

REFERENCE TITLE: **strategic actions; public participation**

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

# **HB 2722**

Introduced by  
Representative Toma

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3 Section 12-751, Arizona Revised Statutes, is repealed.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

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

16 B. The court shall grant the motion unless the party against whom  
17 the motion is made shows EITHER that the moving ~~party's exercise of the~~  
18 ~~right of petition did not contain any reasonable factual support or any~~  
19 ~~arguable basis in law and that the moving party's acts caused actual~~  
20 ~~compensable injury to the responding~~ party VIOLATED CLEARLY ESTABLISHED  
21 LAW OR THAT THE NONMOVING PARTY IS LIKELY TO PREVAIL ON THE NONMOVANT'S  
22 CLAIMS. In making its determination, the court shall consider the  
23 pleadings and supporting and opposing affidavits stating facts on which  
24 the liability, ~~or~~ defense OR ACTION is based. At the request of the  
25 moving party, the court shall make findings whether the ~~lawsuit~~ LEGAL  
26 ACTION was brought to deter, ~~or~~ prevent OR PUNISH the ~~moving party from~~  
27 ~~exercising~~ EXERCISE OF constitutional rights and is thereby brought for an  
28 improper purpose, including to harass or to cause unnecessary delay or  
29 needless increase in the cost of litigation. If the court finds that the  
30 lawsuit was brought to deter, ~~or~~ prevent OR PUNISH the exercise of  
31 constitutional rights or otherwise brought for an improper purpose, the  
32 moving party is encouraged to pursue additional sanctions OR DAMAGES as  
33 provided by ~~court rule~~ LAW.

34 C. The motion to dismiss may be filed within ~~ninety~~ SIXTY days  
35 after the service of the complaint OR OTHER DOCUMENT ON WHICH THE MOTION  
36 IS BASED or, in the court's discretion, at any later time on terms that  
37 the court deems proper. THE COURT SHALL SCHEDULE A HEARING ON THE MOTION  
38 NOT MORE THAN THIRTY DAYS AFTER SERVICE OF THE MOTION UNLESS THE DOCKET  
39 CONDITIONS OF THE COURT REQUIRE A LATER HEARING.

40 D. AS APPLICABLE, ALL DISCOVERY PROCEEDINGS IN THE ACTION SHALL BE  
41 STAYED ON THE FILING OF A NOTICE OF MOTION MADE PURSUANT TO THIS SECTION.  
42 THE STAY OF DISCOVERY SHALL REMAIN IN EFFECT UNTIL NOTICE OF ENTRY OF THE  
43 ORDER RULING ON THE MOTION. NOTWITHSTANDING THIS SUBSECTION, THE COURT,  
44 ON NOTICED MOTION AND FOR GOOD CAUSE SHOWN, MAY ORDER THAT SPECIFIED  
45 DISCOVERY BE CONDUCTED.

1           ~~D.~~ E. If the court grants the motion to dismiss, the court shall  
2 award the moving party costs and reasonable attorney fees, including those  
3 incurred for the motion. If the court finds that a motion to dismiss is  
4 frivolous or solely intended to delay, the court shall award costs and  
5 reasonable attorney fees to the prevailing party on the motion. For the  
6 purposes of this subsection, "costs" means all costs that are reasonably  
7 incurred in connection with a motion to dismiss OR QUASH pursuant to this  
8 section and includes filing fees, record preparation and document copying  
9 fees, documented time away from employment to confer with counsel or  
10 attend case related proceedings, expert witness fees, travel expenses and  
11 any other costs that the court deems appropriate.

12           F. AN ORDER GRANTING OR DENYING A MOTION FILED PURSUANT TO THIS  
13 SECTION IS APPEALABLE PURSUANT TO SECTION 12-2101.

14           ~~E.~~ G. This article does not:

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

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

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

21           ~~4.~~ 2. Limit or preclude a legislative or executive body or a  
22 public agency from enforcing the rules of procedure and rules of order of  
23 the body or agency.

24           H. FOR THE PURPOSES OF THIS SECTION, "LEGAL ACTION" MEANS ANY CIVIL  
25 ACTION, CLAIM, CROSS-CLAIM OR COUNTERCLAIM, ANY CRIMINAL PROSECUTION, ANY  
26 WRITTEN INVESTIGATIVE DEMAND PURSUANT TO SECTION 38-431.06 OR ANY  
27 REGULATORY OR ADMINISTRATIVE ACTION BY THIS STATE OR AN AGENCY OR  
28 POLITICAL SUBDIVISION OF THIS STATE.

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

31           12-2101. Judgments and orders that may be appealed

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

34           1. From a final judgment entered in an action or special proceeding  
35 commenced in a superior court, or brought into a superior court from any  
36 other court, except in actions of forcible entry and detainer when the  
37 annual rental value of the property is less than ~~three hundred dollars~~  
38 \$300.

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

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

43           4. From a final order affecting a substantial right made in a  
44 special proceeding or on a summary application in an action after  
45 judgment.

- 1           5. From an order:
- 2           (a) Granting or refusing a new trial,~~—~~ or granting a motion in
- 3 arrest of judgment.
- 4           (b) Granting or dissolving an injunction,~~—~~ or refusing to grant or
- 5 dissolve an injunction or appointing a receiver.
- 6           (c) Dissolving or refusing to dissolve an attachment or
- 7 garnishment.
- 8           (d) Granting or denying a petition to restore a person's right to
- 9 possess a firearm pursuant to section 13-925.
- 10          (e) GRANTING OR DENYING A MOTION TO DISMISS OR QUASH PURSUANT TO
- 11 SECTION 12-751.
- 12          6. From an interlocutory judgment that determines the rights of the
- 13 parties and directs an accounting or other proceeding to determine the
- 14 amount of the recovery.
- 15          7. From an interlocutory judgment in any action for partition that
- 16 determines the rights and interests of the respective parties,~~—~~ and
- 17 directs partition to be made.
- 18          8. From any interlocutory judgment, decree or order made or entered
- 19 in actions to redeem real or personal property from a mortgage thereof or
- 20 lien thereon, determining such right to redeem and directing an
- 21 accounting.
- 22          9. From a judgment, decree or order entered in any formal
- 23 proceedings under title 14.
- 24          10. From an order or judgment:
- 25           (a) Adjudging a person insane or incompetent,~~—~~ or committing a
- 26 person to the state hospital.
- 27           (b) Revoking or refusing to revoke an order or judgment adjudging a
- 28 person insane or incompetent,~~—~~ or restoring or refusing to restore to
- 29 competency any person who has been declared insane or incompetent.
- 30          11. From an order or judgment made and entered on habeas corpus
- 31 proceedings:
- 32           (a) The petitioner may appeal from an order or judgment refusing
- 33 ~~his~~ THE PETITIONER'S discharge.
- 34           (b) The officer having the custody of the petitioner, or the county
- 35 attorney on behalf of the state, from an order or judgment discharging the
- 36 petitioner whereupon the court may admit the petitioner to bail pending
- 37 the appeal.
- 38          B. If any order or judgment referred to in this section is made or
- 39 rendered by a judge it is appealable as if made by the court.