

# STATE OF NEW YORK

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4328

2023-2024 Regular Sessions

## IN ASSEMBLY

February 14, 2023

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

AN ACT to amend the executive law, in relation to preserve the right to a jury trial for certain actions

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 such other remedies as may be appropriate, including any  
9 civil fines and penalties provided in subdivision four of this section,  
10 unless such person had filed a complaint hereunder or with any local  
11 commission on human rights, or with the superintendent pursuant to the  
12 provisions of section two hundred ninety-six-a of this article, provided  
13 that, where the division has dismissed such complaint on the grounds of  
14 administrative convenience, on the grounds of untimeliness, or on the  
15 grounds that the election of remedies is annulled, such person shall  
16 maintain all rights to bring suit as if no complaint had been filed with  
17 the division. At any time prior to a hearing before a hearing examiner,  
18 a person who has a complaint pending at the division may request that  
19 the division dismiss the complaint and annul his or her election of  
20 remedies so that the human rights law claim may be pursued in court, and  
21 the division may, upon such request, dismiss the complaint on the  
22 grounds that such person's election of an administrative remedy is  
23 annulled. Notwithstanding subdivision (a) of section two hundred four of  
24 the civil practice law and rules, if a complaint is so annulled by the  
25 division, upon the request of the party bringing such complaint before

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

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1 the division, such party's rights to bring such cause of action before a  
2 court of appropriate jurisdiction shall be limited by the statute of  
3 limitations in effect in such court at the time the complaint was  
4 initially filed with the division. Notwithstanding any other provision  
5 of law to the contrary, when a person commences an action pursuant to  
6 this subdivision or pursuant to a local human rights law, and such  
7 action includes a demand for equitable relief, such person shall never-  
8 theless retain the right to a jury trial. Any party to a housing  
9 discrimination complaint shall have the right within twenty days follow-  
10 ing a determination of probable cause pursuant to subdivision two of  
11 this section to elect to have an action commenced in a civil court, and  
12 an attorney representing the division of human rights will be appointed  
13 to present the complaint in court, or, with the consent of the division,  
14 the case may be presented by complainant's attorney. A complaint filed  
15 by the equal employment opportunity commission to comply with the  
16 requirements of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b)  
17 shall not constitute the filing of a complaint within the meaning of  
18 this subdivision. No person who has initiated any action in a court of  
19 competent jurisdiction or who has an action pending before any adminis-  
20 trative agency under any other law of the state based upon an act which  
21 would be an unlawful discriminatory practice under this article, may  
22 file a complaint with respect to the same grievance under this section  
23 or under section two hundred ninety-six-a of this article. In cases of  
24 housing discrimination only, a person whose complaint has been dismissed  
25 by the division after investigation for lack of jurisdiction or lack of  
26 probable cause may file the same cause of action in a court of appropri-  
27 ate jurisdiction pursuant to this section, unless judicial review of  
28 such dismissal has been sought pursuant to section two hundred ninety-  
29 eight of this article. The attorney general shall have the power to  
30 commence an action or proceeding in the supreme court of the state of  
31 New York, if, upon information or belief, the attorney general is of the  
32 opinion that an employer has been, is, or is about to violate the  
33 provisions regarding unlawful discriminatory retaliation pursuant to  
34 subdivision seven of section two hundred ninety-six of this article.  
35 Nothing in this section shall in any way limit rights or remedies which  
36 are otherwise available under law to the attorney general or any other  
37 person authorized to bring an action under this section.

38 § 2. This act shall take effect immediately.