

2044

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sen. DeFRANCISCO -- 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 and exemplary damages in an action brought for an
unlawful discriminatory practice

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

1 Section 1. Subdivision 9 of section 297 of the executive law, as
2 amended by section 16 of part D of chapter 405 of the laws of 1999, is
3 amended to read as 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 housing discrimination only,
7 punitive damages, and UPON PREVAILING, SHALL RECOVER REASONABLE ATTOR-
8 NEYS' FEES AND COSTS IN THE ACTION. IN ADDITION THERETO THE TRIER OF
9 FACT MAY AWARD EXEMPLARY DAMAGES AND such other remedies as may be
10 appropriate, including any civil fines and penalties provided in subdi-
11 vision four of this section, unless such person had filed a complaint
12 hereunder or with any local commission on human rights, or with the
13 superintendent pursuant to the provisions of section two hundred nine-
14 ty-six-a of this chapter, provided that, where the division has
15 dismissed such complaint on the grounds of administrative convenience,
16 on the grounds of untimeliness, or on the grounds that the election of
17 remedies is annulled, such person shall maintain all rights to bring
18 suit as if no complaint had been filed with the division. At any time
19 prior to a hearing before a hearing examiner, a person who has a
20 complaint pending at the division may request that the division dismiss
21 the complaint and annul his or her election of remedies so that the
22 human rights law claim may be pursued in court, and the division may,
23 upon such request, dismiss the complaint on the grounds that such

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

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1 person's election of an administrative remedy is annulled. Notwithstand-
2 ing subdivision (a) of section two hundred four of the civil practice
3 law and rules, if a complaint is so annulled by the division, upon the
4 request of the party bringing such complaint before the division, such
5 party's rights to bring such cause of action before a court of appropri-
6 ate jurisdiction shall be limited by the statute of limitations in
7 effect in such court at the time the complaint was initially filed with
8 the division. Any party to a housing discrimination complaint shall have
9 the right within twenty days following a determination of probable cause
10 pursuant to subdivision two of this section to elect to have an action
11 commenced in a civil court, and an attorney representing the division of
12 human rights will be appointed to present the complaint in court, or,
13 with the consent of the division, the case may be presented by
14 complainant's attorney. A complaint filed by the equal employment oppor-
15 tunity commission to comply with the requirements of 42 USC 2000e-5(c)
16 and 42 USC 12117(a) and 29 USC 633(b) shall not constitute the filing of
17 a complaint within the meaning of this subdivision. No person who has
18 initiated any action in a court of competent jurisdiction or who has an
19 action pending before any administrative agency under any other law of
20 the state based upon an act which would be an unlawful discriminatory
21 practice under this article, may file a complaint with respect to the
22 same grievance under this section or under section two hundred ninety-
23 six-a of this article.

24 S 2. This act shall take effect on the thirtieth day after it shall
25 have become a law.