

# STATE OF NEW YORK

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6490

2017-2018 Regular Sessions

## IN SENATE

May 25, 2017

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Introduced by Sen. YOUNG -- (at request of the Division of Human Rights)  
-- 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 providing that attorney's fees may be awarded in all cases

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 attorney's  
8 fees to any prevailing or substantially prevailing party; and with  
9 respect to [~~a claim of employment or credit discrimination where sex is~~  
10 ~~a basis of such discrimination~~] all other claims of discrimination, in  
11 an action or proceeding at law under this section or section two hundred  
12 ninety-eight of this article, the commissioner or the court may in its  
13 discretion award reasonable attorney's fees attributable to such claim  
14 to any prevailing party; provided, however, that a prevailing respondent  
15 or defendant in order to recover such reasonable attorney's fees must  
16 make a motion requesting such fees and show that the action or proceeding  
17 brought was frivolous; and further provided that in a proceeding  
18 brought in the division of human rights, the commissioner may only award  
19 attorney's fees as part of a final order after a public hearing held  
20 pursuant to subdivision four of this section. In no case shall attorney's  
21 fees be awarded to the division, nor shall the division be liable  
22 to a prevailing or substantially prevailing party for attorney's fees,  
23 except in a case in which the division is a party to the action or the  
24 proceeding in the division's capacity as an employer. In cases of

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

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1 employment discrimination, a respondent shall only be liable for attor-  
2 ney's fees under this subdivision if the respondent has been found  
3 liable for having committed an unlawful discriminatory practice. In  
4 order to find the action or proceeding to be frivolous, the court or the  
5 commissioner must find in writing one or more of the following:

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

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

16 § 2. This act shall take effect immediately.