies that if the defendant does not appear and contest the claim and no other party intervenes as a defendant, the plaintiff is not entitled to taxable costs. (Sec. 1)
14. States that if a defendant has not been served within 90 days after the date of filing and no party has appeared or intervened as a defendant in intervention, the claims against that defendant must be dismissed and any preliminary relief granted must expire unless the court finds that the interests of justice require otherwise. (Sec. 1)
15. Allows the plaintiff in an action for digital impersonation to obtain injunctive relief if all of the following elements are proven:

- a) The digital impersonation depicts the person engaging in a sexual act or depicts the unclothed breasts, buttocks or genitals of the person, appeals to the prurient interests and offends local community standards;
  - b) The plaintiff was not a public figure, including a limited public figure, at the time the cause of action accrued; and
  - c) The publication was made with actual knowledge that the recording or image was a digital impersonation or the publisher failed to take reasonable corrective action within 21 days after the publisher had actual knowledge that the recording or image was a digital impersonation. (Sec. 1)
16. Clarifies that if preliminary declaratory relief is granted, any factual or legal determinations made by the court cannot be considered by the trier of fact or the court at any later stage of the proceeding or in any other proceeding. (Sec. 1)
  17. Establishes a standard of proof for digital impersonation actions for preliminary declaratory judgements, injunctive relief and damages and permanent declaratory relief. (Sec. 1)
  18. Designates the superior court in which a plaintiff may bring an action for digital impersonation in specified circumstances. (Sec. 1)
  19. Authorizes the parent or guardian of a minor child or incapacitated person to seek relief on the minor child or incapacitated person's behalf. (Sec. 1)
  20. Requires this act to be narrowly construed in favor of both free and open discourse on matters of public concern and artistic expression and must not be construed to abrogate any cause of action otherwise. (Sec. 1)
  21. Clarifies that all parties in any action brought under this act have a right to trial by jury. (Sec. 1)
  22. Defines *digital impersonation, election, information content provider, interactive computer service, political party office and public office*. (Sec. 1)
  23. Specifies this act does not take effect until 14 days after the effective date. (Sec. 1)
  24. Contains an emergency clause.