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I N   S E N A T E

February 17, 2010

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Introduced by Sen. THOMPSON -- 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 institution of court actions under section 297 thereof

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 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 such other remedies as may be appropriate, includ-  
8 ing any civil fines and penalties provided in subdivision four of this  
9 section, unless such person had filed a complaint [hereunder] PURSUANT  
10 TO THIS SECTION or with any local commission on human rights, or with  
11 the superintendent pursuant to the provisions of section two hundred  
12 ninety-six-a of this [chapter,] ARTICLE; provided that, where the divi-  
13 sion has dismissed such complaint on the grounds of administrative  
14 convenience, on the grounds of untimeliness, or on the grounds that the  
15 election of remedies is annulled, such person shall maintain all rights  
16 to bring suit as if no complaint had been filed with the division AND  
17 MAY BRING SUCH SUIT WITHIN THREE YEARS AFTER ANY SUCH DISMISSAL FOR  
18 ADMINISTRATIVE CONVENIENCE. At any time prior to a hearing before a  
19 hearing examiner, a person who has a complaint pending at the division  
20 may request that the division dismiss the complaint and annul his or her  
21 election of remedies so that the human rights law claim may be pursued  
22 in court, and the division may, upon such request, dismiss the complaint  
23 on the grounds that such person's election of an administrative remedy  
24 is annulled. Notwithstanding subdivision (a) of section two hundred four  
25 of the civil practice law and rules, if a complaint is so annulled by  
26 the division, upon the request of the party bringing such complaint  
27 before the division, such party's rights to bring such cause of action

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

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1 before a court of appropriate jurisdiction shall be limited by the stat-  
2 ute of limitations in effect in such court at the time the complaint was  
3 initially filed with the division. Any party to a housing discrimination  
4 complaint shall have the right, within twenty days following a determi-  
5 nation of probable cause pursuant to subdivision two of this section, to  
6 elect to have an action commenced in a civil court, and an attorney  
7 representing the division of human rights [will] SHALL be appointed to  
8 present the complaint in court[, ] or, with the consent of the division,  
9 the case may be presented by complainant's attorney. A complaint filed  
10 by the equal employment opportunity commission to comply with the  
11 requirements of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b)  
12 shall not constitute the filing of a complaint within the meaning of  
13 this subdivision. No person who has initiated any action in a court of  
14 competent jurisdiction or who has an action pending before any adminis-  
15 trative agency under any other law of the state based upon an act which  
16 would be an unlawful discriminatory practice under this article[, ] may  
17 file a complaint with respect to the same grievance under this section  
18 or under section two hundred ninety-six-a of this article.

19 S 2. This act shall take effect immediately.