S T A T E O F N E W Y O R K

2617

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. JACOBS, DESTITO, GALEF -- Multi-Sponsored by -- M. of A. BOYLAND, CANESTRARI, COLTON, DINOWITZ, FARRELL, HIKIND, LAVINE, McENENY, MILLMAN, O'DONNELL, PERRY, PHEFFER, J. RIVERA, ROBINSON, SWEENEY, WEISENBERG -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law and the executive law, in relation to increasing the monetary and criminal penalties for aggravated harassment or discrimination

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

Section 1. Subdivision 2 of section 40-c of the civil rights law, as amended by chapter 2 of the laws of 2002, is amended to read as follows:

2. No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section [240.25] 240.26 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

S 2. Section 40-d of the civil rights law, as amended by chapter 191 of the laws of 1982, is amended to read as follows:

S 40-d. Penalty for violation. Any person who shall violate any of the provisions of the foregoing section, or subdivision three of section 240.30 or section 240.31 of the penal law, or who shall aid or incite the violation of any of said provisions shall for [each and every] THE FIRST violation thereof be liable to a penalty of not less than one [hundred] THOUSAND dollars nor more than [five hundred] TEN THOUSAND dollars, AND FOR EACH SUBSEQUENT VIOLATION THEREOF BE LIABLE TO A PENALTY OF NOT LESS THAN TWENTY-FIVE HUNDRED DOLLARS NOR MORE THAN TWELVE THOUSAND FIVE HUNDRED DOLLARS, to be recovered by the person aggrieved thereby in any court of competent jurisdiction in the county in which

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

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the defendant shall reside. In addition, any person who shall violate any of the provisions of the foregoing section shall be deemed guilty of a class [A misdemeanor] E FELONY FOR THE FIRST VIOLATION THEREOF AND A CLASS D FELONY FOR ANY SUBSEQUENT VIOLATION THEREOF. At or before the commencement of any action under this section, notice thereof shall be served upon the attorney general.

S 3. Paragraph a of subdivision 3 of section 297 of the executive law, as amended by section 11 of part D of chapter 405 of the laws of 1999, is amended to read as follows:

a. If in the judgment of the division the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the division, the complainant, and the respondent, including PAYMENT BY THE RESPONDENT OF CIVIL FINES AND PENALTIES PROVIDED IN SUBDIVISION FOUR OF THIS SECTION AND a provision for the entry in the supreme court in any county in the judicial district where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or where the housing accommodation, land or commercial space specified in the complaint is located, of a consent decree embodying the terms of the conciliation agreement. The division shall not disclose what has transpired in the course of such endeavors.

S 4. Paragraph c of subdivision 4 of section 297 of the executive law, as amended by chapter 166 of the laws of 2000, subparagraph (vi) as amended by section 1 of part AA of chapter 57 of the laws of 2009, is amended to read as follows:

c. Within one hundred eighty days after the commencement of such hearing, a determination shall be made and an order served as hereinafter provided. If, upon all the evidence at the hearing, the commissioner shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commissioner shall state findings of fact and shall issue and cause to be served on such respondent an order, based on such findings and setting them forth, and including such of the following provisions as in the judgment of the division will effectuate the purposes of this article: (i) requiring such respondent to cease and desist from such unlawful discriminatory practice; (ii) requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, granting the credit which was the subject of any complaint, evaluating applicants for membership in a place of accommodation without discrimination based on race, creed, color, national origin, sex, disability or marital status, and without retaliation or discrimination based on opposition to practices forbidden by this article or filing a complaint, testifying or assisting in any proceeding under this article; (iii) awarding of compensatory damages to the person aggrieved by such practice; (iv) awarding of punitive damages, in cases of housing discrimination only, in an amount not to exceed ten thousand dollars, to the person aggrieved by such practice; (v) requiring payment

to the state of profits obtained by a respondent through the commission of unlawful discriminatory acts described in subdivision three-b of section two hundred ninety-six of this article; [and] (vi) assessing civil fines and penalties, in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious; AND (vii) requiring a report of the manner of compliance. If, upon all the evidence, the commissioner shall find that a respondent has not engaged in any such unlawful discriminatory practice, he or she shall state findings of fact and shall issue and cause to be served on the complainant an order based on such findings and setting them forth dismissing the said complaint as to such respondent. A copy of each order issued by the commissioner shall be delivered in all cases to the attorney general, the secretary of state, if he or she has issued a license to the respondent, and such other public officers as the division deems proper, and if any such order issued by the commissioner concerns a regulated creditor, the commissioner shall forward a copy of any such order to the superintendent. A copy of any complaint filed against any respondent who has previously entered into a conciliation agreement pursuant to paragraph a of subdivision three of this section or as to whom an order of the division has previously been entered pursuant to this paragraph shall be delivered to the attorney general, to the secretary of state if he or she has issued a license to the respondent and to such other public officers as the division deems proper, and if any such respondent is a regulated creditor, the commissioner shall forward a copy of any such complaint to the superintendent.

S 5. Subdivision 10 of section 297 of the executive law, as added by section 17 of part D of chapter 405 of the laws of 1999, is amended to read as follows:

10. [With respect to cases of housing discrimination only, in] IN an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing or substantially prevailing party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous; and further provided that in a proceeding brought in the division of human rights, the commissioner may only award attorney's fees as part of a final order after a public hearing held pursuant to subdivision four of this section. In no case shall attorney's fees be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorney's fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer. In order to find the action or proceeding to be frivolous, the court or the commissioner must find in writing one or more of the following:

(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

(b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding

lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

S 6. The executive law is amended by adding a new section 298-b to read as follows:

S 298-B. CIVIL PENALTIES. 1. ANY CIVIL PENALTY IMPOSED PURSUANT TO SUBDIVISION FOUR OF SECTION TWO HUNDRED NINETY-SEVEN OF THIS ARTICLE SHALL BE COLLECTED BY THE DIVISION AND SHALL BE DEPOSITED INTO THE GENERAL FUND TO THE CREDIT OF THE DIVISION AND SHALL BE USED FOR THE ORDINARY OPERATING EXPENSES OF THE DIVISION.

2. ANY PENALTY IMPOSED PURSUANT TO SUBDIVISION FOUR OR NINE OF SECTION TWO HUNDRED NINETY-SEVEN OF THIS ARTICLE SHALL BE SEPARATELY STATED, AND SHALL BE IN ADDITION TO AND NOT REDUCE OR OFFSET ANY OTHER DAMAGES OR PAYMENT IMPOSED UPON A RESPONDENT PURSUANT TO SUCH SECTION.

S 7. This act shall take effect on the ninetieth day after it shall have become a law.