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**By: Delegates Kagan, Goldwater, and D. Davis**

Introduced and read first time: January 30, 1997

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 1997

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CHAPTER \_\_\_\_

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 certain home-based businesses under certain circumstances;  
8 providing that the operation of a home-based business is a ~~residential~~ certain  
9 activity; authorizing condominiums and homeowners associations to require  
10 home-based businesses to pay certain fees under certain circumstances; authorizing  
11 condominiums, homeowners associations, and cooperative housing corporations to  
12 adopt certain rules; defining a certain term; and generally relating to home-based  
13 businesses in condominiums, homeowners associations, and cooperative housing  
14 corporations.

15 BY renumbering

16 Article - Corporations and Associations

17 Section 5-6B-01(j) through (q), respectively

18 to be Section 5-6B-01(k) through (r), respectively

19 Annotated Code of Maryland

20 (1993 Replacement Volume and 1996 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article - Real Property

23 Section 11-111.1 and 11B-111.1

24 Annotated Code of Maryland

25 (1996 Replacement Volume and 1996 Supplement)

1 BY adding to  
2 Article - Corporations and Associations  
3 Section 5-6B-01(j) and 5-6B-18.1  
4 Annotated Code of Maryland  
5 (1993 Replacement Volume and 1996 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That Section(s) 5-6B-01(j) through (q), respectively, of Article -  
8 Corporations and Associations of the Annotated Code of Maryland be renumbered to be  
9 Section(s) 5-6B-01(k) through (r), respectively.

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

12 **Article - Real Property**

13 11-111.1.

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

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

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

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

20 (I) IS NOT INCONSISTENT WITH THE RESIDENTIAL CHARACTER OF  
21 THE DWELLING UNIT;

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

25 (III) USES NO EQUIPMENT OR PROCESS THAT CREATES NOISE,  
26 VIBRATION, GLARE, FUMES, ODORS, OR ELECTRICAL OR ELECTRONIC  
27 INTERFERENCE DETECTABLE BY NEIGHBORS OR THAT CAUSES AN INCREASE OF  
28 COMMON EXPENSES THAT CAN BE ATTRIBUTABLE TO A HOME-BASED BUSINESS;  
29 AND

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

34 (b) (1) This section does not apply to a condominium that is limited to housing  
35 for older persons, as defined under the federal Fair Housing Act.

36 (2) THE PROVISIONS OF THIS SECTION RELATING TO HOME-BASED  
37 BUSINESSES DO NOT APPLY TO A CONDOMINIUM THAT HAS ADOPTED, PRIOR TO  
38 OCTOBER 1, 1997, PROCEDURES PURSUANT TO ITS DECLARATION FOR THE REVIEW,  
39 APPROVAL, AND REGULATION OF HOME-BASED BUSINESSES.

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

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

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

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

12 (i) Considered a residential activity; and

13 (ii) A permitted activity.

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

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

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

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

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

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

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

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

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

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

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

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

19 (i) Shall obtain the liability insurance described under Article 48A, §  
20 481D of the Code in at least the minimum amount described under that statute; and

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

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

26 (h) (1) EXCEPT AS PROVIDED IN SUBSECTION (D)(1)(I) OF THIS SECTION  
27 AND PARAGRAPH (2) OF THIS SUBSECTION, A RECORDED COVENANT OR  
28 RESTRICTION, A PROVISION IN A DECLARATION, OR A PROVISION OF THE BYLAWS  
29 OR RULES OF A CONDOMINIUM MAY NOT RESTRICT A HOME-BASED BUSINESS.

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

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

34 11B-111.1.

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

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

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

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

2 (I) IS NOT INCONSISTENT WITH THE RESIDENTIAL CHARACTER OF  
3 THE DWELLING UNIT;

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

7 (III) USES NO EQUIPMENT OR PROCESS THAT CREATES NOISE,  
8 VIBRATION, GLARE, FUMES, ODORS, OR ELECTRICAL OR ELECTRONIC  
9 INTERFERENCE DETECTABLE BY NEIGHBORS OR THAT CAUSES AN INCREASE OF  
10 COMMON EXPENSES THAT CAN BE ATTRIBUTABLE TO A HOME-BASED BUSINESS;  
11 AND

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

16 (b) (1) This section does not apply to a homeowners association that is limited  
17 to housing for older persons, as defined under the federal Fair Housing Act.

18 (2) THE PROVISIONS OF THIS SECTION RELATING TO HOME-BASED  
19 BUSINESSES DO NOT APPLY TO A HOMEOWNERS ASSOCIATION THAT HAS ADOPTED  
20 PROCEDURES, PRIOR TO OCTOBER 1, 1997, PURSUANT TO ITS DECLARATION OR  
21 COVENANTS FOR THE REVIEW, APPROVAL, AND REGULATION OF HOME-BASED  
22 BUSINESSES.

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

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

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

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

35 (i) Considered a residential activity; and

36 (ii) A permitted activity.

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

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

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

10 (3) If a homeowners association includes in its declaration, bylaws, or  
11 recorded covenants and restrictions a provision prohibiting the use of a residence as a  
12 family day care home OR HOME-BASED BUSINESS, it shall also include a provision  
13 stating that the prohibition may be eliminated and family day care homes OR  
14 HOME-BASED BUSINESSES may be approved by a simple majority of the total eligible  
15 voters of the homeowners association under the voting procedures contained in the  
16 declaration or bylaws of the homeowners association.

17 (4) If a homeowners association includes in its declaration, bylaws, or  
18 recorded covenants and restrictions a provision expressly prohibiting the use of a  
19 residence as a family day care home OR HOME-BASED BUSINESS, the prohibition may be  
20 eliminated and family day care OR HOME-BASED BUSINESS ACTIVITIES may be  
21 permitted by the approval of a simple majority of the total eligible voters of the  
22 homeowners association under the voting procedures contained in the declaration or  
23 bylaws of the homeowners association.

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

26 (1) Regulates the number or percentage of family day care homes operating  
27 in the homeowners association, provided that the percentage of family day care homes  
28 permitted may not be less than 7.5 percent of the total residences of the homeowners  
29 association;

30 (2) Requires day care providers OR HOME-BASED BUSINESSES to pay on a  
31 pro rata basis based on the total number of family day care homes OR HOME-BASED  
32 BUSINESSES operating in the homeowners association any increase in insurance costs of  
33 the homeowners association that are solely and directly attributable to the operation of  
34 family day care homes OR HOME-BASED BUSINESSES in the homeowners association;  
35 and

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

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

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1 (2) THE HOMEOWNERS ASSOCIATION MAY REQUIRE RESIDENTS TO  
2 NOTIFY THE HOMEOWNERS ASSOCIATION BEFORE OPENING A HOME-BASED  
3 BUSINESS.

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

5 (i) Shall obtain the liability insurance described under Article 48A, §  
6 481D of the Code in at least the minimum amount described under that statute; and

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

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

12 (H) (1) EXCEPT AS PROVIDED IN SUBSECTION (D)(1)(I) OF THIS SECTION  
13 AND PARAGRAPH (2) OF THIS SUBSECTION, A RECORDED COVENANT OR  
14 RESTRICTION, A PROVISION IN A DECLARATION, OR A PROVISION OF THE BYLAWS  
15 OR RULES OF A HOMEOWNERS ASSOCIATION MAY NOT RESTRICT A HOME-BASED  
16 BUSINESS.

17 (2) A HOMEOWNERS ASSOCIATION MAY PLACE RESTRICTIONS ON A  
18 HOME-BASED BUSINESS IN ANY COMMON ~~ELEMENTS~~ AREAS.

19 **Article - Corporations and Associations**

20 5-6B-01.

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

22 (1) IS NOT INCONSISTENT WITH THE RESIDENTIAL CHARACTER OF THE  
23 DWELLING UNIT;

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

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

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

34 5-6B-18.1.

35 (A) THIS SECTION DOES NOT APPLY TO A COOPERATIVE HOUSING  
36 CORPORATION THAT HAS ADOPTED, PRIOR TO OCTOBER 1, 1997, PROCEDURES  
37 PURSUANT TO ITS ARTICLES OF INCORPORATION FOR THE REVIEW, APPROVAL,  
38 AND REGULATION OF HOME-BASED BUSINESSES.

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1           ~~(A)~~ (B) EXCEPT AS PROVIDED IN SUBSECTION ~~(B)~~ (C) OF THIS SECTION, A  
2 PROVISION IN A DECLARATION, OR A PROVISION IN THE BYLAWS OR RULES OF A  
3 COOPERATIVE HOUSING CORPORATION MAY NOT RESTRICT A HOME-BASED  
4 BUSINESS.

5           ~~(B)~~ (C) A COOPERATIVE HOUSING CORPORATION MAY PLACE  
6 RESTRICTIONS ON A HOME-BASED BUSINESS IN ANY COMMON ~~ELEMENT~~ PROPERTY.

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