

Senate Engrossed House Bill
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 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3 Section 12-751, Arizona Revised Statutes, is repealed.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.