

STATE OF NEW YORK

3204

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. DINOWITZ, SEAWRIGHT, PAULIN -- Multi-Sponsored by
-- M. of A. GOTTFRIED, SIMON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to awarding attorneys' fees and costs and exemplary damages in an action brought for an unlawful discriminatory practice

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 separately amended by chapters 160 of the laws of 2019 and 236 of the laws of 2020, is amended to read as follows:

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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 jurisdiction for damages, including, in cases of employment discrimination
6 related to private employers and housing discrimination only, punitive
7 damages, and upon prevailing, shall recover reasonable attorneys' fees
8 and costs in the action. In addition thereto the trier of fact may award
9 exemplary damages and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this
10 section, unless such person had filed a complaint hereunder or with any
11 local commission on human rights, or with the superintendent pursuant to
12 the provisions of section two hundred ninety-six-a of this [~~chapter~~
13 article, provided that, where the division has dismissed such complaint
14 on the grounds of administrative convenience, on the grounds of untimeliness, or on the grounds that the election of remedies is annulled,
15 such person shall maintain all rights to bring suit as if no complaint
16 had been filed with the division. At any time prior to a hearing before
17 a hearing examiner, a person who has a complaint pending at the division
18 may 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
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

LBD06710-01-1

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

30 § 2. This act shall take effect on the thirtieth day after it shall
31 have become a law; provided however, that if chapter 236 of the laws of
32 2020 shall not yet have taken effect then this act shall take effect on
33 the same date as such chapter takes effect.