

# STATE OF NEW YORK

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2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

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Introduced by M. of A. L. ROSENTHAL -- read once and referred to the  
Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the awarding of punitive damages to persons aggrieved by sexual harassment

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

1 Section 1. Paragraph c of subdivision 4 and subdivision 9 of section  
2 297 of the executive law, paragraph c of subdivision 4 as amended by  
3 chapter 160 of the laws of 2019, and subdivision 9 as separately amended  
4 by chapter 160 of the laws of 2019 and chapter 236 of the laws of 2020,  
5 are amended to read as follows:

6 c. Within one hundred eighty days after the commencement of such hear-  
7 ing, a determination shall be made and an order served as hereinafter  
8 provided. If, upon all the evidence at the hearing, the commissioner  
9 shall find that a respondent has engaged in any unlawful discriminatory  
10 practice as defined in this article, the commissioner shall state find-  
11 ings of fact and shall issue and cause to be served on such respondent  
12 an order, based on such findings and setting them forth, and including  
13 such of the following provisions as in the judgment of the division will  
14 effectuate the purposes of this article: (i) requiring such respondent  
15 to cease and desist from such unlawful discriminatory practice; (ii)  
16 requiring such respondent to take such affirmative action, including  
17 (but not limited to) hiring, reinstatement or upgrading of employees,  
18 with or without back pay, restoration to membership in any respondent  
19 labor organization, admission to or participation in a guidance program,  
20 apprenticeship training program, on-the-job training program or other  
21 occupational training or retraining program, the extension of full,  
22 equal and unsegregated accommodations, advantages, facilities and privi-  
23 leges to all persons, granting the credit which was the subject of any  
24 complaint, evaluating applicants for membership in a place of accommo-

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

LBD00715-01-1

1 dation without discrimination based on race, creed, color, national  
2 origin, sex, disability or marital status, and without retaliation or  
3 discrimination based on opposition to practices forbidden by this arti-  
4 cle or filing a complaint, testifying or assisting in any proceeding  
5 under this article; (iii) awarding of compensatory damages to the person  
6 aggrieved by such practice; (iv) awarding of punitive damages, in cases  
7 of employment discrimination related to private employers, and, in cases  
8 of housing discrimination, with damages in housing discrimination cases  
9 in an amount not to exceed ten thousand dollars, to the person aggrieved  
10 by such practice; (v) requiring payment to the state of profits obtained  
11 by a respondent through the commission of unlawful discriminatory acts  
12 described in subdivision three-b of section two hundred ninety-six of  
13 this article; ~~[and]~~ (vi) assessing civil fines and penalties, in an  
14 amount not to exceed fifty thousand dollars, to be paid to the state by  
15 a respondent found to have committed an unlawful discriminatory act, or  
16 not to exceed one hundred thousand dollars to be paid to the state by a  
17 respondent found to have committed an unlawful discriminatory act which  
18 is found to be willful, wanton or malicious; (vii) requiring a report of  
19 the manner of compliance; and (viii) awarding of punitive damages, in  
20 cases of sexual harassment only, to the person aggrieved by such prac-  
21 tice. If, upon all the evidence, the commissioner shall find that a  
22 respondent has not engaged in any such unlawful discriminatory practice,  
23 he or she shall state findings of fact and shall issue and cause to be  
24 served on the complainant an order based on such findings and setting  
25 them forth dismissing the said complaint as to such respondent. A copy  
26 of each order issued by the commissioner shall be delivered in all cases  
27 to the attorney general, the secretary of state, if he or she has issued  
28 a license to the respondent, and such other public officers as the divi-  
29 sion deems proper, and if any such order issued by the commissioner  
30 concerns a regulated creditor, the commissioner shall forward a copy of  
31 any such order to the superintendent. A copy of any complaint filed  
32 against any respondent who has previously entered into a conciliation  
33 agreement pursuant to paragraph a of subdivision three of this section  
34 or as to whom an order of the division has previously been entered  
35 pursuant to this paragraph shall be delivered to the attorney general,  
36 to the secretary of state if he or she has issued a license to the  
37 respondent and to such other public officers as the division deems prop-  
38 er, and if any such respondent is a regulated creditor, the commissioner  
39 shall forward a copy of any such complaint to the superintendent.

40 9. Any person claiming to be aggrieved by an unlawful discriminatory  
41 practice shall have a cause of action in any court of appropriate juris-  
42 diction for damages, including, in cases of employment discrimination  
43 related to private employers and housing discrimination and sexual  
44 harassment only, punitive damages, and such other remedies as may be  
45 appropriate, including any civil fines and penalties provided in subdivi-  
46 sion four of this section, unless such person had filed a complaint  
47 hereunder or with any local commission on human rights, or with the  
48 superintendent pursuant to the provisions of section two hundred nine-  
49 ty-six-a of this ~~[chapter]~~ article, provided that, where the division  
50 has dismissed such complaint on the grounds of administrative conven-  
51 ience, on the grounds of untimeliness, or on the grounds that the  
52 election of remedies is annulled, such person shall maintain all rights  
53 to bring suit as if no complaint had been filed with the division. At  
54 any time prior to a hearing before a hearing examiner, a person who has  
55 a complaint pending at the division may request that the division  
56 dismiss the complaint and annul his or her election of remedies so that

1 the human rights law claim may be pursued in court, and the division  
2 may, upon such request, dismiss the complaint on the grounds that such  
3 person's election of an administrative remedy is annulled. Notwithstand-  
4 ing subdivision (a) of section two hundred four of the civil practice  
5 law and rules, if a complaint is so annulled by the division, upon the  
6 request of the party bringing such complaint before the division, such  
7 party's rights to bring such cause of action before a court of appropri-  
8 ate jurisdiction shall be limited by the statute of limitations in  
9 effect in such court at the time the complaint was initially filed with  
10 the division. Any party to a housing discrimination complaint shall have  
11 the right within twenty days following a determination of probable cause  
12 pursuant to subdivision two of this section to elect to have an action  
13 commenced in a civil court, and an attorney representing the division of  
14 human rights will be appointed to present the complaint in court, or,  
15 with the consent of the division, the case may be presented by  
16 complainant's attorney. A complaint filed by the equal employment oppor-  
17 tunity commission to comply with the requirements of 42 USC 2000e-5(c)  
18 and 42 USC 12117(a) and 29 USC 633(b) shall not constitute the filing of  
19 a complaint within the meaning of this subdivision. No person who has  
20 initiated any action in a court of competent jurisdiction or who has an  
21 action pending before any administrative agency under any other law of  
22 the state based upon an act which would be an unlawful discriminatory  
23 practice under this article, may file a complaint with respect to the  
24 same grievance under this section or under section two hundred ninety-  
25 six-a of this article. In cases of housing discrimination only, a person  
26 whose complaint has been dismissed by the division after investigation  
27 for lack of jurisdiction or lack of probable cause may file the same  
28 cause of action in a court of appropriate jurisdiction pursuant to this  
29 section, unless judicial review of such dismissal has been sought pursu-  
30 ant to section two hundred ninety-eight of this article.

31 § 2. This act shall take effect on the ninetieth day after it shall  
32 have become a law; provided, however, that is chapter 236 of the laws of  
33 2020 shall not have taken effect on or before such date then the amend-  
34 ments to subdivision 9 of section 297 of the executive law as amended by  
35 section one of this act, shall take effect on the same date and in the  
36 same manner as such chapter of the laws of 2020, takes effect.