



**ARIZONA STATE SENATE**  
*Fifty-Fifth Legislature, Second Regular Session*

**REVISED**

**AMENDED**

FACT SHEET FOR H.B. 2722

strategic actions; public participation

Purpose

Expands the applicability of motions to dismiss strategic actions against public participation and allows a court to quash, rather than only dismiss, a strategic action against public participation.

Background

A defending party may file a motion to dismiss a legal action involving a party's exercise of the right to petition. The court must grant the motion unless the non-moving party can show that the moving party's exercise of the right to petition did not contain any reasonable factual support or arguable basis in law, and that the moving party's acts caused actual compensable injury to the responding party. At the request of the moving party, the court must determine whether the lawsuit was brought to deter or prevent the moving party from exercising constitutional rights, and thereby brought for an improper purpose, such as causing unnecessary delay or needless increase in the cost of litigation. The moving party must be awarded reasonable attorney fees if the motion to dismiss is granted.

Statute governing the ability of a party to file a motion to dismiss an action brought in this manner does not: 1) affect, limit or preclude the right of the moving party to any remedy otherwise authorized by law; 2) apply to an enforcement action that is brought in the name of this state or a political subdivision of this state; 3) create any privileges or immunities or otherwise affect, limit or preclude any privileges or immunities authorized by law; or 4) limit or preclude a legislative or executive body or a public agency from enforcing the rules of procedure and rules of order of the body or agency ([A.R.S. § 12-752](#)).

*Exercise of the right to petition* means any written or oral statement that falls within the constitutional protection of free speech and that is made as part of an initiative, referendum or recall effort or that is all of the following: 1) made before or submitted to a legislative or executive body or any other governmental proceeding; 2) made in connection with an issue that is under consideration or review by a legislative or executive body or any other governmental proceeding; and 3) made for the purpose of influencing a governmental action, decision or result ([A.R.S. § 12-751](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Repeals statute defining *exercise of the right to petition, governmental proceeding and legal action*.
2. Allows a person other than a state actor or intervenor to file a motion to dismiss or quash, rather than only dismiss, an action that involves, in addition to the person's lawful right to petition, the person's constitutional right of speech, freedom of the press, right to freely associate or right to peaceably assemble.
3. Stipulates that the person who files a motion to dismiss or quash has the burden of establishing prima facie proof that the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.
4. Allows the moving person to submit evidence based on the record, a sworn affidavit or other evidence that is submitted with the motion to dismiss or quash.
5. Specifies that a party is not required to file a response to a motion to dismiss or quash unless the court finds that the moving party has established the prima facie proof and orders the party to file a response.
6. Requires the court to grant the motion to dismiss or quash unless:
  - a) if the responding party is a state actor, the responding party shows that the legal action in question is justified by clearly established law and that the responding party did not act in order to deter, prevent or retaliate against the moving party's exercise of constitutional rights; or
  - b) if the responding party is not a state actor, the responding party shows that the legal action in question is justified by existing law or supported by reasonable argument for extending or modifying existing law.
7. Allows a state actor to demonstrate that a legal action is justified by:
  - a) establishing that the person who initiated and conducted an investigation that resulted in the legal action and that made the decision to pursue the legal action was unaware of the movant's lawful exercise of the constitutional right;
  - b) establishing that the state actor or intervenor has a consistent practice of pursuing similar legal actions against similarly situated persons who did not lawfully exercise constitutional rights; or
  - c) producing any other evidence that the court finds sufficient.
8. Requires a court to either considering pleadings and supporting and opposing affidavits or conduct an evidentiary hearing in making a determination on a motion to dismiss or quash.
9. Removes the existing exception to a court being required to grant a motion to dismiss based on a finding that the moving party's exercise of the right to petition did not contain any reasonable factual support or any arguable basis in law.
10. Removes the requirement that the court, at the request of the moving party, determine whether an action was brought to deter or prevent the moving party from exercising constitutional rights and is thereby brought for an improper purpose.

11. Reduces, from 90 days to 60 days, the time period within which a motion to dismiss or quash may be filed after the service of the complaint or other document on which the motion is based.
12. Allows a motion to be filed at a later time after there is actual notice of a party's misconduct, at the court's discretion.
13. Requires the court, if the court finds that prima facie proof has been established, to conduct an expedited hearing on the motion, if possible.
14. Removes the requirement that the court, when possible, give calendar preference to strategic actions and conduct an expedited hearing after a motion to dismiss has been filed.
15. Requires all discovery proceedings in an action to be stayed on a finding of prima facie proof, unless a court rule specifically provides otherwise.
16. Requires the stay of discovery to remain in effect until notice of entry of the order ruling on the motion.
17. Allows the court to order that specified discovery be conducted on noticed motion and for good cause shown.
18. Allows, rather than requires, a court that grants a motion to dismiss or quash to award the moving party costs and reasonable attorney fees.
19. Specifies that *costs* include costs incurred that are not in connection with the specific motion to dismiss or quash.
20. States that, if the court denies a motion to dismiss or quash, the denial and the court's supporting findings are not admissible in evidence at any later stage of the case or in any subsequent action.
21. States that the burden of proof or degree of proof that is otherwise applicable is not affected by the findings in any later stage of the case or in any subsequent proceeding.
22. States that an order granting or denying a motion to dismiss or quash is appealable, if the court determines that the moving party has established prima facie proof.
23. Includes the limited ability to appeal a motion to dismiss or quash in actions brought in the superior court, and requires the superior court to expedite an appeal unless the court finds for good cause that an expedited review is not feasible under the circumstances or a court rule specifically provides otherwise.
24. Requires the Court of Appeals to expedite any appeal unless the court, for good cause shown, finds that expedited review is not feasible under the circumstances, or a court rule specifically provides otherwise.
25. Expands the applicability of statute relating to strategic actions against public participation to enforcement actions brought by the state or its political subdivisions.

26. Defines *legal action* as:

- a) any civil action, claim, cross-claim or counterclaim for damages other than nominal damages;
- b) any criminal prosecution, except for drug trafficking offenses, a riot or a serious offense or violent or aggravated felony; and
- c) any written investigative demand of a public meeting or proceeding or other compulsory legal process or any regulatory or administrative action by a state actor.

27. States that a *legal action* does not include a motion to dismiss or quash a strategic action against public participation.

28. Defines *state actor* as:

- a) the state and any of its political subdivisions;
- b) any branch, department, board, bureau, commission, council or committee of an entity of the state or its political subdivisions; and
- c) any officer, employee or other agent of the state or its political subdivisions who is acting in the officer's, employee's or agent's official capacity.

29. Contains a severability clause.

30. Makes technical and conforming changes.

31. Becomes effective on the general effective date.

#### Amendments Adopted by Committee

1. Specifies that a motion to dismiss or quash applies to strategic actions against public participation involving a person's lawful exercise of the right to petition, as well as the freedom of the press.
2. Stipulates that the person who files a motion to dismiss or quash has the burden of establishing prima facie proof that the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.
3. Allows the moving person to submit evidence based on the record, a sworn affidavit or other evidence that is submitted with the motion to dismiss or quash.
4. Specifies that a party is not required to file a response to a motion to dismiss or quash unless the court finds that the moving party has established the prima facie proof and orders the party to file a response.
5. Modifies criteria for determining when a court is not required to grant a motion to dismiss or quash when a responding party is a state actor.
6. Allows a state actor to demonstrate that a legal action is justified by:
  - a) establishing that the person who initiated and conducted an investigation that resulted in the legal action and that made the decision to pursue the legal action was unaware of the movant's lawful exercise of the constitutional right;
  - b) establishing that the state actor or intervenor has a consistent practice of pursuing similar legal actions against similarly situated persons who did not lawfully exercise constitutional rights; or
  - c) producing any other evidence that the court finds sufficient.

7. Requires a court to either considering pleadings and supporting and opposing affidavits or conduct an evidentiary hearing in making a determination on a motion to dismiss or quash.
8. Removes the stipulation that a moving party is encouraged to pursue additional damages, in addition to additional sanctions, if a court finds that an action was brought to deter, prevent or retaliate against the exercise of constitutional rights or is otherwise brought for an improper purpose.
9. Allows a motion to be filed at a later time after there is actual notice of a party's misconduct, at the court's discretion.
10. Requires the court, if the court finds that prima facie proof has been established, to conduct an expedited hearing on the motion, if possible.
11. Replaces the requirement that the court must schedule a hearing on a motion to dismiss or quash within 30 days after service of the motion with the requirement that the court must conduct an expedited hearing on the motion, if possible and if the court finds that prima facie proof is established.
12. Requires all discovery proceedings in an action to be stayed on a finding of prima facie proof, rather than on filing of a notice of a motion to dismiss or quash, unless a court rule specifically provides otherwise.
13. Allows, rather than requires, a court that grants a motion to dismiss or quash to award the moving party costs and reasonable attorney fees.
14. Specifies that *costs* include costs incurred that are not in connection with the specific motion to dismiss or quash.
15. Specifies that an order granting or denying an order to dismiss or quash is appealable only if the court determines that the moving party has established prima facie proof.
16. Includes the limited ability to appeal a motion to dismiss or quash in actions brought in the superior court, and requires the superior court to expedite an appeal unless the court finds for good cause that an expedited review is not feasible under the circumstances or a court rule specifically provides otherwise.
17. Modifies the definition of *legal action* to exclude certain criminal proceedings.

#### Revisions

1. Corrects provisions to reflect that a court is not required to grant a motion to dismiss or quash if the responding party is a state actor and can demonstrate that the party did not act, rather than did act, to deter the moving party's exercise of constitutional rights.
2. Corrects provisions relating to when the court must schedule a hearing on a motion to dismiss or quash to reflect the committee amendment.

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House Action

JUD            2/16/22    DPA    5-3-0-2  
3<sup>rd</sup> Read      2/22/22                40-19-1

Senate Action

JUD            3/24/22    DPA    6-1-1

Prepared by Senate Research

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ZD/sr