

# STATE OF NEW YORK

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2182

2023-2024 Regular Sessions

## IN ASSEMBLY

January 23, 2023

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Introduced by M. of A. DINOWITZ, SEAWRIGHT, PAULIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to awarding attorneys' fees and costs and exemplary damages in an action brought for an unlawful discriminatory practice

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  
2 amended by chapter 140 of the laws of 2022, is amended to read as  
3 follows:

4 9. Any person claiming to be aggrieved by an unlawful discriminatory  
5 practice shall have a cause of action in any court of appropriate juris-  
6 diction for damages, including, in cases of employment discrimination  
7 related to private employers and housing discrimination only, punitive  
8 damages, and upon prevailing, shall recover reasonable attorneys' fees  
9 and costs in the action. In addition thereto the trier of fact may award  
10 exemplary damages and such other remedies as may be appropriate, includ-  
11 ing any civil fines and penalties provided in subdivision four of this  
12 section, unless such person had filed a complaint hereunder or with any  
13 local commission on human rights, or with the superintendent pursuant to  
14 the provisions of section two hundred ninety-six-a of this article,  
15 provided that, where the division has dismissed such complaint on the  
16 grounds of administrative convenience, on the grounds of untimeliness,  
17 or on the grounds that the election of remedies is annulled, such person  
18 shall maintain all rights to bring suit as if no complaint had been  
19 filed with the division. At any time prior to a hearing before a hearing  
20 examiner, a person who has a complaint pending at the division may  
21 request that the division dismiss the complaint and annul his or her  
22 election of remedies so that the human rights law claim may be pursued  
23 in court, and the division may, upon such request, dismiss the complaint  
24 on the grounds that such person's election of an administrative remedy

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

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

37 § 2. This act shall take effect on the thirtieth day after it shall  
38 have become a law.