

2380--A

2015-2016 Regular Sessions

I N S E N A T E

January 22, 2015

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to providing for awards of attorney's fees in actions under the human rights law

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

1 Section 1. Subdivision 10 of section 297 of the executive law, as
2 amended by chapter 364 of the laws of 2015, is amended to read as
3 follows:
4 10. [With respect to all cases of housing discrimination and housing
5 related credit discrimination in an action or proceeding at law under
6 this section or section two hundred ninety-eight of this article, the
7 commissioner or the court may in its discretion award reasonable attor-
8 ney's fees to any prevailing or substantially prevailing party; and with
9 respect to a claim of employment or credit discrimination where sex is a
10 basis of such discrimination, in] IN an action or proceeding at law
11 under this section or section two hundred ninety-eight of this article,
12 the commissioner or the court [may in its discretion] SHALL award
13 reasonable attorney's fees attributable to such claim to any prevailing
14 [party; provided, however, that a prevailing respondent or defendant in
15 order to recover such reasonable attorney's fees must make a motion
16 requesting such fees and show that the action or proceeding brought was
17 frivolous; and further provided that in a proceeding brought in the
18 division of human rights, the commissioner may only award attorney's
19 fees as part of a final order after a public hearing held pursuant to
20 subdivision four of this section] PLAINTIFF OR COMPLAINANT. In no case
21 shall attorney's fees be awarded to the division, nor shall the division

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

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1 be liable to a prevailing or substantially prevailing party for attor-
2 ney's fees, except in a case in which the division is a party to the
3 action or the proceeding in the division's capacity as an employer. In
4 cases of employment discrimination, a respondent shall only be liable
5 for attorney's fees under this subdivision if the respondent has been
6 found liable for having committed an unlawful discriminatory practice.
7 [In order to find the action or proceeding to be frivolous, the court or
8 the commissioner must find in writing one or more of the following:
9 (a) the action or proceeding was commenced, used or continued in bad
10 faith, solely to delay or prolong the resolution of the litigation or to
11 harass or maliciously injure another; or
12 (b) the action or proceeding was commenced or continued in bad faith
13 without any reasonable basis and could not be supported by a good faith
14 argument for an extension, modification or reversal of existing law. If
15 the action or proceeding was promptly discontinued when the party or
16 attorney learned or should have learned that the action or proceeding
17 lacked such a reasonable basis, the court may find that the party or the
18 attorney did not act in bad faith.]
19 S 2. This act shall take effect immediately.