

STATE OF NEW YORK

4688

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

Introduced by M. of A. O'DONNELL, SIMON -- read once and referred to the
Committee on Governmental Operations

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 Assem-
bly, 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
22 be liable to a prevailing or substantially prevailing party for attor-
23 ney's fees, except in a case in which the division is a party to the
24 action or the proceeding in the division's capacity as an employer. In
25 cases of employment discrimination, a respondent shall only be liable

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

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1 for attorney's fees under this subdivision if the respondent has been
2 found liable for having committed an unlawful discriminatory practice.

3 ~~[In order to find the action or proceeding to be frivolous, the court or
4 the commissioner must find in writing one or more of the following:~~

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

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

15 § 2. This act shall take effect immediately.