

SENATE BILL 403

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1999 Regular Session
(9r1032)

ENROLLED BILL
-- Judicial Proceedings/Economic Matters --

Introduced by **Senators Forehand and Ruben**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Homeowners Associations - Family Day Care Homes**

3 FOR the purpose of prohibiting a homeowners association from prohibiting the use of
4 a residence as a family day care home until the lot owners, other than the
5 developer, have a certain percentage of votes in the homeowners association;
6 specifying that the approval of certain provisions expressly prohibiting the use
7 of a residence as a family day care home or no-impact home-based business by
8 a simple majority of the total eligible voters does not include the developer;
9 repealing a provision of law that regulates a certain number of family day care
10 homes operating in the homeowners association; and generally relating to family
11 day care homes and homeowners associations.

12 BY repealing and reenacting, with amendments,
13 Article - Real Property
14 Section 11B-111.1
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 1998 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Real Property**

4 11B-111.1.

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

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

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

10 (4) "No-impact home-based business" means a business that:

11 (i) Is consistent with the residential character of the dwelling unit;

12 (ii) Is subordinate to the use of the dwelling unit for residential
13 purposes and requires no external modifications that detract from the residential
14 appearance of the dwelling unit;

15 (iii) Uses no equipment or process that creates noise, vibration,
16 glare, fumes, odors, or electrical or electronic interference detectable by neighbors or
17 that causes an increase of common expenses that can be solely and directly
18 attributable to a no-impact home-based business; and

19 (iv) Does not involve use, storage, or disposal of any grouping or
20 classification of materials that the United States Secretary of Transportation or the
21 State or any local governing body designates as a hazardous material.

22 (b) (1) The provisions of this section relating to family day care homes do not
23 apply to a homeowners association that is limited to housing for older persons, as
24 defined under the federal Fair Housing Act.

25 (2) The provisions of this section relating to no-impact home-based
26 businesses do not apply to a homeowners association that has adopted, prior to July 1,
27 1999, procedures in accordance with its covenants, declaration, or bylaws for the
28 prohibition or regulation of no-impact home-based businesses.

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
31 bylaws or rules of a homeowners association that prohibits or restricts commercial or
32 business activity in general, but does not expressly apply to family day care homes or
33 no-impact home-based businesses, may not be construed to prohibit or restrict:

34 (i) The establishment and operation of family day care homes or
35 no-impact home-based businesses; or

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

3 (2) Subject to the provisions of subsections (d) and (e)(1) of this section,
4 the operation of a family day care home or no-impact home-based business shall be:

5 (i) Considered a residential activity; and

6 (ii) A permitted activity.

7 (d) (1) (i) [Subject] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF
8 THIS PARAGRAPH AND SUBJECT to the provisions of paragraphs (2) and (3) of this
9 subsection, a homeowners association may include in its declaration, bylaws, or
10 recorded covenants and restrictions a provision expressly prohibiting the use of a
11 residence as a family day care home or no-impact home-based business.

12 (II) A HOMEOWNERS ASSOCIATION MAY NOT INCLUDE A
13 PROVISION DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH EXPRESSLY
14 PROHIBITING THE USE OF A RESIDENCE AS A FAMILY DAY CARE HOME IN ITS
15 DECLARATION, BYLAWS, OR RECORDED COVENANTS AND RESTRICTIONS UNTIL THE
16 LOT OWNERS, OTHER THAN THE DEVELOPER, HAVE 90% OF THE VOTES IN THE
17 HOMEOWNERS ASSOCIATION.

18 [(ii)] (III) A provision described under subparagraph (i) of this
19 paragraph expressly prohibiting the use of a residence as a family day care home or
20 no-impact home-based business shall apply to an existing family day care home or
21 no-impact home-based business in the homeowners association.

22 (2) A provision described under paragraph (1)(i) of this subsection
23 expressly prohibiting the use of a residence as a family day care home or no-impact
24 home-based business may not be enforced unless it is approved by a simple majority
25 of the total eligible voters of the homeowners association, NOT INCLUDING THE
26 DEVELOPER, under the voting procedures contained in the declaration or bylaws of
27 the homeowners association.

28 (3) If a homeowners association includes in its declaration, bylaws, or
29 recorded covenants and restrictions a provision prohibiting the use of a residence as a
30 family day care home or no-impact home-based business, it shall also include a
31 provision stating that the prohibition may be eliminated and family day care homes
32 or no-impact home-based businesses may be approved by a simple majority of the
33 total eligible voters of the homeowners association under the voting procedures
34 contained in the declaration or bylaws of the homeowners association.

35 (4) If a homeowners association includes in its declaration, bylaws, or
36 recorded covenants and restrictions a provision expressly prohibiting the use of a
37 residence as a family day care home or no-impact home-based business, the
38 prohibition may be eliminated and family day care or no-impact home-based
39 business activities may be permitted by the approval of a simple majority of the total
40 eligible voters of the homeowners association under the voting procedures contained
41 in the declaration or bylaws of the homeowners association.

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

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

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

12 (3) (2) Imposes a fee for use of common areas in a reasonable amount
13 not to exceed \$50 per year on each family day care home or no-impact home-based
14 business which is registered and operating in the homeowners association.

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

19 (2) The homeowners association may require residents to notify the
20 homeowners association before opening a no-impact home-based business.

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

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

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

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

30 (h) A homeowners association may restrict or prohibit a no-impact
31 home-based business in any common areas.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 1999.

