

[First Reprint]  
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.

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  
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

**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> Senate SEG committee amendments adopted June 23, 1997.

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

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

17 g. This act is intended to establish State guidelines for  
18 municipalities to follow in their treatment of home-based businesses,  
19 in order to bolster business growth in the State and carefully balance  
20 the interests of home-based business owners with the needs of the  
21 residential area in which they operate.

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

25

26 3. As used in this act:

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

30 a. is not inconsistent with the residential character of the dwelling  
31 unit;

32 b. is subordinate to the use of the dwelling unit for residential  
33 purposes and requires no external modifications that detract from the  
34 residential appearance of the dwelling unit;

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

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

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

46 f. does not present any appreciable <sup>1</sup>[traffic or]<sup>1</sup> safety <sup>1</sup>or traffic<sup>1</sup>

1 concerns <sup>1</sup>; and

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

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

12

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

28

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

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

46 A municipal zoning or housing code official may conduct an

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

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

27 b. <sup>1</sup>[The owner of a home-based business which is required to be  
 28 a permitted use under this act shall have any fines and penalties  
 29 previously assessed but not collected by the municipality negated] The  
 30 municipal official conducting the hearing shall abate any such fines or  
 31 penalties assessed against the owner of a home-based business if such  
 32 business clearly meets the definition of home-based business pursuant  
 33 to section 3 of P.L. , c. (C. )(pending before the Legislature as this  
 34 bill) and thus is required to be a permitted use under this act<sup>1</sup>. <sup>1</sup>[A  
 35 municipality] The municipal official<sup>1</sup> shall reduce, as appropriate, fines  
 36 previously imposed for home-based businesses which substantially  
 37 meet the definition of home-based business pursuant to section 3 of  
 38 P.L. , c. (C. )(pending before the Legislature as this bill.) <sup>1</sup>The  
 39 municipal official who substantially reduces or abates any fines or  
 40 penalties pursuant to this subsection shall notify the municipal court,  
 41 if necessary, to reflect any change to a claim which the municipality  
 42 may have filed with the court.<sup>1</sup>

43 <sup>1</sup>[A neighbor advisory council which has been formed pursuant to  
 44 section 6 of P.L. , c. (C. )(pending before the Legislature as this  
 45 bill) may be requested by a homeowner to assist in the appeal of such  
 46 fines or penalties, and any testimony from an advisory council shall be

1 given considerable weight by the municipal official conducting the  
2 hearing.]<sup>1</sup>

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

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