WEST VIRGINIA CODE: §21-3-19

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

(a) It shall be unlawful for any employer, whether public or private, or the agent of such 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 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 which, as one of its primary purposes or objectives, discourages the use of one or more tobacco products by the general public.

(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 coverage 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 by its insurance carriers.

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

WV Legislature