

3884

2009-2010 Regular Sessions

I N   S E N A T E

April 2, 2009

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Introduced by Sens. C. JOHNSON, DIAZ, ONORATO, SAVINO -- (at request of the Division of Human Rights) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, in relation to providing for the award of attorney's fees and expert witness fees in appropriate cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 10 of section 297 of the executive law, as  
2 added by section 17 of part D of chapter 405 of the laws of 1999, is  
3 amended to read as follows:  
4     10. [With respect to cases of housing discrimination only, in] IN an  
5 action or proceeding at law under this section or section two hundred  
6 ninety-eight of this article, the commissioner or the court may in its  
7 discretion award reasonable attorney's fees to any prevailing or  
8 substantially prevailing party; provided, however, that a prevailing  
9 respondent or defendant in order to recover such reasonable attorney's  
10 fees must make a motion requesting such fees and show that the action or  
11 proceeding brought was frivolous; and further provided that in a  
12 proceeding brought in the division of human rights, the commissioner may  
13 only award attorney's fees as part of a final order after a public hear-  
14 ing held pursuant to subdivision four of this section. In no case shall  
15 attorney's fees be awarded to the division, nor shall the division be  
16 liable to a prevailing or substantially prevailing party for attorney's  
17 fees, except in a case in which the division is a party to the action or  
18 the proceeding in the division's capacity as an employer. WITH RESPECT  
19 TO CASES OF EMPLOYMENT DISCRIMINATION ONLY, THE AWARD OF ATTORNEY'S FEES  
20 WILL BE LIMITED TO THOSE CASES IN WHICH THE EMPLOYER HAS FIFTY OR MORE  
21 EMPLOYEES. EXPERT WITNESS FEES MAY BE AWARDED IN THE SAME MANNER AS  
22 ATTORNEY'S FEES. In order to find the action or proceeding to be frivo-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 lous, the court or the commissioner must find in writing one or more of  
2 the following:

3 (a) the action or proceeding was commenced, used or continued in bad  
4 faith, solely to delay or prolong the resolution of the litigation or to  
5 harass or maliciously injure another; or

6 (b) the action or proceeding was commenced or continued in bad faith  
7 without any reasonable basis and could not be supported by a good faith  
8 argument for an extension, modification or reversal of existing law. If  
9 the action or proceeding was promptly discontinued when the party or  
10 attorney learned or should have learned that the action or proceeding  
11 lacked such a reasonable basis, the court may find that the party or the  
12 attorney did not act in bad faith.

13 S 2. This act shall take effect on the ninetieth day after it shall  
14 have become a law.