

**Senate Bill No. 400**

(By Senator Ferns)

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[Introduced February 3, 2015; referred to the Committee on Health and Human Resources; and  
then to the Committee on the Judiciary.]

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A BILL to amend and reenact §21-3-19 of the Code of West Virginia, 1931, as amended, relating  
to exempting certain employers from discriminating against tobacco users.

*Be it enacted by the Legislature of West Virginia:*

That §21-3-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
to read as follows:

**ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.**

**§21-3-19. Discrimination for use of tobacco products prohibited.**

(a) It ~~shall be~~ is unlawful for ~~any~~ an employer, whether public or private, or the agent of ~~such~~  
the employer to refuse to hire any individual or to discharge any employee or otherwise to  
disadvantage or penalize any employee with respect to compensation, terms, conditions or privileges  
of employment solely because ~~such~~ the individual uses tobacco products off the premises of the  
employer during nonworking hours.

(b) ~~This section shall not apply with respect to an employer which is a nonprofit organization~~

1 ~~which, as one of its primary purposes or objectives, discourages the use of one or more tobacco~~  
 2 ~~products by the general public. The protections described in subsection (a) of this section do not apply~~  
 3 ~~to any individual who is first employed on or after July 1, 2015, by:~~

4 (1) An employer which as one of its primary purposes or objectives, discourages the use of  
 5 one or more tobacco products by the general public; or

6 (2) An employer whose principal business is the operation of a health care facility or facilities  
 7 that provide treatment to patients including patients with life threatening illnesses caused by or related  
 8 to the use of one or more tobacco products, and any affiliated employer whose principal business is  
 9 directly related to that employer.

10 (c) This section ~~shall not~~ does not prohibit an employer from offering, imposing or having in  
 11 effect a health, disability or life insurance policy which makes distinctions between employees for  
 12 type of coverage or price of coverage based upon the employee's use of tobacco products: *Provided,*  
 13 That any differential premium rates charged to employees must reflect differential costs to the  
 14 employer: *Provided, however,* That the employer ~~must~~ shall provide employees with a statement  
 15 delineating the differential rates used by its insurance carriers.

16 (d) ~~Nothing in~~ This section ~~shall not be construed to~~ does not prohibit an employer from  
 17 making available to smokers and other users of tobacco products, programs, free of charge or at  
 18 reduced rates, which encourage the reduction or cessation of smoking or tobacco use.

NOTE: The purpose of this bill is to exempt employers that have as one of their primary purposes or objectives to discourage the use of tobacco products by the general public from discriminating against tobacco users. The bill exempts employers whose principal business is the operation of a health care facility that provide treatment to patients with life threatening illnesses caused by or related to the use of tobacco products from discriminating against tobacco users. The bill also exempts affiliated employers whose principal business is directly related to those other two

types of employers from discriminating against tobacco users.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.