

# STATE OF NEW YORK

5870

2021-2022 Regular Sessions

## IN SENATE

March 19, 2021

Introduced by Sen. GOUNARDES -- 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 retaliation against certain unlawful discriminatory practices by employers

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

1 Section 1. Subdivision 7 of section 296 of the executive law, as  
2 amended by chapter 166 of the laws of 2000, is amended to read as  
3 follows:

4 7. It shall be an unlawful discriminatory practice for any person  
5 engaged in any activity to which this section applies to retaliate or  
6 discriminate against any person because he or she has opposed any prac-  
7 tices forbidden under this article or because he or she has filed a  
8 complaint, testified or assisted in any proceeding under this article.

9 Retaliation may include, but is not limited to, disclosing an employee's  
10 personnel files because he or she has opposed any practices forbidden  
11 under this article or because he or she has filed a complaint, testified  
12 or assisted in any proceeding under this article, except where such  
13 disclosure is made in the course of commencing or responding to a  
14 complaint in any proceeding under this article or any other civil or  
15 criminal action or other judicial or administrative proceeding as  
16 permitted by applicable law.

17 § 2. Subdivision 9 of section 297 of the executive law, as separately  
18 amended by chapter 160 of the laws of 2019 and chapter 236 of the laws  
19 of 2020, is amended to read as follows:

20 9. Any person claiming to be aggrieved by an unlawful discriminatory  
21 practice shall have a cause of action in any court of appropriate juris-  
22 diction for damages, including, in cases of employment discrimination  
23 related to private employers and housing discrimination only, punitive  
24 damages, and such other remedies as may be appropriate, including any

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

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1 civil fines and penalties provided in subdivision four of this section,  
2 unless such person had filed a complaint hereunder or with any local  
3 commission on human rights, or with the superintendent pursuant to the  
4 provisions of section two hundred ninety-six-a of this [~~chapter~~]  
5 article, provided that, where the division has dismissed such complaint  
6 on the grounds of administrative convenience, on the grounds of untime-  
7 liness, or on the grounds that the election of remedies is annulled,  
8 such person shall maintain all rights to bring suit as if no complaint  
9 had been filed with the division. At any time prior to a hearing before  
10 a hearing examiner, a person who has a complaint pending at the division  
11 may request that the division dismiss the complaint and annul his or her  
12 election of remedies so that the human rights law claim may be pursued  
13 in court, and the division may, upon such request, dismiss the complaint  
14 on the grounds that such person's election of an administrative remedy  
15 is annulled. Notwithstanding subdivision (a) of section two hundred four  
16 of the civil practice law and rules, if a complaint is so annulled by  
17 the division, upon the request of the party bringing such complaint  
18 before the division, such party's rights to bring such cause of action  
19 before a court of appropriate jurisdiction shall be limited by the stat-  
20 ute of limitations in effect in such court at the time the complaint was  
21 initially filed with the division. Any party to a housing discrimination  
22 complaint shall have the right within twenty days following a determi-  
23 nation of probable cause pursuant to subdivision two of this section to  
24 elect to have an action commenced in a civil court, and an attorney  
25 representing the division of human rights will be appointed to present  
26 the complaint in court, or, with the consent of the division, the case  
27 may be presented by complainant's attorney. A complaint filed by the  
28 equal employment opportunity commission to comply with the requirements  
29 of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not  
30 constitute the filing of a complaint within the meaning of this subdivi-  
31 sion. No person who has initiated any action in a court of competent  
32 jurisdiction or who has an action pending before any administrative  
33 agency under any other law of the state based upon an act which would be  
34 an unlawful discriminatory practice under this article, may file a  
35 complaint with respect to the same grievance under this section or under  
36 section two hundred ninety-six-a of this article. In cases of housing  
37 discrimination only, a person whose complaint has been dismissed by the  
38 division after investigation for lack of jurisdiction or lack of proba-  
39 ble cause may file the same cause of action in a court of appropriate  
40 jurisdiction pursuant to this section, unless judicial review of such  
41 dismissal has been sought pursuant to section two hundred ninety-eight  
42 of this article. The attorney general shall have the power to commence  
43 an action or proceeding in the supreme court of the state of New York,  
44 if, upon information or belief, the attorney general is of the opinion  
45 that an employer has been, is, or is about to violate the provisions  
46 regarding unlawful discriminatory retaliation pursuant to subdivision  
47 seven of section two hundred ninety-six of this article. Nothing in this  
48 section shall in any way limit rights or remedies which are otherwise  
49 available under law to the attorney general or any other person author-  
50 ized to bring an action under this section.

51 § 3. This act shall take effect immediately.