

# STATE OF NEW YORK

7374

2021-2022 Regular Sessions

## IN SENATE

September 10, 2021

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to requiring additional notice prior to commencing an action in certain discrimination cases

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

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4 9. a. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages, including, in cases of employment discrimination related to private employers and housing discrimination only, punitive damages, and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this section, unless such person had filed a complaint hereunder or with any local commission on human rights, or with the superintendent pursuant to the provisions of section two hundred ninety-six-a of this ~~chapter~~ article, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, on the grounds of untimeliness, or on the grounds that the election of remedies is annulled, such person shall maintain all rights to bring suit as if no complaint had been filed with the division. At any time prior to a hearing before a hearing examiner, a person who has a complaint pending at the division may request that the division dismiss the complaint and annul his or her election of remedies so that the human rights law claim may be pursued in court, and the division may, upon such request, dismiss the complaint on the grounds that such person's election of an administrative remedy is annulled. Notwithstanding subdivision (a) of section two hundred four of the civil practice law and rules, if a complaint is so annulled by the division, upon the request of the party bringing such complaint

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

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

26 b. Notwithstanding paragraph a of this subdivision, prior to commenc-  
27 ing an action in any court of competent jurisdiction alleging that the  
28 contents of a website or mobile application that describes goods and  
29 services provided at a place of public accommodation, resort or amuse-  
30 ment constitute an unlawful discriminatory practice with respect to  
31 visually and hearing impaired individuals, the claimant shall serve  
32 written notice upon the owner of such place of public accommodation,  
33 resort or amusement by both certified mail, return receipt requested and  
34 first class mail that (i) describes each and every feature of such  
35 website and/or mobile application alleged to constitute an unlawful  
36 discriminatory practice and (ii) provides such owner with an opportunity  
37 to correct such alleged violation or violations within sixty days from  
38 service of such notice.

39 c. Within the sixty-day period of time described in subdivision b of  
40 this section, the owner of a place of public accommodation, resort or  
41 amusement may advise the claimant by written notice by both certified  
42 mail, return receipt requested and first class mail that the alleged  
43 violation or violations have either been corrected or did not occur and  
44 do not need correction.

45 § 2. This act shall take effect immediately.