

HOUSE BILL 44

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HB 600/97 - ECM

1998 Regular Session
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(PRE-FILED)

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

Requested: July 15, 1997

Introduced and read first time: January 14, 1998

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums, Homeowners Associations, and Cooperatives - No-Impact**
3 **Home-Based Businesses**

4 FOR the purpose of providing that a recorded covenant or restriction, declaration,
5 bylaw, or rule of a condominium, homeowners association, or cooperative
6 housing corporation may not prohibit no-impact home-based businesses;
7 providing that a condominium, homeowners association, or cooperative housing
8 corporation may restrict or prohibit certain no-impact home-based businesses
9 under certain circumstances; providing that the operation of a no-impact
10 home-based business is a certain activity; authorizing condominiums and
11 homeowners associations to require no-impact home-based businesses to pay
12 certain fees under certain circumstances; authorizing condominiums,
13 homeowners associations, and cooperative housing corporations to adopt certain
14 rules; defining a certain term; and generally relating to no-impact home-based
15 businesses in condominiums, homeowners associations, and cooperative housing
16 corporations.

17 BY renumbering
18 Article - Corporations and Associations
19 Section 5-6B-01(o), (p), and (q), respectively
20 to be Section 5-6B-01(p), (q), and (r), respectively
21 Annotated Code of Maryland
22 (1993 Replacement Volume and 1997 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Real Property
25 Section 11-111.1 and 11B-111.1
26 Annotated Code of Maryland
27 (1996 Replacement Volume and 1997 Supplement)

28 BY adding to
29 Article - Corporations and Associations
30 Section 5-6B-01(o) and 5-6B-18.1

1 Annotated Code of Maryland
2 (1993 Replacement Volume and 1997 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That Section(s) 5-6B-01(o), (p), and (q), respectively, of Article -
5 Corporations and Associations of the Annotated Code of Maryland be renumbered to
6 be Section(s) 5-6B-01(p), (q), and (r), respectively.

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

9 **Article - Real Property**

10 11-111.1.

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

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

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

16 (4) "NO-IMPACT HOME-BASED BUSINESS" MEANS A BUSINESS THAT:

17 (I) IS CONSISTENT WITH THE RESIDENTIAL CHARACTER OF THE
18 DWELLING UNIT;

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

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

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

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

33 (c) (1) Subject to the provisions of subsections (d) and (e)(1) of this section, a
34 recorded covenant or restriction, a provision in a declaration, or a provision of the
35 bylaws or rules of a condominium that prohibits or restricts commercial or business

1 activity in general, but does not expressly apply to family day care homes OR
2 NO-IMPACT HOME-BASED BUSINESSES, may not be construed to prohibit or restrict:

3 (i) The establishment and operation of family day care homes OR
4 NO-IMPACT HOME-BASED BUSINESSES; or

5 (ii) Use of the roads, sidewalks, and other common elements of the
6 condominium by users of the family day care home.

7 (2) Subject to the provisions of subsections (d) and (e)(1) of this section,
8 the operation of a family day care home OR NO-IMPACT HOME-BASED BUSINESS shall
9 be:

10 (i) Considered a residential activity; and

11 (ii) A permitted activity.

12 (d) (1) (i) Subject to the provisions of paragraphs (2) and (3) of this
13 subsection, a condominium may include in its declaration, bylaws, or rules and
14 restrictions a provision expressly prohibiting the use of a unit as a family day care
15 home OR NO-IMPACT HOME-BASED BUSINESS.

16 (ii) A provision described under subparagraph (i) of this paragraph
17 expressly prohibiting the use of a unit as a family day care home OR NO-IMPACT
18 HOME-BASED BUSINESS shall apply to an existing family day care home OR
19 NO-IMPACT HOME-BASED BUSINESS in the condominium.

20 (2) A provision described under paragraph (1)(i) of this subsection
21 expressly prohibiting the use of a unit as a family day care home OR NO-IMPACT
22 HOME-BASED BUSINESS may not be enforced unless it is approved by a simple
23 majority of the total eligible voters of the condominium under the voting procedures
24 contained in the declaration or bylaws of the condominium.

25 (3) If a condominium includes in its declaration, bylaws, or rules and
26 restrictions, a provision prohibiting the use of a unit as a family day care home OR
27 NO-IMPACT HOME-BASED BUSINESS, it shall also include a provision stating that the
28 prohibition may be eliminated and family day care homes OR NO-IMPACT
29 HOME-BASED BUSINESSES may be approved by a simple majority of the total eligible
30 voters of the condominium under the voting procedures contained in the declaration
31 or bylaws of the condominium.

32 (4) If a condominium includes in its declaration, bylaws, or rules and
33 restrictions a provision expressly prohibiting the use of a unit as a family day care
34 home OR NO-IMPACT HOME-BASED BUSINESS, the prohibition may be eliminated
35 and family day care OR NO-IMPACT HOME-BASED BUSINESS ACTIVITIES may be
36 permitted by the approval of a simple majority of the total eligible voters of the
37 condominium under the voting procedures contained in the declaration or bylaws of
38 the condominium.

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

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

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

10 (3) Imposes a fee for use of common elements in a reasonable amount not
11 to exceed \$50 per year on each family day care home OR NO-IMPACT HOME-BASED
12 BUSINESS which is registered and operating in the condominium.

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

17 (2) THE CONDOMINIUM MAY REQUIRE RESIDENTS TO NOTIFY THE
18 CONDOMINIUM BEFORE OPENING A NO-IMPACT HOME-BASED BUSINESS.

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

20 (i) Shall obtain the liability insurance described under §§ 19-106
21 and 19-202 of the Insurance Article in at least the minimum amount described under
22 that statute; and

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

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

28 (h) (1) EXCEPT AS PROVIDED IN SUBSECTION (D)(1)(I) OF THIS SECTION AND
29 PARAGRAPH (2) OF THIS SUBSECTION, A RECORDED COVENANT OR RESTRICTION, A
30 PROVISION IN A DECLARATION, OR A PROVISION OF THE BYLAWS OR RULES OF A
31 CONDOMINIUM MAY NOT PROHIBIT A NO-IMPACT HOME-BASED BUSINESS.

32 (2) A CONDOMINIUM MAY RESTRICT OR PROHIBIT A NO-IMPACT
33 HOME-BASED BUSINESS IN ANY COMMON ELEMENTS.

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

1 11B-111.1.

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

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

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

7 (4) "NO-IMPACT HOME-BASED BUSINESS" MEANS A BUSINESS THAT:

8 (I) IS CONSISTENT WITH THE RESIDENTIAL CHARACTER OF THE
9 DWELLING UNIT;

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

13 (III) USES NO EQUIPMENT OR PROCESS THAT CREATES NOISE,
14 VIBRATION, GLARE, FUMES, ODORS, OR ELECTRICAL OR ELECTRONIC
15 INTERFERENCE DETECTABLE BY NEIGHBORS OR THAT CAUSES AN INCREASE OF
16 COMMON EXPENSES THAT CAN BE SOLELY AND DIRECTLY ATTRIBUTABLE TO A
17 NO-IMPACT HOME-BASED BUSINESS; AND

18 (IV) 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 BODY
21 DESIGNATES AS A HAZARDOUS MATERIAL.

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

24 (c) (1) Subject to the provisions of subsections (d) and (e)(1) of this section, a
25 recorded covenant or restriction, a provision in a declaration, or a provision of the
26 bylaws or rules of a homeowners association that prohibits or restricts commercial or
27 business activity in general, but does not expressly apply to family day care homes OR
28 NO-IMPACT HOME-BASED BUSINESSES, may not be construed to prohibit or restrict:

29 (i) The establishment and operation of family day care homes OR
30 NO-IMPACT HOME-BASED BUSINESSES; or

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

33 (2) Subject to the provisions of subsections (d) and (e)(1) of this section,
34 the operation of a family day care home OR NO-IMPACT HOME-BASED BUSINESS shall
35 be:

36 (i) Considered a residential activity; and

1 (ii) A permitted activity.

2 (d) (1) (i) Subject to the provisions of paragraphs (2) and (3) of this
3 subsection, a homeowners association may include in its declaration, bylaws, or
4 recorded covenants and restrictions a provision expressly prohibiting the use of a
5 residence as a family day care home OR NO-IMPACT HOME-BASED BUSINESS.

6 (ii) A provision described under subparagraph (i) of this paragraph
7 expressly prohibiting the use of a residence as a family day care home OR NO-IMPACT
8 HOME-BASED BUSINESS shall apply to an existing family day care home OR
9 NO-IMPACT HOME-BASED BUSINESS in the homeowners association.

10 (2) A provision described under paragraph (1)(i) of this subsection
11 expressly prohibiting the use of a residence as a family day care home OR NO-IMPACT
12 HOME-BASED BUSINESS may not be enforced unless it is approved by a simple
13 majority of the total eligible voters of the homeowners association under the voting
14 procedures contained in the declaration or bylaws of the homeowners association.

15 (3) If a homeowners association includes in its declaration, bylaws, or
16 recorded covenants and restrictions a provision prohibiting the use of a residence as a
17 family day care home OR NO-IMPACT HOME-BASED BUSINESS, it shall also include a
18 provision stating that the prohibition may be eliminated and family day care homes
19 OR NO-IMPACT HOME-BASED BUSINESSES may be approved by a simple majority of
20 the total eligible voters of the homeowners association under the voting procedures
21 contained in the declaration or bylaws of the homeowners association.

22 (4) If a homeowners association includes in its declaration, bylaws, or
23 recorded covenants and restrictions a provision expressly prohibiting the use of a
24 residence as a family day care home OR NO-IMPACT HOME-BASED BUSINESS, the
25 prohibition may be eliminated and family day care OR NO-IMPACT HOME-BASED
26 BUSINESS ACTIVITIES may be permitted by the approval of a simple majority of the
27 total eligible voters of the homeowners association under the voting procedures
28 contained in the declaration or bylaws of the homeowners association.

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

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

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

1 (3) Imposes a fee for use of common areas in a reasonable amount not to
2 exceed \$50 per year on each family day care home OR NO-IMPACT HOME-BASED
3 BUSINESS which is registered and operating in the homeowners association.

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

8 (2) THE HOMEOWNERS ASSOCIATION MAY REQUIRE RESIDENTS TO
9 NOTIFY THE HOMEOWNERS ASSOCIATION BEFORE OPENING A NO-IMPACT
10 HOME-BASED BUSINESS.

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

12 (i) Shall obtain the liability insurance described under §§ 19-106
13 and 19-202 of the Insurance Article in at least the minimum amount described under
14 that statute; and

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

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

20 (H) (1) EXCEPT AS PROVIDED IN SUBSECTION (D)(1)(I) OF THIS SECTION AND
21 PARAGRAPH (2) OF THIS SUBSECTION, A RECORDED COVENANT OR RESTRICTION, A
22 PROVISION IN A DECLARATION, OR A PROVISION OF THE BYLAWS OR RULES OF A
23 HOMEOWNERS ASSOCIATION MAY NOT PROHIBIT A NO-IMPACT HOME-BASED
24 BUSINESS.

25 (2) A HOMEOWNERS ASSOCIATION MAY RESTRICT OR PROHIBIT A
26 NO-IMPACT HOME-BASED BUSINESS IN ANY COMMON AREAS.

27 **Article - Corporations and Associations**

28 5-6B-01.

29 (O) "NO-IMPACT HOME-BASED BUSINESS" MEANS A BUSINESS THAT:

30 (1) IS CONSISTENT WITH THE RESIDENTIAL CHARACTER OF THE
31 DWELLING UNIT;

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

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

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

8 5-6B-18.1.

9 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PROVISION
10 IN A DECLARATION, OR A PROVISION IN THE BYLAWS OR RULES OF A COOPERATIVE
11 HOUSING CORPORATION MAY NOT PROHIBIT A NO-IMPACT HOME-BASED BUSINESS.

12 (B) A COOPERATIVE HOUSING CORPORATION MAY RESTRICT OR PROHIBIT A
13 NO-IMPACT HOME-BASED BUSINESS IN ANY COMMON PROPERTY.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 1998.