

Senate Engrossed House Bill

~~candidates; digital impersonation; injunctive relief~~
(now: digital impersonation; injunctive relief; requirements)

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2394

AN ACT

AMENDING TITLE 16, CHAPTER 7, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 16-1023; RELATING TO PROHIBITED ACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 16, chapter 7, article 1, Arizona Revised
3 Statutes, is amended by adding section 16-1023, to read:

4 16-1023. Digital impersonation of candidate or other person;
5 relief; applicability; definitions

6 A. A CANDIDATE FOR PUBLIC OFFICE OR POLITICAL PARTY OFFICE WHO WILL
7 APPEAR ON THE BALLOT IN THIS STATE OR ANY CITIZEN OF THIS STATE MAY BRING
8 AN ACTION FOR DIGITAL IMPERSONATION WITHIN TWO YEARS AFTER THE DATE THAT
9 THE PERSON KNOWS, OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD KNOW,
10 THAT A DIGITAL IMPERSONATION OF THE PERSON WHO IS BRINGING THE ACTION WAS
11 PUBLISHED. THE SOLE REMEDY ON THIS CAUSE OF ACTION IS PRELIMINARY AND
12 PERMANENT DECLARATORY RELIEF EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY
13 THIS SECTION. TO PREVAIL ON AN ACTION PRESCRIBED BY THIS SECTION, A
14 PLAINTIFF MUST PROVE ALL OF THE FOLLOWING:

15 1. THAT A DIGITAL IMPERSONATION OF THE PERSON WAS PUBLISHED TO ONE
16 OR MORE OTHER PERSONS WITHOUT THE PERSON'S CONSENT.

17 2. THAT AT THE TIME OF PUBLICATION EITHER OF THE FOLLOWING APPLIES:

18 (a) THE PUBLISHER DID NOT REASONABLY CONVEY TO THE PERSONS TO WHOM
19 THE PUBLICATION WAS MADE THAT THE RECORDING OR IMAGE WAS A DIGITAL
20 IMPERSONATION OR THAT ITS AUTHENTICITY WAS DISPUTED.

21 (b) IT WOULD NOT BE OBVIOUS TO A REASONABLE PERSON THAT THE
22 RECORDING OR IMAGE WAS A DIGITAL IMPERSONATION.

23 B. IF THE DIGITAL IMPERSONATION IS OR IS PART OF A PAID
24 ADVERTISEMENT, A CAUSE OF ACTION FOR DIGITAL IMPERSONATION MAY BE BROUGHT
25 ONLY AGAINST THE PERSON OR ENTITY THAT ORIGINATED, ORDERED, PLACED OR PAID
26 FOR THE ADVERTISEMENT.

27 C. A PROVIDER OF AN INTERACTIVE COMPUTER SERVICE MAY NOT BE SUBJECT
28 TO AN ACTION FOR DIGITAL IMPERSONATION FOR PUBLISHING INFORMATION THAT IS
29 PROVIDED BY ANOTHER INFORMATION CONTENT PROVIDER.

30 D. A PERSON WHO BRINGS AN ACTION FOR DIGITAL IMPERSONATION MAY FILE
31 A COMPLAINT AND A MOTION FOR PRELIMINARY DECLARATORY RELIEF IN THE
32 SUPERIOR COURT. THE PLAINTIFF SHALL MAKE DILIGENT EFFORTS TO BOTH SERVE
33 AND PROVIDE PROMPT ACTUAL NOTICE TO ALL DEFENDANTS. THE PUBLISHER OF THE
34 ALLEGED DIGITAL IMPERSONATION HAS THE RIGHT TO APPEAR, BE HEARD AND
35 PRESENT EVIDENCE BEFORE THE COURT'S ENTRY OF PRELIMINARY DECLARATORY
36 RELIEF, BUT A DEFENDANT'S FAILURE TO APPEAR DOES NOT PRECLUDE A COURT FROM
37 GRANTING PRELIMINARY DECLARATORY RELIEF.

38 E. THE COURT SHALL RULE ON THE MOTION FOR PRELIMINARY DECLARATORY
39 RELIEF WITHIN TWO DAYS AFTER THE DATE THAT THE COMPLAINT AND MOTION ARE
40 RECEIVED BY THE JUDICIAL OFFICER WHO IS ASSIGNED TO THE CASE, EXCLUDING
41 SATURDAYS, SUNDAYS AND COURT HOLIDAYS. PRELIMINARY DECLARATORY RELIEF MAY
42 BE GRANTED AGAINST A DEFENDANT WHO DOES NOT APPEAR ONLY IF THE PLAINTIFF'S
43 COMPLAINT IS VERIFIED AND A DECLARATION IS FILED THAT STATES WHY WITH THE
44 EXERCISE OF REASONABLE DILIGENCE THE DEFENDANT COULD NOT BE SERVED. IF
45 THE COURT GRANTS PRELIMINARY DECLARATORY RELIEF AGAINST A DEFENDANT WHO

1 DOES NOT APPEAR, THE ORDER GRANTING THE RELIEF MUST BE FILED PROMPTLY IN
2 THE CLERK'S OFFICE AND ENTERED IN THE RECORD AND MUST STATE ALL OF THE
3 FOLLOWING:

- 4 1. THE DATE AND HOUR THE ORDER WAS ISSUED.
- 5 2. WHY THE ORDER WAS ISSUED WITHOUT NOTICE.
- 6 3. THE DATE AND HOUR THE ORDER EXPIRES.
- 7 4. ANY ADDITIONAL INFORMATION THAT THE JUDICIAL OFFICER BELIEVES IS
8 NECESSARY OR APPROPRIATE TO EFFECTUATE THE ORDER.

9 F. PRELIMINARY DECLARATORY RELIEF MAY BE GRANTED ONLY IF THE
10 PLAINTIFF PROVES THE ELEMENTS OF DIGITAL IMPERSONATION PRESCRIBED BY
11 SUBSECTION A OF THIS SECTION AND AT LEAST ONE OF THE FOLLOWING ADDITIONAL
12 ELEMENTS:

13 1. THE PERSON IS A CANDIDATE FOR PUBLIC OFFICE OR POLITICAL PARTY
14 OFFICE AND AN ELECTION IS SCHEDULED TO BE HELD FOR THAT PUBLIC OFFICE OR
15 POLITICAL PARTY OFFICE WITHIN ONE HUNDRED EIGHTY DAYS OF THE DATE THAT THE
16 RELIEF IS REQUESTED.

17 2. THE DIGITAL IMPERSONATION DEPICTS THE PERSON ENGAGING IN A
18 SEXUAL ACT OR DEPICTS THE UNCLOTHED BREASTS, BUTTOCKS OR GENITALS OF THE
19 PERSON.

20 3. THE DIGITAL IMPERSONATION DEPICTS THE PERSON ENGAGING IN A
21 CRIMINAL ACT.

22 4. IN THE ABSENCE OF PRELIMINARY DECLARATORY RELIEF, THE PERSON CAN
23 BE REASONABLY EXPECTED TO SUFFER SIGNIFICANT PERSONAL OR FINANCIAL
24 HARDSHIP OR LOSS OF EMPLOYMENT OPPORTUNITIES.

25 5. IN THE ABSENCE OF PRELIMINARY DECLARATORY RELIEF, THE PERSON'S
26 REPUTATION WILL BE IRREPARABLY HARMED.

27 G. IF THE DEFENDANT DOES NOT APPEAR AND CONTEST THE CLAIM AND NO
28 OTHER PARTY INTERVENES AS A DEFENDANT, THE PLAINTIFF IS NOT ENTITLED TO
29 TAXABLE COSTS.

30 H. IF A DEFENDANT HAS NOT BEEN SERVED WITHIN NINETY DAYS AFTER THE
31 DATE OF FILING AND NO PARTY HAS APPEARED OR INTERVENED AS A DEFENDANT IN
32 INTERVENTION, THE CLAIMS AGAINST THAT DEFENDANT SHALL BE DISMISSED AND ANY
33 PRELIMINARY RELIEF THAT WAS GRANTED SHALL EXPIRE UNLESS THE COURT FINDS
34 THAT THE INTERESTS OF JUSTICE REQUIRE OTHERWISE.

35 I. IN ADDITION TO DECLARATORY RELIEF AS PRESCRIBED IN SUBSECTIONS A
36 THROUGH F OF THIS SECTION, A PLAINTIFF IN AN ACTION FOR DIGITAL
37 IMPERSONATION MAY OBTAIN INJUNCTIVE RELIEF AND DAMAGES ONLY IF THE
38 ELEMENTS OF DIGITAL IMPERSONATION PRESCRIBED IN SUBSECTION A OF THIS
39 SECTION AND ALL OF THE FOLLOWING ELEMENTS ARE PROVEN:

40 1. THE DIGITAL IMPERSONATION DEPICTS THE PERSON ENGAGING IN A
41 SEXUAL ACT OR DEPICTS THE UNCLOTHED BREASTS, BUTTOCKS OR GENITALS OF THE
42 PERSON, APPEALS TO PRURIENT INTERESTS AND OFFENDS LOCAL COMMUNITY
43 STANDARDS.

44 2. THE PLAINTIFF WAS NOT A PUBLIC FIGURE, INCLUDING A LIMITED
45 PUBLIC FIGURE, AT THE TIME THE CAUSE OF ACTION ACCRUED.

1 3. THE PUBLICATION WAS MADE WITH ACTUAL KNOWLEDGE THAT THE
2 RECORDING OR IMAGE WAS A DIGITAL IMPERSONATION OR THE PUBLISHER FAILED TO
3 TAKE REASONABLE CORRECTIVE ACTION WITHIN TWENTY-ONE DAYS AFTER THE
4 PUBLISHER HAD ACTUAL KNOWLEDGE THAT THE RECORDING OR IMAGE WAS A DIGITAL
5 IMPERSONATION. REASONABLE CORRECTIVE ACTION INCLUDES REMOVING OR
6 DISABLING ACCESS TO THE DIGITAL IMPERSONATION AND PUBLISHING TO THE SAME
7 AUDIENCE A STATEMENT THAT THE PUBLICATION WAS A DIGITAL IMPERSONATION.

8 J. IF PRELIMINARY DECLARATORY RELIEF IS GRANTED, ANY FACTUAL OR
9 LEGAL DETERMINATIONS MADE BY THE COURT SHALL NOT BE CONSIDERED BY THE
10 TRIER OF FACT OR THE COURT AT ANY LATER STAGE OF THE PROCEEDING OR IN ANY
11 OTHER PROCEEDING.

12 K. THE STANDARD OF PROOF FOR ACTIONS PRESCRIBED BY THIS SECTION IS:

13 1. FOR PRELIMINARY DECLARATORY RELIEF, CLEAR AND CONVINCING
14 EVIDENCE.

15 2. FOR INJUNCTIVE RELIEF AND DAMAGES, CLEAR AND CONVINCING
16 EVIDENCE.

17 3. FOR PERMANENT DECLARATORY RELIEF, A PREPONDERANCE OF THE
18 EVIDENCE.

19 L. A PLAINTIFF WHO BRINGS AN ACTION UNDER THIS SECTION MAY FILE A
20 COMPLAINT IN THE SUPERIOR COURT FOR THE COUNTY IN WHICH THE PLAINTIFF
21 RESIDES OR, IF THE PLAINTIFF IS A CANDIDATE FOR PRESIDENT OF THE UNITED
22 STATES, IN MARICOPA COUNTY OR IN ANY COUNTY IN WHICH ONE OF THE
23 CANDIDATE'S POLITICAL PARTY'S APPOINTEES FOR ELECTOR RESIDES.

24 M. A PARENT OR GUARDIAN OF A MINOR CHILD OR INCAPACITATED PERSON
25 MAY SEEK RELIEF UNDER THIS SECTION ON THE MINOR CHILD'S OR INCAPACITATED
26 PERSON'S BEHALF.

27 N. THIS SECTION SHALL BE NARROWLY CONSTRUED IN FAVOR OF BOTH FREE
28 AND OPEN DISCOURSE ON MATTERS OF PUBLIC CONCERN AND ARTISTIC EXPRESSION
29 AND SHALL NOT BE CONSTRUED SO AS TO ABROGATE ANY CAUSE OF ACTION OTHERWISE
30 AVAILABLE.

31 O. ALL PARTIES TO A CONTESTED ACTION SEEKING PERMANENT DECLARATORY
32 RELIEF, PERMANENT INJUNCTIVE RELIEF OR DAMAGES AND THAT IS BROUGHT
33 PURSUANT TO THIS SECTION HAVE THE RIGHT TO TRIAL BY JURY.

34 P. THIS SECTION APPLIES FOURTEEN DAYS AFTER THE EFFECTIVE DATE OF
35 THIS SECTION.

36 Q. FOR THE PURPOSES OF THIS SECTION:

37 1. "DIGITAL IMPERSONATION" MEANS SYNTHETIC MEDIA, TYPICALLY VIDEO,
38 AUDIO OR STILL IMAGE, THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

39 (a) HAS BEEN DIGITALLY MANIPULATED TO CONVINCINGLY REPLACE ONE
40 PERSON'S LIKENESS OR VOICE WITH THAT OF ANOTHER USING DEEP GENERATIVE
41 METHODS AND ARTIFICIAL INTELLIGENCE TECHNIQUES, OR FOR WHICH ONE PERSON'S
42 LIKENESS OR VOICE HAS OTHERWISE BEEN SIMULATED USING DEEP GENERATIVE
43 METHODS AND ARTIFICIAL INTELLIGENCE TECHNIQUES.

44 (b) WAS CREATED WITH THE INTENTION TO DECEIVE OR LEAD REASONABLE
45 LISTENERS OR VIEWERS INTO BELIEVING THAT THE CONTENT IS AUTHENTIC.

1 (c) WOULD LEAD REASONABLE VIEWERS OR LISTENERS TO BELIEVE THAT IT
2 IS A TRUE AND ACCURATE DEPICTION OF THE IMPERSONATED PERSON'S VOICE OR
3 LIKENESS AND IS SOMETHING THE IMPERSONATED PERSON SAID OR DID.

4 (d) IS NOT COMMENTARY, PARODY, SATIRE, CRITICISM OR ARTISTIC
5 EXPRESSION.

6 (e) WAS NOT CREATED BY THE IMPERSONATED PERSON OR WITH THE
7 IMPERSONATED PERSON'S CONSENT.

8 2. "ELECTION" MEANS ANY ELECTION IN THIS STATE, INCLUDING A
9 PRIMARY, PRESIDENTIAL PREFERENCE, SPECIAL OR GENERAL ELECTION.

10 3. "INFORMATION CONTENT PROVIDER" MEANS ANY PERSON OR ENTITY THAT
11 IS RESPONSIBLE, IN WHOLE OR IN PART, FOR THE CREATION OR DEVELOPMENT OF
12 INFORMATION PROVIDED THROUGH THE INTERNET OR ANY OTHER INTERACTIVE
13 COMPUTER SERVICE.

14 4. "INTERACTIVE COMPUTER SERVICE" MEANS ANY INFORMATION SERVICE,
15 SYSTEM OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR ENABLES COMPUTER
16 ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUDING SPECIFICALLY A
17 SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTERNET AND SUCH SYSTEMS
18 OPERATED OR SERVICES OFFERED BY LIBRARIES OR EDUCATIONAL INSTITUTIONS.

19 5. "POLITICAL PARTY OFFICE" MEANS AN OFFICE TO WHICH PERSONS ARE
20 ELECTED WITHIN A POLITICAL PARTY.

21 6. "PUBLIC OFFICE":

22 (a) MEANS ANY OFFICE TO WHICH PERSONS ARE ELECTED BY BALLOT AT AN
23 ELECTION ADMINISTERED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS
24 STATE.

25 (b) INCLUDES THE OFFICE OF PRESIDENT OF THE UNITED STATES WHERE A
26 CANDIDATE'S NAME OR A CANDIDATE'S POLITICAL PARTY APPOINTEES FOR ELECTOR
27 WILL APPEAR ON THE BALLOT IN THIS STATE.

28 Sec. 2. Emergency

29 This act is an emergency measure that is necessary to preserve the
30 public peace, health or safety and is operative immediately as provided by
31 law.