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## **ASSEMBLY APPROVES IMPROVEMENT TO THE EQUAL ACCESS TO JUSTICE ACT**

The State Assembly has approved legislation (A.7395/S.4534) that would improve on the current Equal Access to Justice Act regarding counsel fees and expenses for “underdogs” who take on state agencies in court. “The Equal Access to Justice Act authorizes an award of attorney's fees to litigants who have been wronged by the unjustified actions of New York State agencies,” said Assemblyman Robin Schimminger, D-C-I-Kenmore, “However, a recent court decision declared that litigants were not entitled to attorney's fees where the case was settled at any time prior to a final judgment.”

As a result of this failure to award fees as contemplated by the Equal Access to Justice Act, attorneys are increasingly unwilling to take on these matters. Ultimately, the absence of attorneys willing to bring such actions against state agencies negates the effectiveness of the Equal Access to Justice Act in tempering overreaching state action and allowing small businesses, not-for-profit organizations and individuals of modest means to fight back.

This new legislation would remedy this issue by amending New York State law to mirror provisions in the New York City Human Rights Law, and a 2008 U.S. Senate bill to award attorney's fees in actions where the pursuit of litigation has acted as a "catalyst for a voluntary or unilateral change in position by the opposing party (i.e. the government agencies) that provides any significant part of the relief sought."

“In 1989, I sponsored the legislation that created the Equal Access to Justice Act,” said Schimminger, chairman of the Assembly Committee on Economic Development, Job Creation, Commerce and Industry. “Over the years, I have monitored the value and importance of this law to determine whether changes or updates were required. The court’s recent action requires this change in the law to preserve its ability to do what it was designed to do: give ‘the little guy’ a more equal playing field when taking on state agencies that overstep their authority.”

Senator John Sampson, D-Brooklyn, sponsors the identical legislation in the State Senate.

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