

Senate Engrossed House Bill  
strategic actions; public participation

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

**CHAPTER 267**  
**HOUSE BILL 2722**

AN ACT

REPEALING SECTION 12-751, ARIZONA REVISED STATUTES; PROVIDING FOR  
RENUMBERING; AMENDING SECTION 12-751, ARIZONA REVISED STATUTES, AS  
RENUMBERED; AMENDING SECTIONS 12-2101 AND 22-261, ARIZONA REVISED  
STATUTES; RELATING TO PUBLIC PARTICIPATION IN GOVERNMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 12-751, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 12-752, Arizona Revised Statutes, is renumbered as  
5 section 12-751 and, as so renumbered, is amended to read:

6 12-751. Strategic actions against public participation;  
7 motion to dismiss or quash; definitions

8 A. In any legal action that involves a ~~party's~~ PERSON'S LAWFUL  
9 exercise of the right of petition, THE RIGHT OF SPEECH, THE FREEDOM OF THE  
10 PRESS, THE RIGHT TO FREELY ASSOCIATE OR THE RIGHT TO PEACEABLY ASSEMBLE  
11 PURSUANT TO THE UNITED STATES CONSTITUTION OR ARIZONA CONSTITUTION, the  
12 ~~defending party~~ PERSON OTHER THAN A STATE ACTOR OR AN INTERVENOR may file  
13 a motion to dismiss OR QUASH the action under this section. ~~When~~  
14 ~~possible, the court shall give calendar preference to an action that is~~  
15 ~~brought under this subsection and shall conduct an expedited hearing after~~  
16 ~~the motion is filed with the court and notice of the motion has been~~  
17 ~~served as provided by court rule.~~

18 B. A PERSON WHO FILES A MOTION PURSUANT TO SUBSECTION A OF THIS  
19 SECTION HAS THE BURDEN OF ESTABLISHING PRIMA FACIE PROOF THAT THE LEGAL  
20 ACTION WAS SUBSTANTIALLY MOTIVATED BY A DESIRE TO DETER, RETALIATE AGAINST  
21 OR PREVENT THE LAWFUL EXERCISE OF A CONSTITUTIONAL RIGHT. THE MOVING  
22 PERSON MAY SUBMIT EVIDENCE BASED ON THE RECORD, A SWORN AFFIDAVIT OR OTHER  
23 EVIDENCE THAT IS SUBMITTED WITH THE MOTION TO DISMISS OR QUASH. A PARTY  
24 IS NOT REQUIRED TO FILE A RESPONSE TO A MOTION FILED PURSUANT TO  
25 SUBSECTION A OF THIS SECTION UNLESS AND UNTIL THE COURT FINDS THAT THE  
26 MOVING PARTY HAS ESTABLISHED THE PRIMA FACIE PROOF AND ORDERS THE PARTY TO  
27 FILE A RESPONSE. The court shall grant the motion unless ~~the party~~  
28 ~~against whom the motion is made shows that the moving party's exercise of~~  
29 ~~the right of petition did not contain any reasonable factual support or~~  
30 ~~any arguable basis in law and that the moving party's acts caused actual~~  
31 ~~compensable injury to the responding party.~~ ONE OF THE FOLLOWING APPLIES:

32 1. IF THE RESPONDING PARTY IS A STATE ACTOR, THE RESPONDING PARTY  
33 SHOWS THAT THE LEGAL ACTION ON WHICH THE MOTION IS BASED IS JUSTIFIED BY  
34 CLEARLY ESTABLISHED LAW AND THAT THE RESPONDING PARTY DID NOT ACT IN ORDER  
35 TO DETER, PREVENT OR RETALIATE AGAINST THE MOVING PARTY'S EXERCISE OF  
36 CONSTITUTIONAL RIGHTS. A STATE ACTOR MAY SATISFY THE REQUIREMENTS OF THIS  
37 PARAGRAPH BY DOING ANY OF THE FOLLOWING:

38 (a) ESTABLISHING THAT THE PERSON WHO INITIATED AND CONDUCTED AN  
39 INVESTIGATION THAT RESULTED IN THE LEGAL ACTION AND THAT MADE THE DECISION  
40 TO PURSUE THE LEGAL ACTION WAS UNAWARE OF THE MOVANT'S LAWFUL EXERCISE OF  
41 THE CONSTITUTIONAL RIGHT.

42 (b) ESTABLISHING THAT THE STATE ACTOR HAS A CONSISTENT PRACTICE OF  
43 PURSUING SIMILAR LEGAL ACTIONS AGAINST SIMILARLY SITUATED PERSONS WHO DID  
44 NOT LAWFULLY EXERCISE CONSTITUTIONAL RIGHTS.

1 (c) PRODUCING ANY OTHER EVIDENCE THAT THE COURT FINDS SUFFICIENT.

2 2. IF THE RESPONDING PARTY IS NOT A STATE ACTOR, THE RESPONDING  
3 PARTY SHOWS THAT THE LEGAL ACTION ON WHICH THE MOTION IS BASED IS  
4 JUSTIFIED BY EXISTING LAW OR SUPPORTED BY A REASONABLE ARGUMENT FOR  
5 EXTENDING OR MODIFYING EXISTING LAW.

6 C. In making its determination, the court shall CONDUCT AN  
7 EVIDENTIARY HEARING OR consider the pleadings and supporting and opposing  
8 affidavits stating facts on which the liability ~~or~~ defense OR ACTION is  
9 based. ~~At the request of the moving party, the court shall make findings  
10 whether the lawsuit was brought to deter or prevent the moving party from  
11 exercising constitutional rights and is thereby brought for an improper  
12 purpose, including to harass or to cause unnecessary delay or needless  
13 increase in the cost of litigation. If the court finds that the lawsuit  
14 was brought to deter or prevent the exercise of constitutional rights or  
15 otherwise brought for an improper purpose, the moving party is encouraged  
16 to pursue additional sanctions as provided by court rule.~~

17 ~~C.~~ D. The motion to dismiss OR QUASH may be filed within ~~ninety~~  
18 SIXTY days after the service of the complaint OR OTHER DOCUMENT ON WHICH  
19 THE MOTION IS BASED or, in the court's discretion, at any later time on  
20 terms that the court deems proper, INCLUDING A LATER TIME AFTER THERE IS  
21 ACTUAL NOTICE OF A PARTY'S MISCONDUCT. IF THE COURT FINDS THAT PRIMA  
22 FACIE PROOF HAS BEEN ESTABLISHED AS PRESCRIBED IN SUBSECTION B OF THIS  
23 SECTION, THE COURT, IF POSSIBLE, SHALL CONDUCT AN EXPEDITED HEARING ON THE  
24 MOTION.

25 E. UNLESS A COURT RULE SPECIFICALLY PROVIDES OTHERWISE, ALL  
26 DISCOVERY PROCEEDINGS IN THE ACTION SHALL BE STAYED ON A FINDING OF PRIMA  
27 FACIE PROOF AS PRESCRIBED IN SUBSECTION B OF THIS SECTION. THE STAY OF  
28 DISCOVERY SHALL REMAIN IN EFFECT UNTIL NOTICE OF ENTRY OF THE ORDER RULING  
29 ON THE MOTION. NOTWITHSTANDING THIS SUBSECTION, THE COURT, ON NOTICED  
30 MOTION AND FOR GOOD CAUSE SHOWN, MAY ORDER THAT SPECIFIED DISCOVERY BE  
31 CONDUCTED.

32 ~~D.~~ F. If the court grants the motion to dismiss OR QUASH, the  
33 court ~~shall~~ MAY award the moving party costs and reasonable attorney fees,  
34 including those incurred for the motion. If the court finds that a motion  
35 to dismiss OR QUASH is frivolous or solely intended to delay, the court  
36 shall award costs and reasonable attorney fees to the prevailing party on  
37 the motion. For the purposes of this subsection, "costs" means all costs  
38 that are reasonably incurred ~~in connection with a motion to dismiss  
39 pursuant to this section~~ and includes filing fees, record preparation and  
40 document copying fees, documented time away from employment to confer with  
41 counsel or attend case related proceedings, expert witness fees, travel  
42 expenses and any other costs that the court deems appropriate.

43 G. IF THE COURT DENIES THE MOTION TO DISMISS OR QUASH, THE DENIAL  
44 AND THE COURT'S FINDINGS IN SUPPORT OF THE DENIAL ARE NOT ADMISSIBLE IN  
45 EVIDENCE AT ANY LATER STAGE OF THE CASE, OR IN ANY SUBSEQUENT ACTION, AND

1 THE BURDEN OF PROOF OR DEGREE OF PROOF THAT IS OTHERWISE APPLICABLE IS NOT  
2 AFFECTED BY THE FINDINGS IN ANY LATER STAGE OF THE CASE OR IN ANY  
3 SUBSEQUENT PROCEEDING.

4 H. IF THE COURT DETERMINES THAT THE MOVING PARTY HAS ESTABLISHED  
5 PRIMA FACIE PROOF AS PRESCRIBED IN SUBSECTION B OF THIS SECTION, AN ORDER  
6 GRANTING OR DENYING A MOTION FILED PURSUANT TO THIS SECTION IS APPEALABLE  
7 PURSUANT TO SECTION 12-2101.

8 ~~F.~~ I. This article does not:

9 1. Affect, limit or preclude the right of the moving party to any  
10 remedy otherwise authorized by law.

11 ~~2. Apply to an enforcement action that is brought in the name of~~  
12 ~~this state or a political subdivision of this state.~~

13 ~~3.~~ 2. Create any privileges or immunities or otherwise affect,  
14 limit or preclude any privileges or immunities authorized by law.

15 ~~4.~~ 3. Limit or preclude a legislative or executive body or a  
16 public agency from enforcing the rules of procedure and rules of order of  
17 the body or agency.

18 J. FOR THE PURPOSES OF THIS SECTION:

19 1. "LEGAL ACTION":

20 (a) MEANS ANY OF THE FOLLOWING:

21 (i) ANY CIVIL ACTION, CLAIM, CROSS-CLAIM OR COUNTERCLAIM FOR  
22 DAMAGES OTHER THAN NOMINAL DAMAGES.

23 (ii) ANY CRIMINAL PROSECUTION, EXCEPT FOR A DRUG TRAFFICKING  
24 OFFENSE INCLUDED IN TITLE 13, CHAPTER 34 OR 34.1, A RIOT OR A SERIOUS  
25 OFFENSE OR VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706.

26 (iii) ANY WRITTEN INVESTIGATIVE DEMAND PURSUANT TO SECTION  
27 38-431.06 OR OTHER COMPULSORY LEGAL PROCESS OR ANY REGULATORY OR  
28 ADMINISTRATIVE ACTION BY A STATE ACTOR.

29 (b) DOES NOT INCLUDE A MOTION FILED PURSUANT TO SUBSECTION A OF  
30 THIS SECTION.

31 2. "STATE ACTOR" MEANS ANY OF THE FOLLOWING:

32 (a) THIS STATE AND ANY COUNTY, CITY, TOWN OR POLITICAL SUBDIVISION  
33 OF THIS STATE.

34 (b) ANY BRANCH, DEPARTMENT, BOARD, BUREAU, COMMISSION, COUNCIL OR  
35 COMMITTEE OF AN ENTITY INCLUDED IN SUBDIVISION (a) OF THIS PARAGRAPH.

36 (c) ANY OFFICER, EMPLOYEE OR OTHER AGENT OF AN ENTITY INCLUDED IN  
37 SUBDIVISION (a) OF THIS PARAGRAPH WHO IS ACTING IN THE OFFICER'S,  
38 EMPLOYEE'S OR AGENT'S OFFICIAL CAPACITY.

39 Sec. 3. Section 12-2101, Arizona Revised Statutes, is amended to  
40 read:

41 12-2101. Judgments and orders that may be appealed

42 A. An appeal may be taken to the court of appeals from the superior  
43 court in the following instances:

- 1           1. From a final judgment entered in an action or special proceeding  
2 commenced in a superior court, or brought into a superior court from any  
3 other court, except in actions of forcible entry and detainer when the  
4 annual rental value of the property is less than ~~three hundred dollars~~  
5 \$300.
- 6           2. From any special order made after final judgment.
- 7           3. From any order affecting a substantial right made in any action  
8 when the order in effect determines the action and prevents judgment from  
9 which an appeal might be taken.
- 10          4. From a final order affecting a substantial right made in a  
11 special proceeding or on a summary application in an action after  
12 judgment.
- 13          5. From an order:
  - 14           (a) Granting or refusing a new trial,~~—~~ or granting a motion in  
15 arrest of judgment.
  - 16           (b) Granting or dissolving an injunction,~~—~~ or refusing to grant or  
17 dissolve an injunction or appointing a receiver.
  - 18           (c) Dissolving or refusing to dissolve an attachment or  
19 garnishment.
  - 20           (d) Granting or denying a petition to restore a person's right to  
21 possess a firearm pursuant to section 13-925.
  - 22           (e) GRANTING OR DENYING A MOTION TO DISMISS OR QUASH PURSUANT TO  
23 SECTION 12-751, UNLESS THE COURT DID NOT FIND THAT THE MOVING PARTY  
24 ESTABLISHED PRIMA FACIE PROOF AS PRESCRIBED IN SECTION 12-751, SUBSECTION  
25 B. THE COURT OF APPEALS SHALL EXPEDITE ANY APPEAL FILED PURSUANT TO THIS  
26 SUBDIVISION UNLESS THE COURT FOR GOOD CAUSE FINDS THAT EXPEDITED REVIEW IS  
27 NOT FEASIBLE UNDER THE CIRCUMSTANCES OR A COURT RULE SPECIFICALLY PROVIDES  
28 OTHERWISE.
- 29          6. From an interlocutory judgment that determines the rights of the  
30 parties and directs an accounting or other proceeding to determine the  
31 amount of the recovery.
- 32          7. From an interlocutory judgment in any action for partition that  
33 determines the rights and interests of the respective parties,~~—~~ and  
34 directs partition to be made.
- 35          8. From any interlocutory judgment, decree or order made or entered  
36 in actions to redeem real or personal property from a mortgage thereof or  
37 lien thereon, determining such right to redeem and directing an  
38 accounting.
- 39          9. From a judgment, decree or order entered in any formal  
40 proceedings under title 14.
- 41          10. From an order or judgment:
  - 42           (a) Adjudging a person insane or incompetent,~~—~~ or committing a  
43 person to the state hospital.

1 (b) Revoking or refusing to revoke an order or judgment adjudging a  
2 person insane or incompetent, ~~or~~ or restoring or refusing to restore to  
3 competency any person who has been declared insane or incompetent.

4 11. From an order or judgment made and entered on habeas corpus  
5 proceedings:

6 (a) The petitioner may appeal from an order or judgment refusing  
7 ~~his~~ THE PETITIONER'S discharge.

8 (b) The officer having the custody of the petitioner, or the county  
9 attorney on behalf of the state, from an order or judgment discharging the  
10 petitioner whereupon the court may admit the petitioner to bail pending  
11 the appeal.

12 B. If any order or judgment referred to in this section is made or  
13 rendered by a judge it is appealable as if made by the court.

14 Sec. 4. Section 22-261, Arizona Revised Statutes, is amended to  
15 read:

16 22-261. Judgments that may be appealed

17 A. Any party to a final judgment of a justice court may appeal to  
18 the superior court.

19 B. The party aggrieved by a judgment in any action in which the  
20 validity of a tax, impost, assessment, toll or ~~a~~ STATE statute ~~of the~~  
21 ~~state~~ is involved may appeal to the superior court without regard to the  
22 amount in controversy.

23 C. UNLESS THE COURT DID NOT FIND THAT THE MOVING PARTY ESTABLISHED  
24 PRIMA FACIE PROOF AS PRESCRIBED IN SECTION 12-751, SUBSECTION B, THE PARTY  
25 AGGRIEVED BY AN ORDER GRANTING OR DENYING A MOTION TO DISMISS OR QUASH  
26 PURSUANT TO SECTION 12-751 MAY FILE AN APPEAL TO THE SUPERIOR COURT. THE  
27 SUPERIOR COURT SHALL EXPEDITE ANY APPEAL FILED PURSUANT TO THIS SUBSECTION  
28 UNLESS THE COURT FOR GOOD CAUSE FINDS THAT EXPEDITED REVIEW IS NOT  
29 FEASIBLE UNDER THE CIRCUMSTANCES OR A COURT RULE SPECIFICALLY PROVIDES  
30 OTHERWISE.

31 ~~C.~~ D. An appeal shall be on the record of the proceedings if such  
32 record includes a transcript of the proceedings. De novo trials shall be  
33 granted only when the transcript of the proceedings in the superior  
34 court's evaluation is insufficient or in such a condition that the court  
35 cannot properly consider the appeal. A trial de novo shall not be granted  
36 when a party had the opportunity to request that a transcript of the lower  
37 court proceedings be made and failed to do so. At the beginning of each  
38 proceeding the judge shall advise the parties that their right to appeal  
39 is dependent on their requesting that a record be made of the justice  
40 court proceedings. Any party to an action may request that the  
41 proceedings be recorded for appeal purposes. The cost of recording trial  
42 proceedings is the responsibility of the court. The cost of preparing a  
43 transcript, if appealed, is the responsibility of the party appealing the  
44 case. The supreme court shall establish by rule the methods of recording

1 trial proceedings for record appeals to the superior court, including  
2 electronic recording devices or manual transcription.

3 Sec. 5. Severability

4 If a provision of this act or its application to any person or  
5 circumstance is held invalid, the invalidity does not affect other  
6 provisions or applications of the act that can be given effect without the  
7 invalid provision or application, and to this end the provisions of this  
8 act are severable.

APPROVED BY THE GOVERNOR MAY 27, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 27, 2022.