

# STATE OF NEW YORK

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1684

2023-2024 Regular Sessions

## IN ASSEMBLY

January 17, 2023

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Introduced by M. of A. WOERNER, THIELE, DICKENS, TAGUE, ANGELINO,  
HAWLEY, SILLITTI, HUNTER, K. BROWN, JONES -- read once and referred to  
the Committee on Codes

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.