

HOUSE BILL NO. 2862

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOLAN.

5347H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to digital impersonation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be
2 known as section 537.056, to read as follows:

537.056. 1. For the purposes of this section, the following terms mean:

2 **(1) "Digital impersonation", synthetic media, typically video or audio, that:**

3 **(a) Has been digitally manipulated to convincingly replace one person's likeness**
4 **or voice with that of another using deep generative methods and artificial intelligence**
5 **techniques, or for which one person's likeness or voice has otherwise been simulated**
6 **using deep generative methods and artificial intelligence techniques;**

7 **(b) Was created with the intention to deceive or lead reasonable listeners or**
8 **viewers into believing that the content is authentic;**

9 **(c) Reasonable viewers or listeners would believe actually represents the**
10 **person's voice or likeness;**

11 **(d) Would cause reasonable viewers or listeners to conclude that the recording**
12 **or image is a true and accurate depiction of something the person said or did;**

13 **(e) Is not commentary, parody, satire, criticism, or artistic expression; and**

14 **(f) Was not created by the person or with the person's consent;**

15 **(2) "Information content provider", any person or entity that is responsible, in**
16 **whole or in part, for the creation or development of information provided through the**
17 **internet or any other interactive computer service;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18 **(3) "Interactive computer service", any information service, system, or access**
19 **software provider that provides or enables computer access by multiple users to a**
20 **computer server, including specifically a service or system that provides access to the**
21 **internet and such systems operated or services offered by libraries or educational**
22 **institutions.**

23 **2. Any resident of this state may bring an action for digital impersonation within**
24 **two years after the date that the person knows, or in the exercise of reasonable diligence**
25 **should know, that a digital impersonation of that person was published. The sole**
26 **remedy on this cause of action is preliminary and permanent declaratory relief except as**
27 **otherwise expressly provided by this section. To prevail on an action prescribed by this**
28 **section, a plaintiff shall prove all of the following by a preponderance of the evidence:**

29 **(1) That a digital impersonation of the person was published to one or more**
30 **other persons without the person's consent; and**

31 **(2) That on publication:**

32 **(a) The publisher did not reasonably convey to the persons to whom the**
33 **publication was made that the recording or image was a digital impersonation or that its**
34 **authenticity was disputed; or**

35 **(b) It was not otherwise obvious to the person or persons to whom the**
36 **publication was made that the recording or image was a digital impersonation.**

37 **3. If the digital impersonation is or is part of a paid advertisement, a cause of**
38 **action for declaratory judgment of digital impersonation shall be brought only against**
39 **the person or entity that originated, ordered, placed, or paid for the advertisement.**

40 **4. For purposes of this section, no provider of an interactive computer service**
41 **shall be treated as the publisher or speaker of any information provided by another**
42 **information content provider.**

43 **5. A person bringing an action for digital impersonation may petition the circuit**
44 **court for the county in which he or she resides for a preliminary judicial declaration**
45 **that a recording or image is a digital impersonation. The court shall rule on the petition**
46 **within two days, excluding Saturdays, Sundays, and state holidays, after the petition is**
47 **filed. Preliminary declaratory relief shall be granted only if the person is able to prove**
48 **by a preponderance of the evidence the elements of digital impersonation and any of the**
49 **following additional requirements are met:**

50 **(1) The digital impersonation depicts the person engaging in a sexual act or**
51 **depicts the unclothed breasts, buttocks, or genitals of the person;**

52 **(2) The digital impersonation depicts the person engaging in a criminal act;**

53 **(3) In the absence of expedited relief, the person can be reasonably expected to**
54 **suffer significant personal or financial hardship or loss of employment opportunities;**

55 **(4) In the absence of expedited relief, the person's reputation will be irreparably**
56 **harmed; or**

57 **(5) The interests of justice otherwise require.**

58 **6. The publisher of the alleged digital impersonation shall have the right to**
59 **appear, be heard, and present evidence prior to the court's entry of a preliminary**
60 **declaratory judgment, and the plaintiff shall make all reasonable efforts to provide both**
61 **service and actual notice immediately upon filing the complaint. If the publisher does**
62 **not appear and no other party intervenes as a defendant, the plaintiff shall not be**
63 **entitled to taxable costs.**

64 **7. A person bringing an action for digital impersonation additionally has the**
65 **right to recover injunctive relief and damages if all of the following requirements are**
66 **met:**

67 **(1) The digital impersonation depicts the person engaging in a sexual act or**
68 **depicts the unclothed breasts, buttocks, or genitals of the person;**

69 **(2) The person was not a public figure at the time the cause of action accrued;**

70 **(3) The elements of subsection 2 of this section are proven by clear and**
71 **convincing evidence; and**

72 **(4) The person proves, by clear and convincing evidence, that the publication**
73 **was made with actual knowledge that the recording or image was a digital**
74 **impersonation or, if a digital impersonation was published without such knowledge,**
75 **that the publisher failed to take reasonable corrective action within twenty-one days**
76 **after the publisher had actual knowledge that the recording or image was a digital**
77 **impersonation. Reasonable corrective action shall include, but not be limited to,**
78 **removing or disabling access to the digital impersonation or publishing to the same**
79 **audience a statement that the publication was a digital impersonation.**

80 **8. Any factual determinations made by the court in a request for preliminary**
81 **relief under subsection 5 of this section shall not be considered by the trier of fact at any**
82 **later stage of the proceeding.**

83 **9. A parent or guardian of a minor child or incapacitated person may seek relief**
84 **under this section on the minor child's or incapacitated person's behalf.**

85 **10. This section shall be narrowly construed in favor of both free and open**
86 **discourse on matters of public concern and artistic expression and shall not be**
87 **construed so as to deny or disparage any cause of action otherwise available.**

88 **11. Nothing in this section shall be construed to limit a party's constitutional**
89 **right to trial by jury. Both parties to actions seeking only permanent declaratory relief**
90 **retain the right to trial by jury.**

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