



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
Second Regular Session

HB 2394: candidates; digital impersonation; injunctive relief

Sponsor: Representative Kolodin, LD 3

Committee on Municipal Oversight & Elections

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 the publisher did not take reasonable steps to inform the audience of the publication that the recording or image was a digital impersonation, or it was not otherwise obvious that the publication was a digital impersonation. (Sec. 1)

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4. Grants the person bringing an action for digital impersonation the right to obtain a preliminary judicial declaration that a recording or image is a digital impersonation within two judicial days after seeking that relief. (Sec. 1)
5. Mandates that a preliminary declaration 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)
6. 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 upon learning that the recording or image was a digital impersonation. (Sec. 1)
7. 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)
8. 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)
9. Specifies that this section be construed in favor of free expression 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)
10. Defines the terms *appear on the ballot in this state*, *digital impersonation*, *election*, *public figure* and *public office*. (Sec. 1)
11. Contains an emergency clause. (Sec. 2)