

STATE OF NEW YORK

6411

2023-2024 Regular Sessions

IN SENATE

April 18, 2023

Introduced by Sen. KENNEDY -- 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 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

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

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

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