WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 541

By Senators Swope and Maynard

[Introduced January 24, 2024; referred

to the Committee on Government Organization]

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.