

UNOFFICIAL COPY OF HOUSE BILL 1743
EMERGENCY BILL

N1

6lr3728

By: **Delegate Smigiel**

Rules suspended

Introduced and read first time: March 22, 2006

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Condominium or Homeowners Association - Prohibition on Family Day**
3 **Care Homes or No-Impact Home-Based Businesses - Applicability**

4 FOR the purpose of providing that certain provisions in certain governing documents
5 of a condominium or homeowners association that prohibit family day care
6 homes or no-impact home-based business from being located in a condominium
7 unit or a residence under the authority of a homeowners association do not
8 apply to certain family day care homes or no-impact home-based businesses
9 located in a unit or residence on or before a certain date; providing that certain
10 prohibitions do not apply to family day care homes or no-impact home-based
11 businesses that are operating on or before the date a certain provision is adopted
12 in certain governing documents; making this Act an emergency measure; and
13 generally relating to a prohibition on family day care homes and no-impact
14 home-based businesses in a condominium or homeowners association.

15 BY repealing and reenacting, without amendments,
16 Article - Real Property
17 Section 11-111.1(a)(1), (3), and (4) and 11B-111.1(a)(1), (3), and (4)
18 Annotated Code of Maryland
19 (2003 Replacement Volume and 2005 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - Real Property
22 Section 11-111.1(d) and 11B-111.1(d)
23 Annotated Code of Maryland
24 (2003 Replacement Volume and 2005 Supplement)

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

1

Article - Real Property

2 11-111.1.

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

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

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

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

8 (ii) Is subordinate to the use of the dwelling unit for residential
9 purposes and requires no external modifications that detract from the residential
10 appearance of the dwelling unit;11 (iii) Uses no equipment or process that creates noise, vibration,
12 glare, fumes, odors, or electrical or electronic interference detectable by neighbors or
13 that causes an increase of common expenses that can be solely and directly
14 attributable to a no-impact home-based business; and15 (iv) Does not involve use, storage, or disposal of any grouping or
16 classification of materials that the United States Secretary of Transportation or the
17 State or any local governing body designates as a hazardous material.18 (d) (1) THE PROVISIONS OF THIS SUBSECTION RELATING TO A PROVISION
19 IN A DECLARATION, BY LAWS, COVENANT, OR RULES AND RESTRICTIONS OF A
20 CONDOMINIUM EXPRESSLY PROHIBITING THE USE OF A UNIT AS A FAMILY DAY CARE
21 HOME OR NO-IMPACT HOME-BASED BUSINESS DOES NOT APPLY TO A FAMILY DAY
22 CARE HOME OR NO-IMPACT HOME-BASED BUSINESS OPERATING IN A
23 CONDOMINIUM ON OR BEFORE MARCH 1, 2006.24 [(1)] (2) (i) Subject to the provisions of paragraphs [(2) and] (3) AND
25 (4) of this subsection, a condominium may include in its declaration, bylaws, or rules
26 and restrictions a provision expressly prohibiting the use of a unit as a family day
27 care home or no-impact home-based business.28 (ii) A provision described under subparagraph (i) of this paragraph
29 expressly prohibiting the use of a unit as a family day care home or no-impact
30 home-based business [shall apply to an existing] MAY NOT BE ENFORCED AGAINST A
31 family day care home or no-impact home-based business OPERATING in the
32 condominium ON OR BEFORE THE DATE THE PROVISION IS ADOPTED.33 [(2)] (3) A provision described under paragraph [(1)(i)] (2)(I) of this
34 subsection expressly prohibiting the use of a unit as a family day care home or
35 no-impact home-based business may not be enforced unless it is approved by a
36 simple majority of the total eligible voters of the condominium under the voting
37 procedures contained in the declaration or bylaws of the condominium.

1 [(3)] (4) If a condominium includes in its declaration, bylaws, or rules
2 and restrictions, a provision prohibiting the use of a unit as a family day care home or
3 no-impact home-based business, it shall also include a provision stating that the
4 prohibition may be eliminated and family day care homes or no-impact home-based
5 businesses may be approved by a simple majority of the total eligible voters of the
6 condominium under the voting procedures contained in the declaration or bylaws of
7 the condominium.

8 [(4)] (5) If a condominium includes in its declaration, bylaws, or rules
9 and restrictions a provision expressly prohibiting the use of a unit as a family day
10 care home or no-impact home-based business, the prohibition may be eliminated and
11 family day care or no-impact home-based business activities may be permitted by the
12 approval of a simple majority of the total eligible voters of the condominium under the
13 voting procedures contained in the declaration or bylaws of the condominium.

14 11B-111.1.

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

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

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

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

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

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

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

30 (d) (1) THE PROVISIONS OF THIS SUBSECTION RELATING TO A PROVISION
31 IN A DECLARATION, BY LAWS, OR RECORDED COVENANTS AND RESTRICTIONS OF A
32 HOMEOWNERS ASSOCIATION EXPRESSLY PROHIBITING THE USE OF A RESIDENCE AS
33 A FAMILY DAY CARE HOME OR NO-IMPACT HOME-BASED BUSINESS DOES NOT APPLY
34 TO A FAMILY DAY CARE HOME OR NO-IMPACT HOME-BASED BUSINESS OPERATING
35 IN A RESIDENCE ON OR BEFORE MARCH 1, 2006.

36 [(1)] (2) (i) Except as provided in subparagraph (ii) of this paragraph
37 and subject to the provisions of paragraphs [(2) and] (3) AND (4) of this subsection, a
38 homeowners association may include in its declaration, bylaws, or recorded covenants

1 and restrictions a provision expressly prohibiting the use of a residence as a family
2 day care home or no-impact home-based business.

3 (ii) A homeowners association may not include a provision
4 described under subparagraph (i) of this paragraph expressly prohibiting the use of a
5 residence as a family day care home in its declaration, bylaws, or recorded covenants
6 and restrictions until the lot owners, other than the developer, have 90% of the votes
7 in the homeowners association.

8 (iii) A provision described under subparagraph (i) of this paragraph
9 expressly prohibiting the use of a residence as a family day care home or no-impact
10 home-based business [shall apply to an existing] **MAY NOT BE ENFORCED AGAINST A**
11 family day care home or no-impact home-based business **OPERATING** in the
12 homeowners association **ON OR BEFORE THE DATE THE PROVISION IS ADOPTED.**

13 [(2)] (3) A provision described under paragraph [(1)(i)] (2)(I) of this
14 subsection expressly prohibiting the use of a residence as a family day care home or
15 no-impact home-based business may not be enforced unless it is approved by a
16 simple majority of the total eligible voters of the homeowners association, not
17 including the developer, under the voting procedures contained in the declaration or
18 bylaws of the homeowners association.

19 [(3)] (4) If a homeowners association includes in its declaration, bylaws,
20 or recorded covenants and restrictions a provision prohibiting the use of a residence
21 as a family day care home or no-impact home-based business, it shall also include a
22 provision stating that the prohibition may be eliminated and family day care homes
23 or no-impact home-based businesses may be approved by a simple majority of the
24 total eligible voters of the homeowners association under the voting procedures
25 contained in the declaration or bylaws of the homeowners association.

26 [(4)] (5) If a homeowners association includes in its declaration, bylaws,
27 or recorded covenants and restrictions a provision expressly prohibiting the use of a
28 residence as a family day care home or no-impact home-based business, the
29 prohibition may be eliminated and family day care or no-impact home-based
30 business activities may be permitted by the approval of a simple majority of the total
31 eligible voters of the homeowners association under the voting procedures contained
32 in the declaration or bylaws of the homeowners association.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
34 measure, is necessary for the immediate preservation of the public health or safety,
35 has been passed by a ye and nay vote supported by three-fifths of all the members
36 elected to each of the two Houses of the General Assembly, and shall take effect from
37 the date it is enacted.