

STATE OF NEW YORK

920

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. COONEY, PALUMBO -- 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 requiring additional
notice prior to commencing an action in certain discrimination cases

The People of the State of New York, represented in Senate and Assem-
bly, 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. a. Any person claiming to be aggrieved by an unlawful discriminato-
5 ry practice shall have a cause of action in any court of appropriate
6 jurisdiction for damages, including, in cases of employment discrimi-
7 nation related to private employers and housing discrimination only,
8 punitive damages, and such other remedies as may be appropriate, includ-
9 ing 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 article,
13 provided that, where the division has dismissed such complaint on the
14 grounds of administrative convenience, on the grounds of untimeliness,
15 or on the grounds that the election of remedies is annulled, such person
16 shall maintain all rights to bring suit as if no complaint had been
17 filed with the division. At any time prior to a hearing before a hearing
18 examiner, a person who has a complaint pending at the division may
19 request that the division dismiss the complaint and annul his or her
20 election of remedies so that the human rights law claim may be pursued
21 in court, and the division may, upon such request, dismiss the complaint
22 on the grounds that such person's election of an administrative remedy
23 is annulled. Notwithstanding subdivision (a) of section two hundred four
24 of the civil practice law and rules, if a complaint is so annulled by

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

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1 the division, upon the request of the party bringing such complaint
2 before the division, such party's rights to bring such cause of action
3 before a court of appropriate jurisdiction shall be limited by the stat-
4 ute of limitations in effect in such court at the time the complaint was
5 initially filed with the division. Any party to a housing discrimination
6 complaint shall have the right within twenty days following a determi-
7 nation of probable cause pursuant to subdivision two of this section to
8 elect to have an action commenced in a civil court, and an attorney
9 representing the division of human rights will be appointed to present
10 the complaint in court, or, with the consent of the division, the case
11 may be presented by complainant's attorney. A complaint filed by the
12 equal employment opportunity commission to comply with the requirements
13 of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not
14 constitute the filing of a complaint within the meaning of this subdivi-
15 sion. No person who has initiated any action in a court of competent
16 jurisdiction or who has an action pending before any administrative
17 agency under any other law of the state based upon an act which would be
18 an unlawful discriminatory practice under this article, may file a
19 complaint with respect to the same grievance under this section or under
20 section two hundred ninety-six-a of this article. In cases of housing
21 discrimination only, a person whose complaint has been dismissed by the
22 division after investigation for lack of jurisdiction or lack of proba-
23 ble cause may file the same cause of action in a court of appropriate
24 jurisdiction pursuant to this section, unless judicial review of such
25 dismissal has been sought pursuant to section two hundred ninety-eight
26 of this article. The attorney general shall have the power to commence
27 an action or proceeding in the supreme court of the state of New York,
28 if, upon information or belief, the attorney general is of the opinion
29 that an employer has been, is, or is about to violate the provisions
30 regarding unlawful discriminatory retaliation pursuant to subdivision
31 seven of section two hundred ninety-six of this article. Nothing in this
32 section shall in any way limit rights or remedies which are otherwise
33 available under law to the attorney general or any other person author-
34 ized to bring an action under this section.

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

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

54 § 2. This act shall take effect immediately.