

Florida **AB-309**

Post-it <sup>®</sup> brand fax transmittal memo 7671		# of pages <b>2</b>
To <b>Pat Lathey, Joe</b>	From <b>Pat McWhorter</b>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

AMENDMENT TO S.B. 309, AS ENGROSSED.

On page 4, on lines 2 through 21, delete all the language in section 8 and insert in lieu thereof:

Section 8. It shall be unlawful for an employer, other than a physician, other health care provider, <sup>health care benefits provider,</sup> or health related business or association to:

(1) refuse to hire or to discharge any individual solely because the individual is a smoker or non-smoker; or

(2) require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided the individual complies with applicable laws or policies regulating smoking during working hours;

(3) Notwithstanding any other provisions of this section, the sole remedy for any individual claiming to be aggrieved by a violation of any parts of Section 8, shall be a non-jury civil action for damages which shall be limited to a claim for all wages and benefits deprived the individual by reason of the

violation, but which shall not include any claim for mental or emotional suffering or distress, punitive damages, attorneys fees or for any other form of damages.

(4) It is not a discriminatory or unfair employment practice pursuant to this section for:

a. an employer to offer, impose or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type of coverage or the cost of coverage based on the employees' use of tobacco products; or

b. an employer to offer or sponsor incentive programs promoting an employee's use or non-use of tobacco products, provided that such incentive programs do not affect hiring or discharge of any individual; or

c. an employer to discharge an employee who is in violation of the employer's written attendance policy.

(5) In order for any individual claiming to be aggrieved by a violation of Section 8 to recover against the employer, the plaintiff in any such action shall be required to prove that at the time the plaintiff's cause of action arose, the employer had in effect a written policy prohibiting the employment of smokers.