

# STATE OF NEW YORK

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7394--A

Cal. No. 1119

2021-2022 Regular Sessions

## IN SENATE

September 22, 2021

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Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the executive law, in relation to preserve the right to a jury trial for certain actions

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 chapter 140 of the laws of 2022, is amended to read as  
3 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 employment discrimination  
7 related to private employers and housing discrimination only, punitive  
8 damages, and such other remedies as may be appropriate, including any  
9 civil fines and penalties provided in subdivision four of this section,  
10 unless such person had filed a complaint hereunder or with any local  
11 commission on human rights, or with the superintendent pursuant to the  
12 provisions of section two hundred ninety-six-a of this article, provided  
13 that, where the division has dismissed such complaint on the grounds of  
14 administrative convenience, on the grounds of untimeliness, or on the  
15 grounds that the election of remedies is annulled, such person shall  
16 maintain all rights to bring suit as if no complaint had been filed with  
17 the division. At any time prior to a hearing before a hearing examiner,  
18 a person who has a complaint pending at the division may request that  
19 the division dismiss the complaint and annul his or her election of  
20 remedies so that the human rights law claim may be pursued in court, and

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

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1 the division may, upon such request, dismiss the complaint on the  
2 grounds that such person's election of an administrative remedy is  
3 annulled. Notwithstanding subdivision (a) of section two hundred four of  
4 the civil practice law and rules, if a complaint is so annulled by the  
5 division, upon the request of the party bringing such complaint before  
6 the division, such party's rights to bring such cause of action before a  
7 court of appropriate jurisdiction shall be limited by the statute of  
8 limitations in effect in such court at the time the complaint was  
9 initially filed with the division. Notwithstanding any other provision  
10 of law to the contrary, when a person commences an action pursuant to  
11 this subdivision or pursuant to a local human rights law, and such  
12 action includes a demand for equitable relief, such person shall never-  
13 theless retain the right to a jury trial. Any party to a housing  
14 discrimination complaint shall have the right within twenty days follow-  
15 ing a determination of probable cause pursuant to subdivision two of  
16 this section to elect to have an action commenced in a civil court, and  
17 an attorney representing the division of human rights will be appointed  
18 to present the complaint in court, or, with the consent of the division,  
19 the case may be presented by complainant's attorney. A complaint filed  
20 by the equal employment opportunity commission to comply with the  
21 requirements of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b)  
22 shall not constitute the filing of a complaint within the meaning of  
23 this subdivision. No person who has initiated any action in a court of  
24 competent jurisdiction or who has an action pending before any adminis-  
25 trative agency under any other law of the state based upon an act which  
26 would be an unlawful discriminatory practice under this article, may  
27 file a complaint with respect to the same grievance under this section  
28 or under section two hundred ninety-six-a of this article. In cases of  
29 housing discrimination only, a person whose complaint has been dismissed  
30 by the division after investigation for lack of jurisdiction or lack of  
31 probable cause may file the same cause of action in a court of appropri-  
32 ate jurisdiction pursuant to this section, unless judicial review of  
33 such dismissal has been sought pursuant to section two hundred ninety-  
34 eight of this article. The attorney general shall have the power to  
35 commence an action or proceeding in the supreme court of the state of  
36 New York, if, upon information or belief, the attorney general is of the  
37 opinion that an employer has been, is, or is about to violate the  
38 provisions regarding unlawful discriminatory retaliation pursuant to  
39 subdivision seven of section two hundred ninety-six of this article.  
40 Nothing in this section shall in any way limit rights or remedies which  
41 are otherwise available under law to the attorney general or any other  
42 person authorized to bring an action under this section.

43 § 2. This act shall take effect immediately.