

# STATE OF NEW YORK

4129--A

2019-2020 Regular Sessions

## IN SENATE

March 1, 2019

Introduced by Sens. BIAGGI, CARLUCCI, HOYLMAN, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 161 of the laws of 2019, 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 credit discrimination where sex is a basis of  
10 such discrimination, and with respect to all claims of employment  
11 discrimination in an action or proceeding at law under this section or  
12 section two hundred ninety-eight of this article, the commissioner or  
13 the court may in its discretion award reasonable attorney's fees attrib-  
14 utable to such claim to any prevailing party; provided, however, that a  
15 prevailing respondent or defendant in order to recover such reasonable  
16 attorney's fees must make a motion requesting such fees and show that  
17 the action or proceeding brought was frivolous; and further provided  
18 that in a proceeding brought in the division of human rights, the  
19 commissioner may only award attorney's fees as part of a final order  
20 after a public hearing held pursuant to subdivision four of this  
21 section. In no case shall attorney's fees be awarded to the division,

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

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1 nor shall the division be liable to a prevailing or substantially  
2 prevailing party for attorney's fees, except in a case in which the  
3 division is a party to the action or the proceeding in the division's  
4 capacity as an employer. Expert witness fees may be awarded in the same  
5 manner as attorney's fees. In cases of employment discrimination, a  
6 respondent shall only be liable for attorney's fees under this subdivi-  
7 sion if the respondent has been found liable for having committed an  
8 unlawful discriminatory practice. In order to find the action or  
9 proceeding to be frivolous, the court or the commissioner must find in  
10 writing one or more of the following:

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

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

21 § 2. This act shall take effect on the ninetieth day after it shall  
22 have become a law.