

# STATE OF NEW YORK

7733

## IN SENATE

January 7, 2022

Introduced by Sen. BIAGGI -- 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 attorney's fees with respect to claims of credit discrimination where sex is a basis and certain claims of employment discrimination

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

1 Section 1. Subdivision 10 of section 297 of the executive law, as  
2 amended by a chapter of the laws of 2021 amending the executive law  
3 relating to providing for the award of attorney's fees and expert  
4 witness fees in appropriate cases, as proposed in legislative bills  
5 numbers S. 749 and A. 1899, is amended to read as follows:

6 10. In an action or proceeding at law under this section or section  
7 two hundred ninety-eight of this article, the commissioner or the court  
8 may in its discretion award reasonable attorney's fees to any prevailing  
9 or substantially prevailing party; [~~and with respect to a claim of cred-  
10 it discrimination where sex is a basis of such discrimination, and with  
11 respect to all claims of employment discrimination in an action or  
12 proceeding at law under this section or section two hundred ninety-eight  
13 of this article, the commissioner or the court may in its discretion  
14 award reasonable attorney's fees attributable to such claim to any  
15 prevailing party;~~] provided, however, that a prevailing respondent or  
16 defendant in order to recover such reasonable attorney's fees must make  
17 a motion requesting such fees and show that the action or proceeding  
18 brought was frivolous; and further provided that in a proceeding brought  
19 in the division of human rights, the commissioner may only award attor-  
20 ney's fees as part of a final order after a public hearing held pursuant  
21 to subdivision four of this section. In no case shall attorney's fees be  
22 awarded to the division, nor shall the division be liable to a prevail-  
23 ing or substantially prevailing party for attorney's fees, except in a  
24 case in which the division is a party to the action or the proceeding in  
25 the division's capacity as an employer. Expert witness fees may be  
26 awarded in the same manner as attorney's fees. In cases of employment  
27 discrimination, a respondent shall only be liable for attorney's fees

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

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1 under this subdivision if the respondent has been found liable for  
2 having committed an unlawful discriminatory practice. In order to find  
3 the action or proceeding to be frivolous, the court or the commissioner  
4 must find in writing one or more of the following:

5 (a) the action or proceeding was commenced, used or continued in bad  
6 faith, solely to delay or prolong the resolution of the litigation or to  
7 harass or maliciously injure another; or

8 (b) the action or proceeding was commenced or continued in bad faith  
9 without any reasonable basis and could not be supported by a good faith  
10 argument for an extension, modification or reversal of existing law. If  
11 the action or proceeding was promptly discontinued when the party or  
12 attorney learned or should have learned that the action or proceeding  
13 lacked such a reasonable basis, the court may find that the party or the  
14 attorney did not act in bad faith.

15 § 2. This act shall take effect on the same date and in the same  
16 manner as a chapter of the laws of 2021 amending the executive law  
17 relating to providing for the award of attorney's fees and expert  
18 witness fees in appropriate cases, as proposed in legislative bills  
19 numbers S. 749 and A. 1899, takes effect.