

[First Reprint]  
ASSEMBLY, No. 1811

STATE OF NEW JERSEY

INTRODUCED JUNE 9, 1997

By Assemblymen AZZOLINA, WEINGARTEN, Assemblywoman Crecco, Assemblymen Caraballo, Corodemus, T. Smith, Augustine, Assemblywomen Wright, Heck, Assemblymen Doria, Steele, Wolfe, Rocco, Gibson, Kelly, Geist, DeCroce, Chatzidakis, Assemblywoman Murphy, Assemblymen Roberts, Felice, Malone, Gregg, Assemblywoman Farragher, Assemblymen Zecker, Assemblywomen Allen, J. Smith, Assemblymen DeSopo, O'Toole, Bodine and LeFevre

1 AN ACT concerning municipal land use and supplementing chapter  
2 55D of Title 40 of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This bill shall be known and may be cited as the "Home-Based  
8 Business Promotion Act."

9

10 2. The Legislature finds and declares:

11 a. Corporate restructuring and the rise of telecommunications has  
12 led to an explosion of individuals working out of their homes.  
13 According to a national survey, as many as 40 million people work at  
14 least part time at home, with about 8,000 businesses of this nature  
15 starting daily;

16 b. In New Jersey alone, 6,000 home-based businesses are started  
17 each month. Over the past decade, New Jersey gained over a quarter  
18 million new home-based, service-oriented businesses. Two-thirds of  
19 all home-based business owners have school aged children at home.  
20 Entrepreneurial owners have an average income of \$69,900;

21 c. Many of these businesses are operating in violation of outmoded  
22 local ordinances. Many zoning ordinances permit home-based  
23 businesses of recognized professionals, such as doctors, lawyers and  
24 accountants, but prohibit other for-profit businesses under certain

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly floor amendments adopted June 23, 1997.

1 circumstances;

2 d. Most zoning ordinances enacted in the 1960s and 1970s were  
3 based on good intentions and focused on the protection of residential  
4 neighborhoods from the negative effects of industry; this occurred at  
5 a time when more than 75% of the working public then pursued  
6 occupations outside of the home;

7 e. The changing economic structure and technological development  
8 have catalyzed the development of home-based businesses. According  
9 to the Partnership for Work at Home, over 90% of such businesses do  
10 not create the traffic, pollution, noise or safety problems of other  
11 industries. New approaches in zoning are needed to ensure that this  
12 very important segment of the economy, which may lay the  
13 groundwork for the expansion of companies which later grow to a  
14 "Fortune 100" or "Fortune 500" levels, and which generates many jobs  
15 and increased revenues to the State economy, is provided the  
16 opportunity for growth. Such growth cannot occur unless the  
17 Legislature ensures that municipalities will not overregulate or place  
18 burdensome obstacles in the way of home-based businesses.

19 f. The Legislature finds it timely and appropriate to work in  
20 partnership with local governments, individuals, organizations and the  
21 business community to promote a business-friendly environment for  
22 home-based businesses while protecting the safety and health of the  
23 citizens of communities across the State.

24 g. This act is intended to establish State guidelines for  
25 municipalities to follow in their treatment of home-based businesses,  
26 in order to bolster business growth in the State and carefully balance  
27 the interests of home-based business owners with the needs of the  
28 residential area in which they operate.

29 The Legislature further finds that these guidelines will prevent such  
30 businesses from being forced into high cost regulatory environments  
31 or being impeded in their formation by existing ordinances.

32

33 3. As used in this act:

34 "Home Based Business" means any activity performed for pecuniary  
35 gain in or directed from a dwelling unit by one or more residents of  
36 that dwelling unit which is located in a residential zone and which:

37 a. is not inconsistent with the residential character of the dwelling  
38 unit;

39 b. is subordinate to the use of the dwelling unit for residential  
40 purposes and requires no external modifications that detract from the  
41 residential appearance of the dwelling unit;

42 c. uses no equipment or process that creates noise, vibration, glare,  
43 fumes odors, or electrical or electronic interference <sup>1</sup>, including  
44 interference with radio or television reception,<sup>1</sup> detectable by  
45 neighbors;

46 d. in the case of a dwelling unit which is part of a common interest

1 ownership community, does not cause an increase in common expenses  
2 that can be attributable to a home-based business;

3 e. does not involve use, storage, or disposal <sup>1</sup>[or] of<sup>1</sup> any grouping  
4 or classification of materials that the federal <sup>1</sup>[secretary] Secretary<sup>1</sup> of  
5 Transportation or the State or any local governing body designates as  
6 a hazardous material; <sup>1</sup>[and]<sup>1</sup>

7 f. does not present any appreciable <sup>1</sup>[traffic or]<sup>1</sup> safety <sup>1</sup>or traffic<sup>1</sup>  
8 concerns <sup>1</sup>; and

9 g. does not involve any activity which is illegal<sup>1</sup>.

10

11 4. Home-based businesses shall be a permitted use in all residential  
12 districts of a municipality; provided, however, such businesses shall  
13 comply with any municipal ordinances pertaining to parking or use of  
14 signs in the residential district. No municipality shall impose fines or  
15 penalties for home-based businesses that are residential in character  
16 and will not pose significant traffic, trash, noise or safety problems  
17 <sup>1</sup>except as provided in section 6 of P.L. .c. (C. )(now before the  
18 Legislature as this bill)<sup>1</sup>.

19

20 5. A home-based business shall be a permitted use in any  
21 condominium, cooperative or planned real estate development or any  
22 dwelling unit under the control of a horizontal property regime. Any  
23 deed <sup>1</sup>or bylaw<sup>1</sup> restriction that would prohibit the use of a single  
24 family dwelling unit as a home-based business shall not be enforceable  
25 unless that restriction is necessary for the preservation of the health,  
26 safety, and welfare of the other residents in the neighborhood. The  
27 burden of proof shall be on the party seeking to enforce the deed <sup>1</sup>or  
28 bylaw<sup>1</sup> restriction to demonstrate, on a case-by-case basis, that the  
29 restriction is necessary for the preservation of the health, safety and  
30 welfare of the residents in the neighborhood who were meant to  
31 benefit from the restriction. <sup>1</sup>Nothing in this section shall be construed  
32 as preventing the enforcement of master deed or bylaw provisions  
33 which pertain to restricted access to a community, such as in  
34 communities in which access is restricted by guard or gate.<sup>1</sup>

35

36 <sup>1</sup>[6. A home-based business owner, may, at his or her discretion,  
37 convene a neighbor advisory council, the purpose of which shall be to  
38 communicate the nature of the business to the neighborhood and allow  
39 input from neighbors who are within 1000 feet of the home-based  
40 business or the property upon which it is located. The neighbor  
41 advisory council shall function as a mechanism to enhance a business  
42 owner's relationship with neighbors in close proximity to the business  
43 and address any concerns that may arise concerning the conducting of  
44 such a business.]<sup>1</sup>

1 <sup>1</sup>6. In the event that a neighbor or other community member  
2 maintains that the operation of a particular home-based business is  
3 having a deleterious impact on the environment, the character of the  
4 neighborhood, congestion or the safety of the residents of the  
5 community, then those individuals may register a notice of their  
6 concerns with the municipal zoning or housing code enforcement  
7 official.

8 A municipal zoning or housing code official may conduct an  
9 administrative hearing, within 30 days of the registering of the notice  
10 of concerns, to determine the validity of the concerns registered. If  
11 the official determines that a home-based business is having a  
12 deleterious impact on the environment, the character of the  
13 neighborhood, congestion or the safety of the residents of the  
14 community, or if any of the provisions of subsections a. through g. of  
15 section 3 of P.L. , c. (C. )(now before the Legislature as this  
16 bill) are not being met, then the municipal official may deem such  
17 business to be in violation of P.L. , c. (C. )(now before the  
18 Legislature as this bill), and the permitted use status authorized under  
19 this act shall not be required. The official may provide an opportunity  
20 for a home-based business to comply with certain conditions in order  
21 to bring the business into compliance with the provisions of P.L. ,  
22 c. (C. )(now before the Legislature as this bill). If the official  
23 determines that the home-based business is in compliance with the  
24 provisions of P.L. , c. (C. )(now before the Legislature as this  
25 bill), then he shall notify the individual or individuals who registered  
26 the notice of concerns of his determination.<sup>1</sup>

27  
28 7. a. A <sup>1</sup>[municipality which] municipal zoning or code  
29 enforcement official who<sup>1</sup> has imposed any fines or penalties which  
30 have not yet been collected <sup>1</sup>[upon] as of the effective date of P.L.  
31 ,c. (C. )(now before the Legislature as this bill) from<sup>1</sup> a  
32 homeowner maintaining a home-based business shall grant the  
33 homeowner <sup>1</sup>[a] an administrative<sup>1</sup> hearing to review the imposition  
34 of such fines and penalties.

35 b. <sup>1</sup>[The owner of a home-based business which is required to be  
36 a permitted use under this act shall have any fines and penalties  
37 previously assessed but not collected by the municipality negated] The  
38 municipal official conducting the hearing shall abate any such fines or  
39 penalties assessed against the owner of a home-based business if such  
40 business clearly meets the definition of home-based business pursuant  
41 to section 3 of P.L. , c. (C. )(pending before the Legislature as this  
42 bill) and thus is required to be a permitted use under this act<sup>1</sup>. <sup>1</sup>[A  
43 municipality] The municipal official<sup>1</sup> shall reduce, as appropriate, fines  
44 previously imposed for home-based businesses which substantially  
45 meet the definition of home-based business pursuant to section 3 of  
46 P.L. , c. (C. )(pending before the Legislature as this bill.) <sup>1</sup>The

1 municipal official who substantially reduces or abates any fines or  
2 penalties pursuant to this subsection shall notify the municipal court,  
3 if necessary, to reflect any change to a claim which the municipality  
4 may have filed with the court.<sup>1</sup>

5 <sup>1</sup>[A neighbor advisory council which has been formed pursuant to  
6 section 6 of P.L. , c. (C. )(pending before the Legislature as this  
7 bill) may be requested by a homeowner to assist in the appeal of such  
8 fines or penalties, and any testimony from an advisory council shall be  
9 given considerable weight by the municipal official conducting the  
10 hearing.]<sup>1</sup>

11

12 8. This act shall take effect <sup>1</sup>[immediately] on the first day of the  
13 sixth month following enactment<sup>1</sup>.

14

15

16

17

18 "Home-Based Business Promotion Act;" requires that home-based  
19 businesses be a permitted municipal land use.