

House Engrossed

strategic actions; public participation

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

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 SECTION 12-2101, 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3 Section 12-751, Arizona Revised Statutes, is repealed.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 exercise of
9 the right of petition, THE RIGHT OF SPEECH, THE RIGHT TO FREELY ASSOCIATE
10 OR THE RIGHT TO PEACEABLY ASSEMBLE PURSUANT TO THE UNITED STATES
11 CONSTITUTION OR ARIZONA CONSTITUTION, the ~~defending party~~ PERSON may file
12 a motion to dismiss OR QUASH the action under this section. ~~When~~
13 ~~possible, the court shall give calendar preference to an action that is~~
14 ~~brought under this subsection and shall conduct an expedited hearing after~~
15 ~~the motion is filed with the court and notice of the motion has been~~
16 ~~served as provided by court rule.~~

17 B. The court shall grant the motion unless ~~the party against whom~~
18 ~~the motion is made shows that the moving party's exercise of the right of~~
19 ~~petition did not contain any reasonable factual support or any arguable~~
20 ~~basis in law and that the moving party's acts caused actual compensable~~
21 ~~injury to the responding party.~~ ONE OF THE FOLLOWING APPLIES:

22 1. IF THE RESPONDING PARTY IS A STATE ACTOR, THE RESPONDING PARTY
23 SHOWS THAT THE LEGAL ACTION ON WHICH THE MOTION IS BASED IS SUPPORTED BY
24 CLEARLY ESTABLISHED LAW AND THAT ON THE UNDISPUTED MATERIAL FACTS, A TRIER
25 OF FACT COULD NOT REASONABLY FIND THAT THE RESPONDING PARTY ACTED IN ORDER
26 TO DETER, PREVENT OR RETALIATE AGAINST THE MOVING PARTY'S EXERCISE OF
27 CONSTITUTIONAL RIGHTS.

28 2. IF THE RESPONDING PARTY IS NOT A STATE ACTOR, THE RESPONDING
29 PARTY SHOWS THAT THE LEGAL ACTION ON WHICH THE MOTION IS BASED IS
30 JUSTIFIED BY EXISTING LAW OR BY A REASONABLE ARGUMENT FOR EXTENDING OR
31 MODIFYING EXISTING LAW.

32 C. In making its determination, the court shall consider the
33 pleadings and supporting and opposing affidavits stating facts on which
34 the liability ~~or~~ defense OR ACTION is based. ~~At the request of the moving~~
35 ~~party, the court shall make findings whether the lawsuit was brought to~~
36 ~~deter or prevent the moving party from exercising constitutional rights~~
37 ~~and is thereby brought for an improper purpose, including to harass or to~~
38 ~~cause unnecessary delay or needless increase in the cost of litigation.~~
39 If the court finds that the lawsuit was brought to deter, ~~or~~ prevent OR
40 RETALIATE AGAINST the exercise of constitutional rights or otherwise
41 brought for an improper purpose, the moving party is encouraged to pursue
42 additional sanctions OR DAMAGES as provided by ~~court rule~~ LAW.

43 ~~C.~~ D. The motion to dismiss OR QUASH may be filed within ~~ninety~~
44 SIXTY days after the service of the complaint OR OTHER DOCUMENT ON WHICH
45 THE MOTION IS BASED or, in the court's discretion, at any later time on

1 terms that the court deems proper. THE COURT SHALL SCHEDULE A HEARING ON
2 THE MOTION NOT MORE THAN THIRTY DAYS AFTER SERVICE OF THE MOTION UNLESS
3 THE DOCKET CONDITIONS OF THE COURT REQUIRE A LATER HEARING OR A COURT RULE
4 SPECIFICALLY PROVIDES OTHERWISE.

5 E. UNLESS A COURT RULE SPECIFICALLY PROVIDES OTHERWISE, ALL
6 DISCOVERY PROCEEDINGS IN THE ACTION SHALL BE STAYED ON THE FILING OF A
7 NOTICE OF MOTION MADE PURSUANT TO THIS SECTION. THE STAY OF DISCOVERY
8 SHALL REMAIN IN EFFECT UNTIL NOTICE OF ENTRY OF THE ORDER RULING ON THE
9 MOTION. NOTWITHSTANDING THIS SUBSECTION, THE COURT, ON NOTICED MOTION AND
10 FOR GOOD CAUSE SHOWN, MAY ORDER THAT SPECIFIED DISCOVERY BE CONDUCTED.

11 ~~D.~~ F. If the court grants the motion to dismiss OR QUASH, the
12 court shall award the moving party costs and reasonable attorney fees,
13 including those incurred for the motion. If the court finds that a motion
14 to dismiss is frivolous or solely intended to delay, the court shall award
15 costs and reasonable attorney fees to the prevailing party on the motion.
16 For the purposes of this subsection, "costs" means all costs that are
17 reasonably incurred in connection with a motion to dismiss OR QUASH
18 pursuant to this section and includes filing fees, record preparation and
19 document copying fees, documented time away from employment to confer with
20 counsel or attend case related proceedings, expert witness fees, travel
21 expenses and any other costs that the court deems appropriate.

22 G. IF THE COURT DENIES THE MOTION TO DISMISS OR QUASH, THE DENIAL
23 AND THE COURT'S FINDINGS IN SUPPORT OF THE DENIAL ARE NOT ADMISSIBLE IN
24 EVIDENCE AT ANY LATER STAGE OF THE CASE, OR IN ANY SUBSEQUENT ACTION, AND
25 THE BURDEN OF PROOF OR DEGREE OF PROOF THAT IS OTHERWISE APPLICABLE IS NOT
26 AFFECTED BY THE FINDINGS IN ANY LATER STAGE OF THE CASE OR IN ANY
27 SUBSEQUENT PROCEEDING.

28 H. AN ORDER GRANTING OR DENYING A MOTION FILED PURSUANT TO THIS
29 SECTION IS APPEALABLE PURSUANT TO SECTION 12-2101.

30 ~~E.~~ I. This article does not:

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

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

35 ~~3. Create any privileges or immunities or otherwise affect, limit~~
36 ~~or preclude any privileges or immunities authorized by law.~~

37 ~~4.~~ 2. Limit or preclude a legislative or executive body or a
38 public agency from enforcing the rules of procedure and rules of order of
39 the body or agency.

40 J. FOR THE PURPOSES OF THIS SECTION:

41 1. "LEGAL ACTION":

42 (a) MEANS ANY OF THE FOLLOWING:

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

45 (ii) ANY CRIMINAL PROSECUTION.

1 (iii) ANY WRITTEN INVESTIGATIVE DEMAND PURSUANT TO SECTION
2 38-431.06 OR OTHER COMPULSORY LEGAL PROCESS OR ANY REGULATORY OR
3 ADMINISTRATIVE ACTION BY A STATE ACTOR.

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

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

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

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

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

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

16 12-2101. Judgments and orders that may be appealed

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

19 1. From a final judgment entered in an action or special proceeding
20 commenced in a superior court, or brought into a superior court from any
21 other court, except in actions of forcible entry and detainer when the
22 annual rental value of the property is less than ~~three hundred dollars~~
23 \$300.

24 2. From any special order made after final judgment.

25 3. From any order affecting a substantial right made in any action
26 when the order in effect determines the action and prevents judgment from
27 which an appeal might be taken.

28 4. From a final order affecting a substantial right made in a
29 special proceeding or on a summary application in an action after
30 judgment.

31 5. From an order:

32 (a) Granting or refusing a new trial, ~~or~~ or granting a motion in
33 arrest of judgment.

34 (b) Granting or dissolving an injunction, ~~or~~ or refusing to grant or
35 dissolve an injunction or appointing a receiver.

36 (c) Dissolving or refusing to dissolve an attachment or
37 garnishment.

38 (d) Granting or denying a petition to restore a person's right to
39 possess a firearm pursuant to section 13-925.

40 (e) GRANTING OR DENYING A MOTION TO DISMISS OR QUASH PURSUANT TO
41 SECTION 12-751. THE COURT OF APPEALS SHALL EXPEDITE ANY APPEAL FILED
42 PURSUANT TO THIS SUBDIVISION UNLESS THE COURT FOR GOOD CAUSE FINDS THAT
43 EXPEDITED REVIEW IS NOT FEASIBLE UNDER THE CIRCUMSTANCES OR A COURT RULE
44 SPECIFICALLY PROVIDES OTHERWISE.

1 6. From an interlocutory judgment that determines the rights of the
2 parties and directs an accounting or other proceeding to determine the
3 amount of the recovery.

4 7. From an interlocutory judgment in any action for partition that
5 determines the rights and interests of the respective parties, and
6 directs partition to be made.

7 8. From any interlocutory judgment, decree or order made or entered
8 in actions to redeem real or personal property from a mortgage thereof or
9 lien thereon, determining such right to redeem and directing an
10 accounting.

11 9. From a judgment, decree or order entered in any formal
12 proceedings under title 14.

13 10. From an order or judgment:

14 (a) Adjudging a person insane or incompetent, or committing a
15 person to the state hospital.

16 (b) Revoking or refusing to revoke an order or judgment adjudging a
17 person insane or incompetent, or restoring or refusing to restore to
18 competency any person who has been declared insane or incompetent.

19 11. From an order or judgment made and entered on habeas corpus
20 proceedings:

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

23 (b) The officer having the custody of the petitioner, or the county
24 attorney on behalf of the state, from an order or judgment discharging the
25 petitioner whereupon the court may admit the petitioner to bail pending
26 the appeal.

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

29 Sec. 4. Severability

30 If a provision of this act or its application to any person or
31 circumstance is held invalid, the invalidity does not affect other
32 provisions or applications of the act that can be given effect without the
33 invalid provision or application, and to this end the provisions of this
34 act are severable.