

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4943

By Delegates Hornby, Chiarelli, Hardy, Cannon,

Foster, Young, Smith, Hite, and Foggin

[Originating in the Committee on Economic Development

and Tourism; Reported on February 9, 2024]

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, §8-40-6 and §8-40-7, all relating
3 to facilitating the creation of home based lawful occupations and businesses; providing for
4 definitions; providing for permitted use; providing for prohibitions; creating reasonable
5 regulations; providing for limited conditions; providing for review and making effective from
6 passage.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. HOME BASED BUSINESSES.

§8-40-1. Definitions.

1 "Accessory structure" means a shed, workshop, separate garage, or other structure
2 located on the same contiguous property as a dwelling unit that may be used for home-based
3 work.

4 "Dwelling unit" means a structure or part of a structure that is used as a home, residence,
5 or sleeping place by one person who maintains a household or by two or more persons who
6 maintain a common household.

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

8 "Home-based business" means any lawful occupation performed by a resident or business
9 for the manufacture, provision, or sale of lawful goods or services that is owned and operated by
10 the owner or tenant of the residential dwelling or accessory structure, which is secondary to the
11 use of the dwelling unit for residential purposes. Home-based business activities are to have no
12 impact and be characterized by all of the following:

13 (A) Do not generate on-street parking or a substantial increase in traffic through the
14 residential area;

15 (B) Occur inside the residential dwelling, accessory structure or in the yard;

16 (C) Are not visible from the street; and

17 (D) Adhere to local noise ordinances.

§8-40-2. Permitted use.

1 (a) Except as expressly limited in this code, the right to the use of a residential dwelling and
2 accessory structure for a home-based business is hereby preserved and shall be a statutorily
3 protected permitted use, except that this permission does not supersede any of the following:

4 Any pre-existing deed restriction, covenant, or agreement restricting the use of land;

5 Any pre-existing master deed, by-law, or other document applicable to a common interest
6 ownership community: *Provided*, That no deed restriction, covenant, or agreement restricting the
7 use of land or master deed, by-law, or other document applicable to a common interest ownership
8 community created after the effective date of this code may prohibit the right to maintain a home-
9 based business protected pursuant to this code.

10 (b) Enforcement. A local government shall not adopt or enforce a zoning ordinance,
11 resolution, or regulation in violation of the provisions of this section. A person alleging a violation of
12 this Act may bring a civil action for appropriate relief, including reasonable attorney and witness
13 fees and costs for the prevailing party.

14 (c) Except as specifically authorized in §8-40-4 of this code, any county or municipal
15 zoning ordinances inconsistent with this code are expressly superseded.

§8-40-3. Prohibition.

1 (a) Except as specifically authorized in §8-40-4 of this code, no municipality or county may
2 prohibit any lawful occupation or home-based business.

3 (b) Protections: Except as specifically authorized in §8-40-4 of this code, a zoning
4 ordinance, resolution, or regulation shall not:

5 (1) Charge for a permit, licenses, registration, variance, or other type of prior approval from
6 a local government for the purpose of home-based work;

7 (2) Restrict the amount of floor space for home-based work;

8 (3) Restrict the hours of operation for home-based work;

9 (4) Prohibit mail order or telephone sales for home-based work;

10 (5) Prohibit the provision of lawful goods or services for home-based work to clients by
11 appointment in the dwelling unit or accessory structure;

12 (6) Prohibit resident or non-resident employees or independent contractors from working in
13 the home or accessory structure;

14 (7) Prohibit or require structural modifications to the dwelling unit or accessory structure for
15 the purpose of home-based work;

16 (8) Require rezoning for commercial use of the dwelling unit or accessory structure for the
17 purpose of home-based work; or

18 (9) Restrict storage or the use of equipment in the dwelling unit or accessor structure that
19 does not constitute a nuisance outside the dwelling unit or accessory structure.

§8-40-4. Reasonable regulations.

1 Except as limited by §8-40-5 of this code, a municipality or county may establish
2 reasonable regulations on a home-based business if the regulations are narrowly tailored for any
3 of the following purposes:

4 (1) The protection of the public health and safety, as defined in this code, including rules
5 and regulations related to fire and building codes except as limited by §8-40-5 of this code, health
6 and sanitation, transportation, or traffic control, solid or hazardous waste, pollution, and noise
7 control.

8 (2) Ensuring that the business activity is:

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

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

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

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

§8-40-5. Limited conditions.

1 A municipality or county shall not require a person as a condition of operating a home-
2 based 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 or county that enacted the regulation shall establish by clear and convincing
3 evidence that the regulation complies with this article.

§8-40-7. Effective date.

1 This article shall take effect upon its passage by the West Virginia Legislature.

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.