

SENATE, No. 2190

STATE OF NEW JERSEY

INTRODUCED JUNE 12, 1997

By Senators KYRILLOS, SINGER and Scott

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

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

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

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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
25 circumstances;

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

31 e. The changing economic structure and technological development
32 have catalyzed the development of home-based businesses. According
33 to the Partnership for Work at Home, over 90% of such businesses do
34 not create the traffic, pollution, noise or safety problems of other
35 industries. New approaches in zoning are needed to ensure that this
36 very important segment of the economy, which may lay the
37 groundwork for the expansion of companies which later grow to a

1 "Fortune 100" or "Fortune 500" levels, and which generates many jobs
2 and increased revenues to the State economy, is provided the
3 opportunity for growth. Such growth cannot occur unless the
4 Legislature ensures that municipalities will not overregulate or place
5 burdensome obstacles in the way of home-based businesses.

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

11 g. This act is intended to establish State guidelines for
12 municipalities to follow in their treatment of home-based businesses,
13 in order to bolster business growth in the State and carefully balance
14 the interests of home-based business owners with the needs of the
15 residential area in which they operate.

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

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20 3. As used in this act:

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

25 a. is not inconsistent with the residential character of the dwelling
26 unit;

27 b. is subordinate to the use of the dwelling unit for residential
28 purposes and requires no external modifications that detract from the
29 residential appearance of the dwelling unit;

30 c. uses no equipment or process that creates noise, vibration, glare,
31 fumes odors, or electrical or electronic interference detectable by
32 neighbors;

33 d. in the case of a dwelling unit which is part of a common interest
34 ownership community, does not cause an increase in common expenses
35 that can be attributable to a home-based business;

36 e. does not involve use, storage, or disposal or any grouping or
37 classification of materials that the federal secretary of Transportation
38 or the State or any local governing body designates as a hazardous
39 material; and

40 f. does not present any appreciable traffic or safety concerns.

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42 4. Home-based businesses shall be a permitted use in all residential
43 districts of a municipality; provided, however, such businesses shall
44 comply with any municipal ordinances pertaining to parking or use of
45 signs in the residential district. No municipality shall impose fines or
46 penalties for home-based businesses that are residential in character

1 and will not pose significant traffic, trash, noise or safety problems.

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3 5. A home-based business shall be a permitted use in any
4 condominium, cooperative or planned real estate development or any
5 dwelling unit under the control of a horizontal property regime. Any
6 deed restriction that would prohibit the use of a single family dwelling
7 unit as a home-based business shall not be enforceable unless that
8 restriction is necessary for the preservation of the health, safety, and
9 welfare of the other residents in the neighborhood. The burden of
10 proof shall be on the party seeking to enforce the deed restriction to
11 demonstrate, on a case-by-case basis, that the restriction is necessary
12 for the preservation of the health, safety and welfare of the residents
13 in the neighborhood who were meant to benefit from the restriction.

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15 6. A home-based business owner, may, at his or her discretion,
16 convene a neighbor advisory council, the purpose of which shall be to
17 communicate the nature of the business to the neighborhood and allow
18 input from neighbors who are within 1000 feet of the home-based
19 business or the property upon which it is located. The neighbor
20 advisory council shall function as a mechanism to enhance a business
21 owner's relationship with neighbors in close proximity to the business
22 and address any concerns that may arise concerning the conducting of
23 such a business.

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25 7. a. A municipality which has imposed any fines or penalties
26 which have not yet been collected upon a homeowner maintaining a
27 home-based business shall grant the homeowner a hearing to review
28 the imposition of such fines and penalties.

29 b. The owner of a home-based business which is required to be a
30 permitted use under this act shall have any fines and penalties
31 previously assessed but not collected by the municipality negated. A
32 municipality shall reduce, as appropriate, fines previously imposed for
33 home-based businesses which substantially meet the definition of
34 home-based business pursuant to section 3 of P.L. , c. (C.)(pending
35 before the Legislature as this bill.)

36 A neighbor advisory council which has been formed pursuant to
37 section 6 of P.L. , c. (C.)(pending before the Legislature as this
38 bill) may be requested by a homeowner to assist in the appeal of such
39 fines or penalties, and any testimony from an advisory council shall be
40 given considerable weight by the municipal official conducting the
41 hearing.

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43 8. This act shall take effect immediately.

STATEMENT

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This legislation promotes a business friendly environment for small, home-based businesses. Over the years, the State legislative and executive branches have worked together to create incentives for small, medium and large company retention and expansion. The Legislature, under this bill, intends to promote the development of small businesses. The bill authorizes home-based businesses as permitted uses in municipalities so long as certain conditions are met. These businesses must have no negative impact on the residential character of the neighborhood and must not cause pollution, traffic, noise or other safety problems.

In light of the growing number of home-based businesses and the positive benefits they offer in terms of built-in day care, increased variety of goods and services available, and reduced transportation and traffic congestion associated with travel to and from work, this legislation is intended to foster a State-local partnership in promoting a small business friendly environment.

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