STATE OF NEW YORK

4240

2023-2024 Regular Sessions

IN ASSEMBLY

February 13, 2023

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to providing for awards of attorney's fees in actions under the human rights law

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

Section 1. Subdivision 10 of section 297 of the executive law, as amended by chapter 154 of the laws of 2022, is amended to read as follows:

10. In an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court [~~may in its discretion~~] **shall** award reasonable attorney's fees to any prevailing or substantially prevailing [~~party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous; and further provided that in a proceeding brought in the division of human rights, the commissioner may only award attorney's fees as part of a final order after a public hearing held pursuant to subdivision four of this section~~] **plaintiff or complainant**. In no case shall attorney's fees be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorney's fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer. Expert witness fees may be awarded in the same manner as attorney's fees. In cases of employment discrimination, a respondent shall only be liable for attorney's fees under this subdivision if the respondent has been found liable for having committed an unlawful discriminatory practice. [~~In order to find the action or proceeding to be frivolous, the court or the commissioner must find in writing one or more of the following:~~]

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

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

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

§ 2. This act shall take effect immediately.