

House Engrossed

candidates; digital impersonation; injunctive relief

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 injunctive relief; expedited relief

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

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 ON PUBLICATION:

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; OR

21 (b) IT WAS NOT OTHERWISE OBVIOUS TO THE PERSON OR PERSONS TO WHOM  
22 THE PUBLICATION WAS MADE THAT THE RECORDING OR IMAGE WAS A DIGITAL  
23 IMPERSONATION.

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

28 C. FOR PURPOSES OF THIS SECTION, NO PROVIDER OF AN INTERACTIVE  
29 COMPUTER SERVICE SHALL BE TREATED AS THE PUBLISHER OR SPEAKER OF ANY  
30 INFORMATION PROVIDED BY ANOTHER INFORMATION CONTENT PROVIDER.

31 D. A PERSON BRINGING AN ACTION FOR DIGITAL IMPERSONATION MAY  
32 PETITION THE SUPERIOR COURT FOR THE COUNTY IN WHICH HE OR SHE RESIDES OR,  
33 IF THE PERSON IS A CANDIDATE FOR PRESIDENT, IN MARICOPA COUNTY OR IN ANY  
34 COUNTY IN WHICH ONE OF THE CANDIDATE'S APPOINTEES FOR ELECTOR RESIDES, FOR  
35 A PRELIMINARY JUDICIAL DECLARATION THAT A RECORDING OR IMAGE IS A DIGITAL  
36 IMPERSONATION. THE COURT SHALL RULE ON THE PETITION WITHIN TWO DAYS,  
37 EXCLUDING SATURDAYS, SUNDAYS AND STATE HOLIDAYS, AFTER THE PETITION IS  
38 FILED. PRELIMINARY DECLARATORY RELIEF SHALL BE GRANTED ONLY IF THE PERSON  
39 IS ABLE TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THE ELEMENTS OF  
40 DIGITAL IMPERSONATION AND ANY OF THE FOLLOWING ADDITIONAL REQUIREMENTS ARE  
41 MET:

42 1. THE PERSON IS A CANDIDATE FOR PUBLIC OFFICE AND AN ELECTION IS  
43 SCHEDULED TO BE HELD FOR THAT PUBLIC OFFICE WITHIN ONE HUNDRED EIGHTY DAYS  
44 OF THE DATE THAT THE RELIEF IS REQUESTED.

1           2. THE DIGITAL IMPERSONATION DEPICTS THE PERSON ENGAGING IN A  
2 SEXUAL ACT OR DEPICTS THE UNCLOTHED BREASTS, BUTTOCKS OR GENITALS OF THE  
3 PERSON.

4           3. THE DIGITAL IMPERSONATION DEPICTS THE PERSON ENGAGING IN A  
5 CRIMINAL ACT.

6           4. IN THE ABSENCE OF EXPEDITED RELIEF, THE PERSON CAN BE REASONABLY  
7 EXPECTED TO SUFFER SIGNIFICANT PERSONAL OR FINANCIAL HARDSHIP OR LOSS OF  
8 EMPLOYMENT OPPORTUNITIES.

9           5. IN THE ABSENCE OF EXPEDITED RELIEF, THE PERSON'S REPUTATION WILL  
10 BE IRREPARABLY HARMED.

11           6. THE INTERESTS OF JUSTICE OTHERWISE REQUIRE.

12           E. THE PUBLISHER OF THE ALLEGED DIGITAL IMPERSONATION SHALL HAVE  
13 THE RIGHT TO APPEAR, BE HEARD AND PRESENT EVIDENCE PRIOR TO THE COURT'S  
14 ENTRY OF A PRELIMINARY DECLARATORY JUDGMENT AND THE PLAINTIFF SHALL MAKE  
15 ALL REASONABLE EFFORTS TO PROVIDE BOTH SERVICE AND ACTUAL NOTICE  
16 IMMEDIATELY UPON FILING THE COMPLAINT. IF THE PUBLISHER DOES NOT APPEAR  
17 AND NO OTHER PARTY INTERVENES AS A DEFENDANT, THE PLAINTIFF SHALL NOT BE  
18 ENTITLED TO TAXABLE COSTS.

19           F. ACTIONS IN WHICH THE PETITIONER IS A CANDIDATE, PUBLIC OFFICIAL  
20 OR IS OTHERWISE A PUBLIC FIGURE SHALL BE DEEMED TO HAVE BEEN ABATED IF THE  
21 PUBLISHER DOES NOT APPEAR AND NO OTHER PARTY INTERVENES AS A DEFENDANT  
22 WITHIN 30 DAYS OF THE COURT'S ISSUANCE OF A PRELIMINARY DECLARATORY  
23 JUDGMENT. IF THIS SUBSECTION OR ITS APPLICATION TO ANY PERSON OR  
24 CIRCUMSTANCE IS HELD INVALID, THAT INVALIDITY DOES NOT AFFECT OTHER  
25 PROVISIONS OR APPLICATIONS OF THE ACT THAT CAN BE GIVEN EFFECT WITHOUT  
26 THIS SUBSECTION, AND TO THIS END THIS SUBSECTION IS SEVERABLE.

27           G. A PERSON BRINGING AN ACTION FOR DIGITAL IMPERSONATION  
28 ADDITIONALLY HAS THE RIGHT TO RECOVER INJUNCTIVE RELIEF AND DAMAGES IF ALL  
29 OF THE FOLLOWING REQUIREMENTS ARE MET:

30           1. THE DIGITAL IMPERSONATION DEPICTS THE PERSON ENGAGING IN A  
31 SEXUAL ACT OR DEPICTS THE UNCLOTHED BREASTS, BUTTOCKS OR GENITALS OF THE  
32 PERSON.

33           2. THE PERSON WAS NOT A PUBLIC FIGURE AT THE TIME THE CAUSE OF  
34 ACTION ACCRUED.

35           3. THE ELEMENTS OF SUBSECTION A OF THIS SECTION ARE PROVEN BY CLEAR  
36 AND CONVINCING EVIDENCE.

37           4. THE PERSON PROVES, BY CLEAR AND CONVINCING EVIDENCE, THAT THE  
38 PUBLICATION WAS MADE WITH ACTUAL KNOWLEDGE THAT THE RECORDING OR IMAGE WAS  
39 A DIGITAL IMPERSONATION OR, IF A DIGITAL IMPERSONATION WAS PUBLISHED  
40 WITHOUT SUCH KNOWLEDGE, THAT THE PUBLISHER FAILED TO TAKE REASONABLE  
41 CORRECTIVE ACTION WITHIN 21 DAYS AFTER THE PUBLISHER HAD ACTUAL KNOWLEDGE  
42 THAT THE RECORDING OR IMAGE WAS A DIGITAL IMPERSONATION. REASONABLE  
43 CORRECTIVE ACTION SHALL INCLUDE REMOVING OR DISABLING ACCESS TO THE  
44 DIGITAL IMPERSONATION OR PUBLISHING TO THE SAME AUDIENCE A STATEMENT THAT  
45 THE PUBLICATION WAS A DIGITAL IMPERSONATION.

1 H. ANY FACTUAL DETERMINATIONS MADE BY THE COURT IN A REQUEST FOR  
2 PRELIMINARY RELIEF UNDER SUBSECTION D OF THIS SECTION SHALL NOT BE  
3 CONSIDERED BY THE TRIER OF FACT AT ANY LATER STAGE OF THE PROCEEDING.

4 I. A PARENT OR GUARDIAN OF A MINOR CHILD OR INCAPACITATED PERSON  
5 MAY SEEK RELIEF UNDER THIS SECTION ON THE MINOR CHILD'S OR INCAPACITATED  
6 PERSON'S BEHALF.

7 J. THIS SECTION SHALL BE NARROWLY CONSTRUED IN FAVOR OF BOTH FREE  
8 AND OPEN DISCOURSE ON MATTERS OF PUBLIC CONCERN AND ARTISTIC EXPRESSION  
9 AND SHALL NOT BE CONSTRUED SO AS TO DENY OR DISPARAGE ANY CAUSE OF ACTION  
10 OTHERWISE AVAILABLE.

11 K. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT A PARTY'S  
12 CONSTITUTIONAL RIGHT TO TRIAL BY JURY. BOTH PARTIES TO ACTIONS SEEKING  
13 ONLY PERMANENT DECLARATORY RELIEF RETAIN THE RIGHT TO TRIAL BY JURY.

14 L. FOR THE PURPOSES OF THIS SECTION:

15 1. "APPEAR ON THE BALLOT IN THIS STATE" INCLUDES A CANDIDATE FOR  
16 PRESIDENT OF THE UNITED STATES WHOSE CANDIDATES FOR PRESIDENTIAL ELECTOR  
17 WILL APPEAR ON THE BALLOT IN THIS STATE.

18 2. "DIGITAL IMPERSONATION" MEANS SYNTHETIC MEDIA, TYPICALLY VIDEO  
19 OR AUDIO, THAT:

20 (a) HAS BEEN DIGITALLY MANIPULATED TO CONVINCINGLY REPLACE ONE  
21 PERSON'S LIKENESS OR VOICE WITH THAT OF ANOTHER USING DEEP GENERATIVE  
22 METHODS AND ARTIFICIAL INTELLIGENCE TECHNIQUES, OR FOR WHICH ONE PERSON'S  
23 LIKENESS OR VOICE HAS OTHERWISE BEEN SIMULATED USING DEEP GENERATIVE  
24 METHODS AND ARTIFICIAL INTELLIGENCE TECHNIQUES;

25 (b) WAS CREATED WITH THE INTENTION TO DECEIVE OR LEAD REASONABLE  
26 LISTENERS OR VIEWERS INTO BELIEVING THAT THE CONTENT IS AUTHENTIC;

27 (c) REASONABLE VIEWERS OR LISTENERS WOULD BELIEVE ACTUALLY  
28 REPRESENTS THE PERSON'S VOICE OR LIKENESS;

29 (d) WOULD CAUSE REASONABLE VIEWERS OR LISTENERS TO CONCLUDE THAT  
30 THE RECORDING OR IMAGE IS A TRUE AND ACCURATE DEPICTION OF SOMETHING THE  
31 PERSON SAID OR DID;

32 (e) IS NOT COMMENTARY, PARODY, SATIRE, CRITICISM OR ARTISTIC  
33 EXPRESSION; AND

34 (f) WAS NOT CREATED BY THE PERSON OR WITH THE PERSON'S CONSENT.

35 3. "ELECTION" MEANS ANY ELECTION IN THIS STATE, INCLUDING A  
36 PRIMARY, PRESIDENTIAL PREFERENCE, SPECIAL OR GENERAL ELECTION.

37 4. "INFORMATION CONTENT PROVIDER" MEANS ANY PERSON OR ENTITY THAT  
38 IS RESPONSIBLE, IN WHOLE OR IN PART, FOR THE CREATION OR DEVELOPMENT OF  
39 INFORMATION PROVIDED THROUGH THE INTERNET OR ANY OTHER INTERACTIVE  
40 COMPUTER SERVICE.

41 5. "INTERACTIVE COMPUTER SERVICE" MEANS ANY INFORMATION SERVICE,  
42 SYSTEM OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR ENABLES COMPUTER  
43 ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUDING SPECIFICALLY A  
44 SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTERNET AND SUCH SYSTEMS  
45 OPERATED OR SERVICES OFFERED BY LIBRARIES OR EDUCATIONAL INSTITUTIONS.

1           6. "PUBLIC FIGURE", FOR THE AVOIDANCE OF DOUBT, INCLUDES LIMITED  
2 PURPOSE PUBLIC FIGURES.

3           7. "PUBLIC OFFICE" MEANS ANY OFFICE OF PUBLIC TRUST OR ANY POSITION  
4 TO WHICH PERSONS ARE ELECTED WITHIN A POLITICAL PARTY.

5           Sec. 2. Emergency

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