

2015-2016 Regular Sessions

I N S E N A T E

January 9, 2015

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to the provision of attorney's fees in cases of housing, employment or credit discrimination; to amend the executive law, in relation to the awarding of reasonable attorney's fees

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 added by section 17 of part D of chapter 405 of the laws of 1999, is  
3 amended to read as follows:  
4 10. With respect to ALL cases of HOUSING DISCRIMINATION AND housing  
5 RELATED CREDIT discrimination [only] in an action or proceeding at law  
6 under this section or section two hundred ninety-eight of this article,  
7 the commissioner or the court may in its discretion award reasonable  
8 attorney's fees to any prevailing or substantially prevailing party; AND  
9 WITH RESPECT TO A CLAIM OF EMPLOYMENT OR CREDIT DISCRIMINATION WHERE SEX  
10 IS A BASIS OF SUCH DISCRIMINATION, 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 AWARD REASONABLE  
13 ATTORNEY'S FEES ATTRIBUTABLE TO SUCH CLAIM TO ANY PREVAILING PARTY;  
14 provided, however, that a prevailing respondent or defendant in order to  
15 recover such reasonable attorney's fees must make a motion requesting  
16 such fees and show that the action or proceeding brought was frivolous;  
17 and further provided that in a proceeding brought in the division of  
18 human rights, the commissioner may only award attorney's fees as part of  
19 a final order after a public hearing held pursuant to subdivision four  
20 of this section. In no case shall attorney's fees be awarded to the  
21 division, nor shall the division be liable to a prevailing or substan-  
22 tially prevailing party for attorney's fees, except in a case in which  
23 the division is a party to the action or the proceeding in the divi-

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

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1 sion's capacity as an employer. IN CASES OF EMPLOYMENT DISCRIMINATION,  
2 A RESPONDENT SHALL ONLY BE LIABLE FOR ATTORNEY'S FEES UNDER THIS SUBDI-  
3 VISION IF THE RESPONDENT HAS BEEN FOUND LIABLE FOR HAVING COMMITTED AN  
4 UNLAWFUL DISCRIMINATORY PRACTICE. In order to find the action or  
5 proceeding to be frivolous, the court or the commissioner must find in  
6 writing one or more of the following:

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

10 (b) the action or proceeding was commenced or continued in bad faith  
11 without any reasonable basis and could not be supported by a good faith  
12 argument for an extension, modification or reversal of existing law. If  
13 the action or proceeding was promptly discontinued when the party or  
14 attorney learned or should have learned that the action or proceeding  
15 lacked such a reasonable basis, the court may find that the party or the  
16 attorney did not act in bad faith.

17 S 2. Paragraph c of subdivision 7 of section 296-a of the executive  
18 law, as amended by chapter 632 of the laws of 1976, is amended to read  
19 as follows:

20 c. If the superintendent finds that a violation of this section has  
21 occurred, the superintendent shall issue an order which shall do one or  
22 more of the following:

23 (1) impose a fine in an amount not to exceed ten thousand dollars for  
24 each violation, to be paid to the people of the state of New York;

25 (2) award compensatory damages to the person aggrieved by such  
26 violation;

27 (3) FOR A CLAIM OF SEX DISCRIMINATION ONLY, AWARD REASONABLE ATTOR-  
28 NEY'S FEES ATTRIBUTABLE TO SUCH CLAIM TO ANY PREVAILING PARTY; PROVIDED,  
29 HOWEVER, THAT A PREVAILING RESPONDENT OR DEFENDANT IN ORDER TO RECOVER  
30 SUCH REASONABLE ATTORNEY'S FEES MUST MAKE A MOTION REQUESTING SUCH FEES  
31 AND SHOW THAT THE ACTION OR PROCEEDING BROUGHT WAS FRIVOLOUS. IN NO CASE  
32 SHALL ATTORNEY'S FEES BE AWARDED TO THE DEPARTMENT, NOR SHALL THE  
33 DEPARTMENT BE LIABLE TO A PREVAILING PARTY FOR ATTORNEY'S FEES. IN ORDER  
34 TO FIND THE ACTION OR PROCEEDING TO BE FRIVOLOUS, THE SUPERINTENDENT  
35 MUST FIND IN WRITING ONE OR MORE OF THE FOLLOWING:

36 (A) THE ACTION OR PROCEEDING WAS COMMENCED, USED OR CONTINUED IN BAD  
37 FAITH, SOLELY TO DELAY OR PROLONG THE RESOLUTION OF THE LITIGATION OR TO  
38 HARASS OR MALICIOUSLY INJURE ANOTHER; OR

39 (B) THE ACTION OR PROCEEDING WAS COMMENCED OR CONTINUED IN BAD FAITH  
40 WITHOUT ANY REASONABLE BASIS AND COULD NOT BE SUPPORTED BY A GOOD FAITH  
41 ARGUMENT FOR AN EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW. IF  
42 THE ACTION OR PROCEEDING WAS PROMPTLY DISCONTINUED WHEN THE PARTY OR  
43 ATTORNEY LEARNED OR SHOULD HAVE LEARNED THAT THE ACTION OR PROCEEDING  
44 LACKED SUCH A REASONABLE BASIS, THE COURT MAY FIND THAT THE PARTY OR THE  
45 ATTORNEY DID NOT ACT IN BAD FAITH.

46 (4) require the regulated creditor to cease and desist from such  
47 unlawful discriminatory practices;

48 [(4)] (5) require the regulated creditor to take such further affirma-  
49 tive action as will effectuate the purposes of this section, including,  
50 but not limited to, granting the credit which was the subject of the  
51 complaint.

52 S 3. Severability clause. If any clause, sentence, paragraph, subdivi-  
53 sion, section or part of this act shall be adjudged by a court of compe-  
54 tent jurisdiction to be invalid, such judgment shall not affect, impair  
55 or invalidate the remainder thereof, but shall be confined in its opera-  
56 tion to the clause, sentence, paragraph, subdivision, section or part

1 thereof directly involved in the controversy in which such judgment  
2 shall have been rendered. It is hereby declared to be the intent of the  
3 legislature that this act would have been enacted even if such invalid  
4 provisions had not been included herein.

5 S 4. This act shall take effect on the ninetieth day after it shall  
6 have become a law, and shall apply to actions commenced on or after such  
7 date.