

# STATE OF NEW YORK

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## IN ASSEMBLY

January 24, 2020

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Introduced by M. of A. BUCHWALD, ZEBROWSKI -- (at request of the Division of Human Rights) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to providing that, in housing cases only, after a dismissal for lack of probable cause or lack of jurisdiction, a complainant would have the option to appeal the final order, or bring a de novo action in court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 9 of section 297 of the executive law, as  
2 amended by section 16 of part D of chapter 405 of the laws of 1999, is  
3 amended to read as follows:

4 9. Any person claiming to be aggrieved by an unlawful discriminatory  
5 practice shall have a cause of action in any court of appropriate juris-  
6 diction for damages, including, in cases of housing discrimination only,  
7 punitive damages, and such other remedies as may be appropriate, includ-  
8 ing any civil fines and penalties provided in subdivision four of this  
9 section, unless such person had filed a complaint hereunder or with any  
10 local commission on human rights, or with the superintendent pursuant to  
11 the provisions of section two hundred ninety-six-a of this chapter,  
12 provided that, where the division has dismissed such complaint on the  
13 grounds of administrative convenience, on the grounds of untimeliness,  
14 or on the grounds that the election of remedies is annulled, such person  
15 shall maintain all rights to bring suit as if no complaint had been  
16 filed with the division. At any time prior to a hearing before a hearing  
17 examiner, a person who has a complaint pending at the division may  
18 request that the division dismiss the complaint and annul his or her  
19 election of remedies so that the human rights law claim may be pursued  
20 in court, and the division may, upon such request, dismiss the complaint  
21 on the grounds that such person's election of an administrative remedy  
22 is annulled. Notwithstanding subdivision (a) of section two hundred four  
23 of the civil practice law and rules, if a complaint is so annulled by  
24 the division, upon the request of the party bringing such complaint  
25 before the division, such party's rights to bring such cause of action

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

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1 before a court of appropriate jurisdiction shall be limited by the stat-  
2 ute of limitations in effect in such court at the time the complaint was  
3 initially filed with the division. Any party to a housing discrimination  
4 complaint shall have the right within twenty days following a determi-  
5 nation of probable cause pursuant to subdivision two of this section to  
6 elect to have an action commenced in a civil court, and an attorney  
7 representing the division of human rights will be appointed to present  
8 the complaint in court, or, with the consent of the division, the case  
9 may be presented by complainant's attorney. A complaint filed by the  
10 equal employment opportunity commission to comply with the requirements  
11 of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not  
12 constitute the filing of a complaint within the meaning of this subdivi-  
13 sion. No person who has initiated any action in a court of competent  
14 jurisdiction or who has an action pending before any administrative  
15 agency under any other law of the state based upon an act which would be  
16 an unlawful discriminatory practice under this article, may file a  
17 complaint with respect to the same grievance under this section or under  
18 section two hundred ninety-six-a of this article. In cases of housing  
19 discrimination only, a person whose complaint has been dismissed by the  
20 division after investigation for lack of jurisdiction or lack of proba-  
21 ble cause may file the same cause of action in a court of appropriate  
22 jurisdiction pursuant to this section, unless judicial review of such  
23 dismissal has been sought pursuant to section two hundred ninety-eight  
24 of this article.

25 § 2. Section 298 of the executive law, as amended by chapter 166 of  
26 the laws of 2000, is amended to read as follows:

27 § 298. Judicial review and enforcement. Any complainant, respondent  
28 or other person aggrieved by an order of the commissioner which is an  
29 order after public hearing, a cease and desist order, an order awarding  
30 damages, an order dismissing a complaint, or by an order of the division  
31 which makes a final disposition of a complaint may obtain judicial  
32 review thereof, and the division may obtain an order of court for its  
33 enforcement and for the enforcement of any order of the commissioner  
34 which has not been appealed to the court, in a proceeding as provided in  
35 this section. Such proceeding shall be brought in the supreme court in  
36 the county wherein the unlawful discriminatory practice which is the  
37 subject of the order occurs or wherein any person required in the order  
38 to cease and desist from an unlawful discriminatory practice or to take  
39 other affirmative action resides or transacts business. Such proceeding  
40 shall be initiated by the filing of a notice of petition and petition in  
41 such court. Thereafter, at a time and in a manner to be specified by  
42 rules of court, the division shall file with the court a written tran-  
43 script of the record of all prior proceedings. Upon the filing of a  
44 notice of petition and petition, the court shall have jurisdiction of  
45 the proceeding and of the questions determined therein, except that  
46 where the order sought to be reviewed was made as a result of a public  
47 hearing held pursuant to paragraph a of subdivision four of section two  
48 hundred ninety-seven of this article, the court shall make an order  
49 directing that the proceeding be transferred for disposition to the  
50 appellate division of the supreme court in the judicial department  
51 embracing the county in which the proceeding was commenced. The court  
52 shall have power to grant such temporary relief or restraining order as  
53 it deems just and proper, and to make and enter upon the pleadings,  
54 testimony, and proceedings set forth in such transcript an order enforc-  
55 ing, modifying, and enforcing as so modified, or setting aside in whole  
56 or in part such order. No objection that has not been urged in prior

1 proceedings shall be considered by the court, unless the failure or  
2 neglect to urge such objection shall be excused because of extraordinary  
3 circumstances. Any party may move the court to remit the case to the  
4 division in the interests of justice for the purpose of adducing addi-  
5 tional specified and material evidence and seeking findings thereon,  
6 provided he or she shows reasonable grounds for the failure to adduce  
7 such evidence in prior proceedings. The findings of facts on which such  
8 order is based shall be conclusive if supported by sufficient evidence  
9 on the record considered as a whole. All such proceedings shall be heard  
10 and determined by the court and any appeal taken from its judgment or  
11 order shall be reviewed by the appropriate appellate court as expe-  
12 ditiously as possible and with lawful precedence over other matters. The  
13 jurisdiction of the courts over these proceedings, as provided for here-  
14 in, shall be exclusive and their judgments and orders shall be final,  
15 subject to appellate review in the same manner and form and with the  
16 same effect as provided for appeals from a judgment in a special  
17 proceeding. The division's copy of the testimony shall be available at  
18 all reasonable times to all parties for examination without cost and for  
19 the purposes of judicial review of such order. Any appeal under this  
20 section and any proceeding, if instituted under article seventy-eight of  
21 the civil practice law and rules to which the division or the board is a  
22 party shall be heard on the record without requirement of printing. The  
23 division may appear in court by one of its attorneys. A proceeding under  
24 this section when instituted by any complainant, respondent or other  
25 person aggrieved must be instituted within sixty days after the service  
26 of such order. In cases of housing discrimination only, a complaint  
27 dismissed after investigation for lack of jurisdiction or lack of proba-  
28 ble cause may either be appealed pursuant to this section or the same  
29 cause of action may be filed in a court of appropriate jurisdiction  
30 pursuant to section two hundred ninety-seven of this article.

31 § 3. This act shall take effect on the ninetieth day after it shall  
32 have become a law.