

STATE OF NEW YORK

5065

2025-2026 Regular Sessions

IN SENATE

February 18, 2025

Introduced by Sen. SEPULVEDA -- 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 awarding attorneys' fees and costs in an action brought for an unlawful discriminatory practice

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
2 amended by chapter 140 of the laws of 2022, is amended to read as
3 follows:

4 9. Any person claiming to be aggrieved by an unlawful discriminatory
5 practice shall have a cause of action in any court of appropriate juris-
6 diction for damages[~~, including, in cases of employment discrimination~~
7 ~~related to private employers and housing discrimination only,~~] and may
8 award punitive damages, and such other remedies as may be appropriate,
9 including any civil fines and penalties provided in subdivision four of
10 this section, unless such person had filed a complaint hereunder or with
11 any local commission on human rights, or with the superintendent pursu-
12 ant to the provisions of section two hundred ninety-six-a of this arti-
13 cle, provided that, where the division has dismissed such complaint on
14 the grounds of administrative convenience, on the grounds of untimeli-
15 ness, or on the grounds that the election of remedies is annulled, such
16 person shall maintain all rights to bring suit as if no complaint had
17 been filed with the division. At any time prior to a hearing before a
18 hearing examiner, a person who has a complaint pending at the division
19 may request that the division dismiss the complaint and annul [~~his or~~
20 ~~her~~] such person's election of remedies so that the human rights law
21 claim may be pursued in court, and the division may, upon such request,
22 dismiss the complaint on the grounds that such person's election of an
23 administrative remedy is annulled. Notwithstanding subdivision (a) of

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

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1 section two hundred four of the civil practice law and rules, if a
2 complaint is so annulled by the division, upon the request of the party
3 bringing such complaint before the division, such party's rights to
4 bring such cause of action before a court of appropriate jurisdiction
5 shall be limited by the statute of limitations in effect in such court
6 at the time the complaint was initially filed with the division. Any
7 party to a housing discrimination complaint shall have the right within
8 twenty days following a determination of probable cause pursuant to
9 subdivision two of this section to elect to have an action commenced in
10 a civil court, and an attorney representing the division of human rights
11 will be appointed to present the complaint in court, or, with the
12 consent of the division, the case may be presented by complainant's
13 attorney. A complaint filed by the equal employment opportunity commis-
14 sion to comply with the requirements of 42 USC 2000e-5(c) and 42 USC
15 12117(a) and 29 USC 633(b) shall not constitute the filing of a
16 complaint within the meaning of this subdivision. No person who has
17 initiated any action in a court of competent jurisdiction or who has an
18 action pending before any administrative agency under any other law of
19 the state based upon an act which would be an unlawful discriminatory
20 practice under this article, may file a complaint with respect to the
21 same grievance under this section or under section two hundred ninety-
22 six-a of this article. In cases of housing discrimination only, a person
23 whose complaint has been dismissed by the division after investigation
24 for lack of jurisdiction or lack of probable cause may file the same
25 cause of action in a court of appropriate jurisdiction pursuant to this
26 section, unless judicial review of such dismissal has been sought pursu-
27 ant to section two hundred ninety-eight of this article. The attorney
28 general shall have the power to commence an action or proceeding in the
29 supreme court of the state of New York, if, upon information or belief,
30 the attorney general is of the opinion that an employer has been, is, or
31 is about to violate the provisions regarding unlawful discriminatory
32 retaliation pursuant to subdivision seven of section two hundred nine-
33 ty-six of this article. Nothing in this section shall in any way limit
34 rights or remedies which are otherwise available under law to the attor-
35 ney general or any other person authorized to bring an action under this
36 section.

37 § 2. Subdivision 10 of section 297 of the executive law, as amended by
38 chapter 154 of the laws of 2022, is amended to read as follows:

39 10. (a) In an action or proceeding at law under this section the
40 commissioner or the court shall award reasonable attorneys' fees and
41 costs in the action to a prevailing party claiming to be aggrieved by an
42 unlawful discriminatory practice, except that attorneys' fees shall not
43 be awarded to the division, nor shall the division be liable to a
44 prevailing or substantially prevailing party for attorneys' fees, except
45 in a case in which the division is a party to the action or the proceed-
46 ing in the division's capacity as an employer. Expert witness fees may
47 be awarded in the same manner as attorneys' fees.

48 (b) In an action or proceeding at law under this section or section
49 two hundred ninety-eight of this article, the commissioner or the court
50 may in its discretion award reasonable ~~[attorney's]~~ attorneys' fees to
51 any prevailing ~~[or substantially prevailing party]~~ respondent or defend-
52 ant; provided, however, that a prevailing respondent or defendant in
53 order to recover such reasonable ~~[attorney's]~~ attorneys' fees must make
54 a motion requesting such fees and show that the action or proceeding
55 brought was frivolous; and further provided that in a proceeding brought
56 in the division of human rights, the commissioner may only award ~~[attor-~~

1 ~~ney's]~~ attorneys' fees to a prevailing respondent or defendant as part
2 of a final order after a public hearing held pursuant to subdivision
3 four of this section. ~~[In no case shall attorney's fees be awarded to~~
4 ~~the division, nor shall the division be liable to a prevailing or~~
5 ~~substantially prevailing party for attorney's fees, except in a case in~~
6 ~~which the division is a party to the action or the proceeding in the~~
7 ~~division's capacity as an employer.]~~ Expert witness fees may be awarded
8 in the same manner as ~~[attorney's]~~ attorneys' fees. ~~[In cases of employ-~~
9 ~~ment discrimination, a respondent shall only be liable for attorney's~~
10 ~~fees under this subdivision if the respondent has been found liable for~~
11 ~~having committed an unlawful discriminatory practice.]~~ In order to find
12 the action or proceeding to be frivolous, the court or the commissioner
13 must find in writing one or more of the following:

14 ~~[(a)]~~ (i) the action or proceeding was commenced, used or continued in
15 bad faith, solely to delay or prolong the resolution of the litigation
16 or to harass or maliciously injure another; or

17 ~~[(b)]~~ (ii) the action or proceeding was commenced or continued in bad
18 faith without any reasonable basis and could not be supported by a good
19 faith argument for an extension, modification or reversal of existing
20 law. If the action or proceeding was promptly discontinued when the
21 party or attorney learned or should have learned that the action or
22 proceeding lacked such a reasonable basis, the court may find that the
23 party or the attorney did not act in bad faith.

24 § 3. This act shall take effect on the thirtieth day after it shall
25 have become a law.