1	Senate Bill No. 626
2	(By Senators McCabe and Foster)
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4	[Introduced February 17, 2012; referred to the Committee on
5	Health and Human Resources; and then to the Committee on the
6	Judiciary.]
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11	A BILL to amend and reenact $\$21-3-19$ of the Code of West Virginia,
12	1931, as amended, relating to exempting certain employers from
13	discriminating against tobacco users.
14	Be it enacted by the Legislature of West Virginia:
15	That §21-3-19 of the Code of West Virginia, 1931, as amended,
16	be amended and reenacted to read as follows:
17	ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.
18	§21-3-19. Discrimination for use of tobacco products prohibited.
19	(a) It shall be unlawful for any employer, whether public or
20	private, or the agent of such employer to refuse to hire any
21	individual or to discharge any employee or otherwise to
22	disadvantage or penalize any employee with respect to compensation,
23	terms, conditions or privileges of employment solely because such
24	individual uses tobacco products off the premises of the employer

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1 during nonworking hours.

2 (b) This section shall not apply with respect to an employer 3 which is a nonprofit organization which, as one of its primary 4 purposes or objectives, discourages the use of one or more tobacco 5 products by the general public. The protections described in 6 subsection (a) of this section do not apply to any individual who 7 is first employed on or after the effective date of this amendment 8 by: (1) An employer that has as one of its primary purposes or 9 objectives, discourages the use of one or more tobacco products by 10 the general public; or (2) an employer whose principal business is 11 the operation of a health care facility or facilities that provide 12 treatment to patients with life threatening illnesses caused by or 13 related to the use of one or more tobacco products, and any 14 affiliated employer.

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

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1 (d) Nothing in this section shall be construed to prohibit an 2 employer from making available to smokers and other users of 3 tobacco products, programs, free of charge or at reduced rates, 4 which encourage the reduction or cessation of smoking or tobacco 5 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.