

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 2373

FISCAL  
NOTE

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[Introduced February 13, 2021; Referred to the  
Committee on Small Business, Entrepreneurship and  
Economic Development then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §5B-10-1, §5B-10-2, §5B-10-3, and §5B-10-4, all relating to creating the  
 3 Home-Based Business Fairness Act; to expanding opportunities for home based  
 4 businesses across the State of West Virginia; to limiting what particular businesses may  
 5 be operated; and further defining what employees and regulations such businesses may  
 6 operate under.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 10. HOME-BASED BUSINESS FAIRNESS ACT.**

**§5B-10-1. Short title.**

1 This article shall be known and may be cited as the Home-Based Business Fairness Act.

**§5B-10-2. Findings by the Legislature.**

1 The Legislature finds that home-based businesses are a vital part of the twenty-first  
 2 century economy. Major advances in technology have launched a new economy, empowering  
 3 entrepreneurs to start businesses from their homes, hedging costs, permitting flexibility, and  
 4 realizing their dreams of self-employment. In fact, according to the U.S. Census Bureau, in 2012  
 5 more than half of surveyed businesses were operated primarily from someone’s home.

6 However, the Legislature finds that home-based businesses are under threat.  
 7 Unfortunately, cities and counties throughout our state are applying outmoded zoning, licensing,  
 8 and permitting requirements to these home-based businesses, stifling flexibility and economic  
 9 opportunity, punishing responsible citizens for serving their communities, and diverting limited  
 10 resources away from addressing nuisances and fighting actual crime. Government has not  
 11 sufficiently responded to this new economy and adopted flexible regulations that encourage and  
 12 facilitate home based businesses to start and thrive.

13 The Legislature finds that policymakers nationwide are introducing common-sense  
 14 reforms to protect home-based businesses. States coast-to-coast have recognized the  
 15 importance of fostering the small business economy by minimizing the regulatory burdens on

16 HBB. States as politically and geographically diverse as Maryland, Vermont, and California have  
17 all adopted reforms to facilitate a friendly HBB environment.

18 The Legislature finds that the Home-Based Business Fairness Act will protect West  
19 Virginia's economy while preserving neighborhoods. The Home-Based Business Fairness Act  
20 modernizes West Virginia's piecemeal and outmoded approach to regulating home-based  
21 businesses in favor of a clear, consistent, and common-sense approach. Home-based  
22 businesses that do not cause disruption to the residential area are designated "no impact." These  
23 businesses must comply with health and safety regulations; building codes; remitting applicable  
24 taxes; all local traffic, parking, and noise ordinances; and state occupational licensing standards.  
25 They are not required to obtain a costly and time-consuming home occupation license or permit.  
26 Home-based businesses that do not qualify as "no impact" can be regulated through existing local  
27 processes designed to mitigate the impact of the business on the reasonable expectations of  
28 residents to enjoy the conditions of a residential environment. Local governments can continue to  
29 prohibit businesses that are incompatible with the surrounding neighborhood. Local governments  
30 would enforce these rules just as they do today, but the city or county would have to demonstrate  
31 that regulations that specifically apply to home-based businesses are narrowly tailored.

32 The Legislature finds that any business that engages in the lawful sale of goods or services  
33 and meets the following criteria shall qualify as a "no impact" home based business: The business  
34 may not employ more than three nonresident employees; the business may not generate on-  
35 street parking or substantially increase traffic in the neighborhood; the business must occur inside  
36 the residential dwelling; the business may not be visible from the street; the business must be a  
37 compatible use with the residential area; the business must be a secondary use as a residential  
38 dwelling; the business must comply with all health and safety regulations established by the city  
39 or county.

40 The Legislature finds that West Virginia cities and counties still regulate home-based  
41 businesses that do not qualify as no-impact HBBs. Cities and counties would retain the power to

42 regulate the following: Public health and safety, which would include fire and building codes,  
43 health and sanitation, transportation, traffic, solid or hazardous waste, pollution and noise control;  
44 certain businesses such as barber shops, auto repair shops, and salons could operate in the  
45 home or garage without a view from the street.

46 The Legislature finds that HBB will still have to comply with all other applicable federal,  
47 state, and local regulations, and will still be required to obtain and maintain any applicable  
48 licenses, remit taxes, and comply with public health and safety standards.

49 Further, the Legislature finds that enforcement against an HBB would be the same as it  
50 exists today, with the exception that the city or county would have to demonstrate that the  
51 enforcement action is based on a narrowly tailored regulation established by the jurisdiction.

**§5B-10-3. Restriction on regulation; home-based business; exceptions; definitions.**

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

3 (1) Any deed restriction, covenant or agreement restricting the use of land, including  
4 without limitation restrictions to residential use;

5 (2) Any master deed, bylaw or other document applicable to a common interest ownership  
6 community.

7 Except as prescribed in subsection (C) of this section, a municipality may not prohibit the  
8 operation of a no-impact home-based business or otherwise require a person to apply for, register  
9 for or obtain any permit, license, variance or other type of prior approval from the municipality to  
10 operate a no-impact home-based business. For the purposes of this section, a residential property  
11 qualifies for use as a no-impact home-based business if all of the following apply:

12 (1) The employees of the business are limited to the following:

13 (A) Residents of the residential dwelling or immediate family members.

14 (B) Immediate family members of the owner of the home-based business.

15 (C) Not more than three individuals who are not residents of the residential dwelling.

- 16           (2) The business activities are characterized by all of the following:
- 17           (A) Are limited to the sale of lawful goods and services.
- 18           (B) Have zero or more clients on the property at one time.
- 19           (C) Do not generate on-street parking or a substantial increase in traffic through the
- 20 residential area.
- 21           (D) Occur inside the residential dwelling.
- 22           (E) Are not visible from the street.
- 23           (F) Do not violate any regulation established pursuant to subsection (C) of this section.
- 24           (3) A municipality may establish reasonable regulations on a home-based business if the
- 25 regulations are tailored for any of the following purposes:
- 26           (A) The protection of the public health and safety, including regulations related to fire and
- 27 building codes, health and sanitation, transportation or traffic control, solid or hazardous waste,
- 28 pollution and noise control.
- 29           (B) Ensuring that the business activity is both of the following:
- 30           compatible with the residential use of the property and the surrounding residential use.
- 31           secondary to the property's use as a residential dwelling.
- 32           (4) Limiting the use of a home-based business for any of the following purposes:
- 33           (A) Selling drugs that are illegal under state or federal law.
- 34           (B) Selling liquor.
- 35           (C) Operating or maintaining a structured sober living home.
- 36           (D) Pornography.
- 37           (E) Obscenity.
- 38           (F) Nude or topless dancing.
- 39           (G) Other adult-oriented businesses.
- 40           (5) A municipality may not require a person as a condition of operating a home-based
- 41 business to:

42 (A) Rezone the property for commercial use.

43 (B) Obtain a home-based business license or other general business license.

44 (C) Install or equip fire sprinklers in a single-family detached residential dwelling or any  
45 residential dwelling with not more than two dwelling units.

46 (6) Whether a regulation complies with this section is a judicial question, and the  
47 municipality that enacted the regulation shall establish that the regulation complies with this  
48 section.

49 (7) This section does not diminish the privileges or rights of a vacation rental or short-term  
50 rental.

51 (8) For the purposes of this section:

52 (A) "Goods" means any merchandise, equipment, products, supplies or materials.

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

55 (C) "Immediate family member" means a spouse, child, sibling, parent, grandparent,  
56 grandchild, stepparent, stepchild or stepsibling whether related by adoption or blood.

**§5B-10-4. Restriction on regulation; home-based business; exceptions; definitions further defined.**

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

3 (1) Any deed restriction, covenant or agreement restricting the use of land, including  
4 without limitation restrictions to residential use.

5 (2) Any master deed, bylaw or other document applicable to a common interest ownership  
6 community.

7 Except as prescribed in subsection (C) of this section, a county may not prohibit the  
8 operation of a no-impact home-based business or otherwise require a person to apply for, register  
9 for or obtain any permit, license, variance or other type of prior approval from the county to operate

10 a no-impact home-based business. For the purposes of this section, a residential property  
11 qualifies for use as a no-impact home-based business if its activities are limited to the following:

12 (1) Making residential property improvements to add doors, shelving or display racks for  
13 use by the home-based business.

14 (2) Displaying a temporary commercial sign on the residential property during business  
15 hours, if the sign is not more than 24 inches by 24 inches.

16 (3) Selling or offering for sale any lawful goods or services.

17 (4) Generating traffic, or parking or delivery activity that does not cause on-street parking  
18 congestion or a substantial increase in traffic through the residential area.

19 Employing any of the following:

20 (1) Residents of the residential dwelling.

21 (2) Immediate family members of the owner of the home-based business.

22 (3) Not more than three individuals who are not residents of the residential dwelling or  
23 immediate family members.

24 Business activities that are characterized by all of the following:

25 (1) Have zero or more clients on the property at one time.

26 (2) Occur inside the residential dwelling.

27 (3) Are not visible from the street.

28 (4) Do not violate any narrowly tailored regulation established pursuant to subsection (C)  
29 of this section.

30 A county may establish reasonable regulations on a home-based business if the  
31 regulations are narrowly tailored for any of the following purposes:

32 (1) The protection of the public health and safety, including regulations related to fire and  
33 building codes, health and sanitation, transportation or traffic control, solid or hazardous waste,  
34 pollution and noise control.

35 (2) Ensuring that the business activity is both of the following:

36 (A) compatible with the residential use of the property and the surrounding residential use.

37 (B) Secondary to the property's use as a residential dwelling.

38 (3) Limiting the use of a home-based business for any of the following purposes:

39 (A) Selling drugs that are illegal under state or federal law.

40 (B) Selling liquor.

41 (C) Operating or maintaining a structured sober living home.

42 (D) Pornography.

43 (E) Obscenity.

44 (F) Nude or topless dancing.

45 (G) Other adult-oriented businesses.

46 (4) A county may not require a person as a condition of operating a home-based business

47 to:

48 (A) Rezone the property for commercial use.

49 (B) Obtain a home-based business license or other general business license.

50 (C) Install or equip fire sprinklers in a single-family detached residential dwelling or any  
51 residential dwelling with not more than two dwelling units.

52 (5) Whether a regulation complies with this section is a judicial question, and the county  
53 that enacted the regulation shall establish by clear and convincing evidence that the regulation  
54 complies with this section.

55 (6) This section does not diminish the privileges or rights of a vacation rental or short-term  
56 rental.

57 (7) For the purposes of this section:

58 (A) "Goods" means any merchandise, equipment, products, supplies or materials.

59 (B) "Home-based business" means any business for the limited manufacture, provision or  
60 sale of goods or services that is owned and operated by the owner or tenant of the residential  
61 property.



62            (C) “Immediate family member” means a spouse, child, sibling, parent, grandparent,  
63 grandchild, stepparent, stepchild or stepsibling whether related by adoption or blood.

NOTE: The purpose of this bill is to create the Home-Based Business Fairness Act.

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