2015-2016 Regular Sessions

I N   S E N A T E

January 9, 2015
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Introduced by Sen. LITTLE -- read twice and ordered printed, and when
    printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to the provision of
    attorney's fees in cases of housing, employment or credit discrimi-
    nation; to amend the executive law, in relation to the awarding of
    reasonable attorney's fees

    THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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 ALL cases of HOUSING DISCRIMINATION AND housing
 5   RELATED CREDIT discrimination [only] in an action or proceeding at law
 6   under this section or section two hundred ninety-eight of this article,
 7   the commissioner or the court may in its discretion award reasonable
 8   attorney's fees to any prevailing or substantially prevailing party; AND
 9   WITH RESPECT TO A CLAIM OF EMPLOYMENT OR CREDIT DISCRIMINATION WHERE SEX
10   IS A BASIS OF SUCH DISCRIMINATION, IN AN ACTION OR PROCEEDING AT LAW
11   UNDER THIS SECTION OR SECTION TWO HUNDRED NINETY-EIGHT OF THIS ARTICLE,
12   THE COMMISSIONER OR THE COURT MAY IN ITS DISCRETION AWARD REASONABLE
13   ATTORNEY'S FEES ATTRIBUTABLE TO SUCH CLAIM TO ANY PREVAILING PARTY;
14   provided, however, that a prevailing respondent or defendant in order to
15   recover such reasonable attorney's fees must make a motion requesting
16   such fees and show that the action or proceeding brought was frivolous;
17   and further provided that in a proceeding brought in the division of
18   human rights, the commissioner may only award attorney's fees as part of
19   a final order after a public hearing held pursuant to subdivision four
20   of this section. In no case shall attorney's fees be awarded to the
21   division, nor shall the division be liable to a prevailing or substan-
22   tially prevailing party for attorney's fees, except in a case in which
23   the division is a party to the action or the proceeding in the divi-

1 sion's capacity as an employer. IN CASES OF EMPLOYMENT DISCRIMINATION,
2 A RESPONDENT SHALL ONLY BE LIABLE FOR ATTORNEY'S FEES UNDER THIS SUBDI-
3 VISION IF THE RESPONDENT HAS BEEN FOUND LIABLE FOR HAVING COMMITTED AN
4 UNLAWFUL DISCRIMINATORY PRACTICE. In order to find the action or
5 proceeding to be frivolous, the court or the commissioner must find in
6 writing one or more of the following:
7   (a) the action or proceeding was commenced, used or continued in bad
8 faith, solely to delay or prolong the resolution of the litigation or to
9 harass or maliciously injure another; or
10   (b) the action or proceeding was commenced or continued in bad faith
11 without any reasonable basis and could not be supported by a good faith
12 argument for an extension, modification or reversal of existing law. If
13 the action or proceeding was promptly discontinued when the party or
14 attorney learned or should have learned that the action or proceeding
15 lacked such a reasonable basis, the court may find that the party or the
16 attorney did not act in bad faith.
17   S 2. Paragraph c of subdivision 7 of section 296-a of the executive
18 law, as amended by chapter 632 of the laws of 1976, is amended to read
19 as follows:
20   c. If the superintendent finds that a violation of this section has
21 occurred, the superintendent shall issue an order which shall do one or
22 more of the following:
23   (1) impose a fine in an amount not to exceed ten thousand dollars for
24 each violation, to be paid to the people of the state of New York;
25   (2) award compensatory damages to the person aggrieved by such
26 violation;
27   (3) FOR A CLAIM OF SEX DISCRIMINATION ONLY, AWARD REASONABLE ATTOR-
28 NEY'S FEES ATTRIBUTABLE TO SUCH CLAIM TO ANY PREVAILING PARTY; PROVIDED,
29 HOWEVER, THAT A PREVAILING RESPONDENT OR DEFENDANT IN ORDER TO RECOVER
30 SUCH REASONABLE ATTORNEY'S FEES MUST MAKE A MOTION REQUESTING SUCH FEES
31 AND SHOW THAT THE ACTION OR PROCEEDING BROUGHT WAS FRIVOLOUS. IN NO CASE
32 SHALL ATTORNEY'S FEES BE AWARDED TO THE DEPARTMENT, NOR SHALL THE
33 DEPARTMENT BE LIABLE TO A PREVAILING PARTY FOR ATTORNEY'S FEES. IN ORDER
34 TO FIND THE ACTION OR PROCEEDING TO BE FRIVOLOUS, THE SUPERINTENDENT
35 MUST FIND IN WRITING ONE OR MORE OF THE FOLLOWING:
36   (A) THE ACTION OR PROCEEDING WAS COMMENCED, USED OR CONTINUED IN BAD
37 FAITH, SOLELY TO DELAY OR PROLONG THE RESOLUTION OF THE LITIGATION OR TO
38 HARASS OR MALICIOUSLY INJURE ANOTHER; OR
39   (B) THE ACTION OR PROCEEDING WAS COMMENCED OR CONTINUED IN BAD FAITH
40 WITHOUT ANY REASONABLE BASIS AND COULD NOT BE SUPPORTED BY A GOOD FAITH
41 ARGUMENT FOR AN EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW. IF
42 THE ACTION OR PROCEEDING WAS PROMPTLY DISCONTINUED WHEN THE PARTY OR
43 ATTORNEY LEARNED OR SHOULD HAVE LEARNED THAT THE ACTION OR PROCEEDING
44 LACKED SUCH A REASONABLE BASIS, THE COURT MAY FIND THAT THE PARTY OR THE
45 ATTORNEY DID NOT ACT IN BAD FAITH.
46   (4) require the regulated creditor to cease and desist from such
47 unlawful discriminatory practices;
48   [(4)] (5) require the regulated creditor to take such further affirma-
49 tive action as will effectuate the purposes of this section, including,
50 but not limited to, granting the credit which was the subject of the
51 complaint.
52   S 3. Severability clause. If any clause, sentence, paragraph, subdivi-
53 sion, section or part of this act shall be adjudged by a court of compe-
54 tent jurisdiction to be invalid, such judgment shall not affect, impair
55 or invalidate the remainder thereof, but shall be confined in its opera-
56 tion to the clause, sentence, paragraph, subdivision, section or part

1 thereof directly involved in the controversy in which such judgment
2 shall have been rendered. It is hereby declared to be the intent of the
3 legislature that this act would have been enacted even if such invalid
4 provisions had not been included herein.
5   S 4. This act shall take effect on the ninetieth day after it shall
6 have become a law, and shall apply to actions commenced on or after such
7 date.