REPORT ON LEGISLATION BY THE
CIVIL RIGHTS COMMITTEE AND
SEX AND LAW COMMITTEE

A.1113
S.2782

M. of A. Dinowitz
Sen. Kennedy

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.

THIS BILL IS APPROVED

Under the existing terms of the State Human Rights Law, punitive damages, attorney’s fees, and penalties can be awarded only in cases of housing discrimination.¹ As such, in the majority of cases, whether brought administratively or in court, victims of discrimination can obtain, and perpetrators of discrimination must pay, only compensatory damages. The statutory scheme thereby provides too little deterrent to discriminatory conduct, imposes substantial burdens on victims (who must either pay for private counsel or cope with administrative delays), and fails to acknowledge the independent harm that discrimination imposes on the State and its residents.

The availability of fee awards would ease the financial burden on meritorious plaintiffs and increase their access to competent counsel, which, in turn, would impose more of the costs of enforcing the civil and human rights laws on discriminating defendants and perhaps reduce the burdens currently borne by state and local civil and human rights enforcement agencies. The availability of punitive damages in appropriate cases would more fully punish those who engage in gross misconduct and dissuade others from similar behavior. We therefore urge the enactment of A.1113/S.2782, which would permit the award of “reasonable attorneys’ fees, costs and exemplary damages in court actions for unlawful discriminatory practices pursuant to the human rights law.”²

In addition to enactment of the Bill, we recommend that the Human Rights Law be further amended to allow for penalties to be paid to the State. Some types of discrimination cause relatively little compensable harm to direct victims, but significant harm to society as a whole—for example, an employer’s use of discriminatory job advertisements. The availability

¹ See N.Y. Exec. L. § 297(9) & 297(10). Additional relief is available in housing discrimination cases because the Human Rights Law was revised previously to make it substantially equivalent to the federal Fair Housing Act.
of penalties would further deter discriminatory conduct and acknowledge (and compensate for) the societal harm caused by discrimination. 3

Taken together, these changes would bring the Human Rights Law more into line with progressive civil rights statutes nationwide. Attorney’s fees, punitive damages, and/or penalties are already available in non-housing-related civil rights matters under federal law 4 and the laws of a number of states and localities, including jurisdictions within New York State. 5

Notably, Chapter 364 of 2015 permits an award of attorneys’ fees only in cases of sex discrimination under the SHRL. The enacted legislation was originally part of the omnibus “Women’s Equality Act” first introduced in the Assembly in 2013, but ultimately passed both houses as a standalone bill. In our view, the award of attorneys’ fees in only one class of cases is arbitrary and inequitable and we much prefer the approach taken by A.1113/S.2782. Attorneys’ fees should be recoverable in all proven cases of discrimination under the SHRL, not just one subset. Plaintiffs subject to, for example, race-based or disability-based discrimination in places of public accommodation should have equal opportunity to pursue their claims to a successful outcome as are individuals subject to sex-based discrimination. Moreover, discrimination does not always fall neatly into one category, and women may experience discrimination on account of both their sex and other unlawful factors. Limiting the amendments to sex discrimination ignores the complexity of discrimination and will create potential new obstacles, such as arguments that a plaintiff is only entitled to a portion of her attorney’s fees because her claims involved sex and other forms of discrimination. For these reasons, we support enactment of A.1113/S.2782.

Reissued September 2017

---

3 While the New York Civil Rights Law provides for penalties of $100 to $500 for each act of discrimination, these penalties must be paid to identified victims or their assignees, not to the State. See N.Y. Civ. Rights L. § 40-d. Substantial penalties are payable to the State under the Human Rights Law only in cases of housing discrimination. See N.Y. Exec. L. § 297(4) & 297(9) (permitting assessment of up to $100,000 in civil fines and penalties).

4 Successful plaintiffs under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, for example, may receive punitive damages; 42 U.S.C. § 1988 allows for awards of reasonable attorney’s fees and costs in certain federal civil rights actions.