

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4943

By Delegates Hornby, Chiarelli, Hardy, Cannon,
Foster, Young, Smith, Hite, and Foggin

[Introduced January 19, 2024; Referred to the
Committee on Economic Development and Tourism]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §8-40-1, §8-40-2, §8-40-3, §8-40-4, §8-40-5, and §8-40-6, all relating to
 3 facilitating the creation of home based businesses; providing for definitions; providing for
 4 permitted use; providing for prohibitions; creating reasonable regulations; providing for
 5 limited conditions; and providing for review.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. HOME BASED BUSINESSES.

§8-40-1. Definitions.

1 "Goods" means any merchandise, equipment, products, supplies, or materials.

2 "Home-based business" means any business for the manufacture, provision, or sale of
 3 goods or services that is owned and operated by the owner or tenant of the residential dwelling.

4 "No-impact home-based business" means a home-based business for which all of the
 5 following apply:

6 (1) The total number of on-site employees and clients do not exceed the municipal
 7 occupancy capacity.

8 (2) The business activities are characterized by all of the following:

9 (A) Are limited to the sale of lawful goods and services;

10 (B) Do not generate on-street parking or a substantial increase in traffic through the
 11 residential area;

12 (C) Occur inside the residential dwelling or in the yard;

13 (D) Are not visible from the street.

§8-40-2. Permitted use.

1 The use of a residential dwelling for a home-based business is a permitted use, except that
 2 this permission does not supersede any of the following:

3 Any deed restriction, covenant, or agreement restricting the use of land;

4 Any master deed, by-law, or other document applicable to a common interest ownership

5 community.

§8-40-3. Prohibition.

1 A municipality shall not prohibit a no-impact home-based business or otherwise require a
2 person to apply, register, or obtain any permit, license, or other type of prior approval from the
3 municipality to operate a no-impact home-based business.

§8-40-4. Reasonable regulations.

1 A municipality may establish reasonable regulations on a home-based business if the
2 regulations are narrowly tailored for any of the following purposes:

3 (1) The protection of the public health and safety, as defined in this code, including rules
4 and regulations related to fire and building codes, health and sanitation, transportation, or traffic
5 control, solid or hazardous waste, pollution, and noise control.

6 (2) Ensuring that the business activity is:

7 (A) Compatible with residential use of the property and surrounding residential use;

8 (B) Secondary to the use as a residential dwelling;

9 (C) Complying with state and federal law and paying applicable taxes.

10 (3) Limiting or prohibiting the use of a home-based business for the purposes of selling
11 illegal drugs, liquor, operating or maintaining a structured sober living home, pornography,
12 obscenity, nude or topless dancing, and other adult-oriented businesses.

§8-40-5. Limited conditions.

1 A municipality shall not require a person as a condition of operating a home-based
2 business to:

3 (1) Rezone the property for commercial use;

4 (2) Install or equip fire sprinklers in a single-family detached residential dwelling or any
5 residential dwelling with not more than two dwelling units.

§8-40-6. Review.

1 The question whether a regulation complies with this article shall be a judicial question,

- 2 and the municipality that enacted the regulation shall establish by clear and convincing evidence
- 3 that the regulation complies with this article.

NOTE: The purpose of this bill is to facilitate creation of home-based businesses, with certain conditions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.