

STATE OF NEW YORK

7394

2021-2022 Regular Sessions

IN SENATE

September 22, 2021

Introduced by Sen. BIAGGI -- 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 preserve the right to a jury trial for certain actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 9 of section 297 of the executive law, as separately amended by chapter 160 of the laws of 2019 and chapter 236 of the laws of 2020, is amended to read as follows:

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4 9. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages, including, in cases of employment discrimination related to private employers and housing discrimination only, punitive damages, and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this section, unless such person had filed a complaint hereunder or with any local commission on human rights, or with the superintendent pursuant to the provisions of section two hundred ninety-six-a of this [chapter] article, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, on the grounds of untimeliness, or on the grounds that the election of remedies is annulled, such person shall maintain all rights to bring suit as if no complaint had been filed with the division. At any time prior to a hearing before a hearing examiner, a person who has a complaint pending at the division may request that the division dismiss the complaint and annul his or her election of remedies so that the human rights law claim may be pursued in court, and the division may, upon such request, dismiss the complaint on the grounds that such person's election of an administrative remedy is annulled. Notwithstanding subdivision (a) of section two hundred four of the civil practice law and rules, if a complaint is so annulled by the division, upon the request of the party bringing such complaint

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

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1 before the division, such party's rights to bring such cause of action
2 before a court of appropriate jurisdiction shall be limited by the stat-
3 ute of limitations in effect in such court at the time the complaint was
4 initially filed with the division. Notwithstanding any other provision
5 of law to the contrary, when a person commences an action pursuant to
6 this subdivision or pursuant to a local human rights law, and such
7 action includes a demand for equitable relief, such person shall never-
8 theless retain the right to a jury trial. Any party to a housing
9 discrimination complaint shall have the right within twenty days follow-
10 ing a determination of probable cause pursuant to subdivision two of
11 this section to elect to have an action commenced in a civil court, and
12 an attorney representing the division of human rights will be appointed
13 to present the complaint in court, or, with the consent of the division,
14 the case may be presented by the complainant's attorney. A complaint
15 filed by the equal employment opportunity commission to comply with the
16 requirements of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b)
17 shall not constitute the filing of a complaint within the meaning of
18 this subdivision. No person who has initiated any action in a court of
19 competent jurisdiction or who has an action pending before any adminis-
20 trative agency under any other law of the state based upon an act which
21 would be an unlawful discriminatory practice under this article, may
22 file a complaint with respect to the same grievance under this section
23 or under section two hundred ninety-six-a of this article. In cases of
24 housing discrimination only, a person whose complaint has been dismissed
25 by the division after investigation for lack of jurisdiction or lack of
26 probable cause may file the same cause of action in a court of appropri-
27 ate jurisdiction pursuant to this section, unless judicial review of
28 such dismissal has been sought pursuant to section two hundred ninety-
29 eight of this article.

30 § 2. This act shall take effect immediately.