
By: Delegates Kagan, Goldwater, and D. Davis

Introduced and read first time: January 30, 1997

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 Condominiums, Homeowners Associations, and Cooperatives - Home-Based Businesses

3 FOR the purpose of prohibiting a recorded covenant or restriction, declaration, bylaw, or
4 rule of a condominium, homeowners association, or cooperative housing
5 corporation from restricting certain home-based businesses; providing that a
6 condominium, homeowners association, or cooperative housing corporation may
7 prohibit or regulate home-based businesses under certain circumstances; providing
8 that the operation of a home-based business is a residential activity; authorizing
9 condominiums and homeowners associations to require home-based businesses to
10 pay certain fees under certain circumstances; authorizing condominiums,
11 homeowners associations, and cooperative housing corporations to adopt certain
12 rules; and generally relating to home-based businesses in condominiums,
13 homeowners associations, and cooperative housing corporations.

14 BY renumbering

15 Article - Corporations and Associations
16 Section 5-6B-01(j) through (q), respectively
17 to be Section 5-6B-01(k) through (r), respectively
18 Annotated Code of Maryland
19 (1993 Replacement Volume and 1996 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article - Real Property
22 Section 11-111.1 and 11B-111.1
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 1996 Supplement)

25 BY adding to

26 Article - Corporations and Associations
27 Section 5-6B-01(j) and 5-6B-18.1
28 Annotated Code of Maryland
29 (1993 Replacement Volume and 1996 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That Section(s) 5-6B-01(j) through (q), respectively, of Article -

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1 Corporations and Associations of the Annotated Code of Maryland be renumbered to be
2 Section(s) 5-6B-01(k) through (r), respectively.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 **Article - Real Property**

6 11-111.1.

7 (a) (1) In this section, the following words have the meanings indicated.

8 (2) "Day care provider" means the adult who has primary responsibility for
9 the operation of a family day care home.

10 (3) "Family day care home" means a unit registered under Title 5, Subtitle 5
11 of the Family Law Article.

12 (4) "HOME-BASED BUSINESS" MEANS A BUSINESS THAT:

13 (I) IS NOT INCONSISTENT WITH THE RESIDENTIAL CHARACTER OF
14 THE DWELLING UNIT;

15 (II) IS SUBORDINATE TO THE USE OF THE DWELLING UNIT FOR
16 RESIDENTIAL PURPOSES AND REQUIRES NO EXTERNAL MODIFICATIONS THAT
17 DETRACT FROM THE RESIDENTIAL APPEARANCE OF THE DWELLING UNIT;

18 (III) USES NO EQUIPMENT OR PROCESS THAT CREATES NOISE,
19 VIBRATION, GLARE, FUMES, ODORS, OR ELECTRICAL OR ELECTRONIC
20 INTERFERENCE DETECTABLE BY NEIGHBORS OR THAT CAUSES AN INCREASE OF
21 COMMON EXPENSES THAT CAN BE ATTRIBUTABLE TO A HOME-BASED BUSINESS;
22 AND

23 (IV) DOES NOT INVOLVE USE, STORAGE, OR DISPOSAL OF ANY
24 GROUPING OR CLASSIFICATION OF MATERIALS THAT THE UNITED STATES
25 SECRETARY OF TRANSPORTATION OR THE STATE OR ANY LOCAL GOVERNING
26 BODY DESIGNATES AS A HAZARDOUS MATERIAL.

27 (b) This section does not apply to a condominium that is limited to housing for
28 older persons, as defined under the federal Fair Housing Act.

29 (c) (1) Subject to the provisions of subsections (d) and (e)(1) of this section, a
30 recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws
31 or rules of a condominium that prohibits or restricts commercial or business activity in
32 general, but does not expressly apply to family day care homes OR HOME-BASED
33 BUSINESSES, may not be construed to prohibit or restrict:

34 (i) The establishment and operation of family day care homes OR
35 HOME-BASED BUSINESSES; or

36 (ii) Use of the roads, sidewalks, and other common elements of the
37 condominium by users of the family day care home OR HOME-BASED BUSINESS.

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1 (2) Subject to the provisions of subsections (d) and (e)(1) of this section, the
2 operation of a family day care home OR HOME-BASED BUSINESS shall be:

3 (i) Considered a residential activity; and

4 (ii) A permitted activity.

5 (d) (1) (i) Subject to the provisions of paragraphs (2) and (3) of this
6 subsection, a condominium may include in its declaration, bylaws, or rules and
7 restrictions a provision expressly prohibiting the use of a unit as a family day care home
8 OR HOME-BASED BUSINESS.

9 (ii) A provision described under subparagraph (i) of this paragraph
10 expressly prohibiting the use of a unit as a family day care home OR HOME-BASED
11 BUSINESS shall apply to an existing family day care home OR HOME-BASED BUSINESS in
12 the condominium.

13 (2) A provision described under paragraph (1)(i) of this subsection expressly
14 prohibiting the use of a unit as a family day care home OR HOME-BASED BUSINESS may
15 not be enforced unless it is approved by a simple majority of the total eligible voters of the
16 condominium under the voting procedures contained in the declaration or bylaws of the
17 condominium.

18 (3) If a condominium includes in its declaration, bylaws, or rules and
19 restrictions, a provision prohibiting the use of a unit as a family day care home OR
20 HOME-BASED BUSINESS, it shall also include a provision stating that the prohibition may
21 be eliminated and family day care homes OR HOME-BASED BUSINESSES may be
22 approved by a simple majority of the total eligible voters of the condominium under the
23 voting procedures contained in the declaration or bylaws of the condominium.

24 (4) If a condominium includes in its declaration, bylaws, or rules and
25 restrictions a provision expressly prohibiting the use of a unit as a family day care home
26 OR HOME-BASED BUSINESS, the prohibition may be eliminated and family day care OR
27 HOME-BASED BUSINESS ACTIVITIES may be permitted by the approval of a simple
28 majority of the total eligible voters of the condominium under the voting procedures
29 contained in the declaration or bylaws of the condominium.

30 (e) A condominium may include in its declaration, bylaws, or rules and
31 restrictions a provision that:

32 (1) Regulates the number or percentage of family day care homes operating
33 in the condominium, provided that the percentage of family day care homes permitted
34 may not be less than 7.5 percent of the total units of the condominium;

35 (2) Requires day care providers OR HOME-BASED BUSINESSES to pay on a
36 pro rata basis based on the total number of family day care homes OR HOME-BASED
37 BUSINESSES operating in the condominium any increase in insurance costs of the
38 condominium that are solely and directly attributable to the operation of family day care
39 homes OR HOME-BASED BUSINESSES in the condominium; and

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1 (3) Imposes a fee for use of common elements in a reasonable amount not
2 to exceed \$50 per year on each family day care home OR HOME-BASED BUSINESS which
3 is registered and operating in the condominium.

4 (f) (1) If the condominium regulates the number or percentage of family day
5 care homes under subsection (e)(1) of this section, in order to assure compliance with the
6 regulation, the condominium may require residents to notify the condominium before
7 opening a family day care home.

8 (2) THE CONDOMINIUM MAY REQUIRE RESIDENTS TO NOTIFY THE
9 CONDOMINIUM BEFORE OPENING A HOME-BASED BUSINESS.

10 (g) (1) A day care provider in a condominium:

11 (i) Shall obtain the liability insurance described under Article 48A, §
12 481D of the Code in at least the minimum amount described under that statute; and

13 (ii) May not operate without the liability insurance described under
14 item (i) of this paragraph.

15 (2) A condominium may not require a day care provider to obtain insurance
16 in an amount greater than the minimum amount required under paragraph (1) of this
17 subsection.

18 (h) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
19 RECORDED COVENANT OR RESTRICTION, A PROVISION IN A DECLARATION, OR A
20 PROVISION OF THE BYLAWS OR RULES OF A CONDOMINIUM MAY NOT RESTRICT A
21 HOME-BASED BUSINESS.

22 (2) A CONDOMINIUM MAY PLACE RESTRICTIONS ON A HOME-BASED
23 BUSINESS IN ANY COMMON ELEMENTS.

24 (I) To the extent that this section is inconsistent with any other provision of this
25 subtitle, this section shall take precedence over any inconsistent provision.

26 11B-111.1.

27 (a) (1) In this section, the following words have the meanings indicated.

28 (2) "Day care provider" means the adult who has primary responsibility for
29 the operation of a family day care home.

30 (3) "Family day care home" means a unit registered under Title 5, Subtitle 5
31 of the Family Law Article.

32 (4) "HOME-BASED BUSINESS" MEANS A BUSINESS THAT:

33 (I) IS NOT INCONSISTENT WITH THE RESIDENTIAL CHARACTER OF
34 THE DWELLING UNIT;

35 (II) IS SUBORDINATE TO THE USE OF THE DWELLING UNIT FOR
36 RESIDENTIAL PURPOSES AND REQUIRES NO EXTERNAL MODIFICATIONS THAT
37 DETRACT FROM THE RESIDENTIAL APPEARANCE OF THE DWELLING UNIT;

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1 (III) USES NO EQUIPMENT OR PROCESS THAT CREATES NOISE,
 2 VIBRATION, GLARE, FUMES, ODORS, OR ELECTRICAL OR ELECTRONIC
 3 INTERFERENCE DETECTABLE BY NEIGHBORS OR THAT CAUSES AN INCREASE OF
 4 COMMON EXPENSES THAT CAN BE ATTRIBUTABLE TO A HOME-BASED BUSINESS;
 5 AND

6 (IV) DOES NOT INVOLVE USE, STORAGE, OR DISPOSAL OF ANY
 7 GROUPING OR CLASSIFICATION OF MATERIALS THAT THE UNITED STATES
 8 SECRETARY OF TRANSPORTATION OR THE STATE OR ANY LOCAL GOVERNING
 9 BODY DESIGNATES AS A HAZARDOUS MATERIAL.

10 (b) This section does not apply to a homeowners association that is limited to
 11 housing for older persons, as defined under the federal Fair Housing Act.

12 (c) (1) Subject to the provisions of subsections (d) and (e)(1) of this section, a
 13 recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws
 14 or rules of a homeowners association that prohibits or restricts commercial or business
 15 activity in general, but does not expressly apply to family day care homes OR
 16 HOME-BASED BUSINESSES, may not be construed to prohibit or restrict:

17 (i) The establishment and operation of family day care homes OR
 18 HOME-BASED BUSINESSES; or

19 (ii) Use of the roads, sidewalks, and other common areas of the
 20 homeowners association by users of the family day care home OR HOME-BASED
 21 BUSINESS.

22 (2) Subject to the provisions of subsections (d) and (e)(1) of this section, the
 23 operation of a family day care home OR HOME-BASED BUSINESS shall be:

24 (i) Considered a residential activity; and

25 (ii) A permitted activity.

26 (d) (1) (i) Subject to the provisions of paragraphs (2) and (3) of this
 27 subsection, a homeowners association may include in its declaration, bylaws, or recorded
 28 covenants and restrictions a provision expressly prohibiting the use of a residence as a
 29 family day care home OR HOME-BASED BUSINESS.

30 (ii) A provision described under subparagraph (i) of this paragraph
 31 expressly prohibiting the use of a residence as a family day care home OR HOME-BASED
 32 BUSINESS shall apply to an existing family day care home OR HOME-BASED BUSINESS in
 33 the homeowners association.

34 (2) A provision described under paragraph (1)(i) of this subsection expressly
 35 prohibiting the use of a residence as a family day care home OR HOME-BASED BUSINESS
 36 may not be enforced unless it is approved by a simple majority of the total eligible voters
 37 of the homeowners association under the voting procedures contained in the declaration
 38 or bylaws of the homeowners association.

39 (3) If a homeowners association includes in its declaration, bylaws, or
 40 recorded covenants and restrictions a provision prohibiting the use of a residence as a
 41 family day care home OR HOME-BASED BUSINESS, it shall also include a provision

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1 stating that the prohibition may be eliminated and family day care homes OR
2 HOME-BASED BUSINESSES may be approved by a simple majority of the total eligible
3 voters of the homeowners association under the voting procedures contained in the
4 declaration or bylaws of the homeowners association.

5 (4) If a homeowners association includes in its declaration, bylaws, or
6 recorded covenants and restrictions a provision expressly prohibiting the use of a
7 residence as a family day care home OR HOME-BASED BUSINESS, the prohibition may be
8 eliminated and family day care OR HOME-BASED BUSINESS ACTIVITIES may be
9 permitted by the approval of a simple majority of the total eligible voters of the
10 homeowners association under the voting procedures contained in the declaration or
11 bylaws of the homeowners association.

12 (e) A homeowners association may include in its declaration, bylaws, rules, or
13 recorded covenants and restrictions a provision that:

14 (1) Regulates the number or percentage of family day care homes operating
15 in the homeowners association, provided that the percentage of family day care homes
16 permitted may not be less than 7.5 percent of the total residences of the homeowners
17 association;

18 (2) Requires day care providers OR HOME-BASED BUSINESSES to pay on a
19 pro rata basis based on the total number of family day care homes OR HOME-BASED
20 BUSINESSES operating in the homeowners association any increase in insurance costs of
21 the homeowners association that are solely and directly attributable to the operation of
22 family day care homes OR HOME-BASED BUSINESSES in the homeowners association;
23 and

24 (3) Imposes a fee for use of common areas in a reasonable amount not to
25 exceed \$50 per year on each family day care home OR HOME-BASED BUSINESS which is
26 registered and operating in the homeowners association.

27 (f) (1) If the homeowners association regulates the number or percentage of
28 family day care homes under subsection (e)(1) of this section, in order to assure
29 compliance with this regulation, the homeowners association may require residents to
30 notify the homeowners association before opening a family day care home.

31 (2) THE HOMEOWNERS ASSOCIATION MAY REQUIRE RESIDENTS TO
32 NOTIFY THE HOMEOWNERS ASSOCIATION BEFORE OPENING A HOME-BASED
33 BUSINESS.

34 (g) (1) A day care provider in a homeowners association:

35 (i) Shall obtain the liability insurance described under Article 48A, §
36 481D of the Code in at least the minimum amount described under that statute; and

37 (ii) May not operate without the liability insurance described under
38 item (i) of this paragraph.

39 (2) A homeowners association may not require a day care provider to obtain
40 insurance in an amount greater than the minimum amount required under paragraph (1)
41 of this subsection.

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1 (H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
2 RECORDED COVENANT OR RESTRICTION, A PROVISION IN A DECLARATION, OR A
3 PROVISION OF THE BYLAWS OR RULES OF A HOMEOWNERS ASSOCIATION MAY NOT
4 RESTRICT A HOME-BASED BUSINESS.

5 (2) A HOMEOWNERS ASSOCIATION MAY PLACE RESTRICTIONS ON A
6 HOME-BASED BUSINESS IN ANY COMMON ELEMENTS.

7 **Article - Corporations and Associations**

8 5-6B-01.

9 (J) "HOME-BASED BUSINESS" MEANS A BUSINESS THAT:

10 (1) IS NOT INCONSISTENT WITH THE RESIDENTIAL CHARACTER OF THE
11 DWELLING UNIT;

12 (2) IS SUBORDINATE TO THE USE OF THE DWELLING UNIT FOR
13 RESIDENTIAL PURPOSES AND REQUIRES NO EXTERNAL MODIFICATIONS THAT
14 DETRACT FROM THE RESIDENTIAL APPEARANCE OF THE DWELLING UNIT;

15 (3) USES NO EQUIPMENT OR PROCESS THAT CREATES NOISE,
16 VIBRATION, GLARE, FUMES, ODORS, OR ELECTRICAL OR ELECTRONIC
17 INTERFERENCE DETECTABLE BY NEIGHBORS; AND

18 (4) DOES NOT INVOLVE USE, STORAGE, OR DISPOSAL OF ANY
19 GROUPING OR CLASSIFICATION OF MATERIALS THAT THE UNITED STATES
20 SECRETARY OF TRANSPORTATION OR THE STATE OR ANY LOCAL GOVERNING
21 BODY DESIGNATES AS A HAZARDOUS MATERIAL.

22 5-6B-18.1.

23 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PROVISION
24 IN A DECLARATION, OR A PROVISION IN THE BYLAWS OR RULES OF A COOPERATIVE
25 HOUSING CORPORATION MAY NOT RESTRICT A HOME-BASED BUSINESS.

26 (B) A COOPERATIVE HOUSING CORPORATION MAY PLACE RESTRICTIONS ON
27 A HOME-BASED BUSINESS IN ANY COMMON ELEMENT.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1997.