

STATE OF NEW YORK

4129

2019-2020 Regular Sessions

IN SENATE

March 1, 2019

Introduced by Sen. BIAGGI -- 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 for the award of attorney's fees and expert witness fees in appropriate 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~~] 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-
24 sion's capacity as an employer. Expert witness fees may be awarded in

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

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1 the same manner as attorney's fees. In cases of employment discrimi-
2 nation, a respondent shall only be liable for attorney's fees under this
3 subdivision if the respondent has been found liable for having committed
4 an 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 § 2. This act shall take effect on the ninetieth day after it shall
18 have become a law.