

REFERENCE TITLE: home-based businesses; local regulation

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2333

Introduced by
Representatives Weninger: Barton, Chávez, Clodfelter, Cobb, Epstein,
Espinoza, Finchem, Grantham, Hernandez, Kern, Leach, Livingston,
Mitchell, Mosley, Norgaard, Nutt, Payne, Powers Hannley, Shope, Thorpe,
Toma, Townsend, Senators Farnsworth D, Petersen

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 6.1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 9-462.09; AMENDING SECTION 11-820, ARIZONA REVISED
STATUTES; RELATING TO LOCAL REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 9, chapter 4, article 6.1, Arizona Revised
3 Statutes, is amended by adding section 9-462.09, to read:

4 9-462.09. Restriction on regulation; home-based business;
5 exceptions; definitions

6 A. THE USE OF A RESIDENTIAL DWELLING FOR A HOME-BASED BUSINESS IS A
7 USE PERMITTED BY RIGHT, EXCEPT THAT THIS PERMISSION DOES NOT SUPERSEDE ANY
8 OF THE FOLLOWING:

9 1. ANY DEED RESTRICTION, COVENANT OR AGREEMENT RESTRICTING THE USE
10 OF LAND.

11 2. ANY MASTER DEED, BYLAW OR OTHER DOCUMENT APPLICABLE TO A COMMON
12 INTEREST OWNERSHIP COMMUNITY.

13 B. EXCEPT AS PRESCRIBED IN SUBSECTION C OF THIS SECTION, A
14 MUNICIPALITY MAY NOT PROHIBIT THE OPERATION OF A NO-IMPACT HOME-BASED
15 BUSINESS OR OTHERWISE REQUIRE A PERSON TO APPLY FOR, REGISTER FOR OR
16 OBTAIN ANY PERMIT, LICENSE, VARIANCE OR OTHER TYPE OF PRIOR APPROVAL FROM
17 THE MUNICIPALITY TO OPERATE A NO-IMPACT HOME-BASED BUSINESS. FOR THE
18 PURPOSES OF THIS SECTION, A RESIDENTIAL PROPERTY QUALIFIES FOR USE AS A
19 NO-IMPACT HOME-BASED BUSINESS IF ALL OF THE FOLLOWING APPLY:

20 1. THE EMPLOYEES OF THE BUSINESS ARE LIMITED TO THE FOLLOWING:

21 (a) RESIDENTS OF THE RESIDENTIAL DWELLING.

22 (b) IMMEDIATE FAMILY MEMBERS OF THE OWNER OF THE HOME-BASED
23 BUSINESS.

24 (c) NOT MORE THAN THREE INDIVIDUALS WHO ARE NOT RESIDENTS OF THE
25 RESIDENTIAL DWELLING.

26 2. THE BUSINESS ACTIVITIES ARE CHARACTERIZED BY ALL OF THE
27 FOLLOWING:

28 (a) ARE LIMITED TO THE SALE OF LAWFUL GOODS AND SERVICES.

29 (b) INVOLVE HAVING MORE THAN ONE CLIENT ON THE PROPERTY AT ONE
30 TIME.

31 (c) DO NOT GENERATE ON-STREET PARKING OR A SUBSTANTIAL INCREASE IN
32 TRAFFIC THROUGH THE RESIDENTIAL AREA.

33 (d) OCCUR INSIDE THE RESIDENTIAL DWELLING.

34 (e) ARE NOT VISIBLE FROM THE STREET.

35 (f) DO NOT VIOLATE ANY NARROWLY TAILORED REGULATION ESTABLISHED
36 PURSUANT TO SUBSECTION C OF THIS SECTION.

37 C. A MUNICIPALITY MAY ESTABLISH REASONABLE REGULATIONS ON A
38 HOME-BASED BUSINESS IF THE REGULATIONS ARE NARROWLY TAILORED FOR ANY OF
39 THE FOLLOWING PURPOSES:

40 1. THE PROTECTION OF THE PUBLIC HEALTH AND SAFETY, INCLUDING
41 REGULATIONS RELATED TO FIRE AND BUILDING CODES, HEALTH AND SANITATION,
42 TRANSPORTATION OR TRAFFIC CONTROL, SOLID OR HAZARDOUS WASTE, POLLUTION AND
43 NOISE CONTROL.

44 2. ENSURING THAT THE BUSINESS ACTIVITY IS BOTH OF THE FOLLOWING:

45 (a) COMPATIBLE WITH THE RESIDENTIAL USE OF THE PROPERTY AND THE
46 SURROUNDING RESIDENTIAL USE.

1 (b) SECONDARY TO THE PROPERTY'S USE AS A RESIDENTIAL DWELLING.
2 3. LIMITING OR PROHIBITING THE USE OF A HOME-BASED BUSINESS FOR ANY
3 OF THE FOLLOWING PURPOSES:
4 (a) SELLING ILLEGAL DRUGS.
5 (b) SELLING LIQUOR.
6 (c) OPERATING OR MAINTAINING A STRUCTURED SOBER LIVING HOME.
7 (d) PORNOGRAPHY.
8 (e) OBSCENITY.
9 (f) NUDE OR TOPLESS DANCING.
10 (g) OTHER ADULT-ORIENTED BUSINESSES.
11 D. A MUNICIPALITY MAY NOT REQUIRE A PERSON AS A CONDITION OF
12 OPERATING A HOME-BASED BUSINESS TO:
13 1. REZONE THE PROPERTY FOR COMMERCIAL USE.
14 2. OBTAIN A HOME-BASED BUSINESS LICENSE OR OTHER GENERAL BUSINESS
15 LICENSE.
16 3. INSTALL OR EQUIP FIRE SPRINKLERS IN A SINGLE-FAMILY DETACHED
17 RESIDENTIAL DWELLING OR ANY RESIDENTIAL DWELLING WITH NOT MORE THAN TWO
18 DWELLING UNITS IN VIOLATION OF SECTION 9-807.
19 E. WHETHER A REGULATION COMPLIES WITH THIS SECTION IS A JUDICIAL
20 QUESTION, AND THE MUNICIPALITY THAT ENACTED THE REGULATION SHALL ESTABLISH
21 BY CLEAR AND CONVINCING EVIDENCE THAT THE REGULATION COMPLIES WITH THIS
22 SECTION.
23 F. FOR THE PURPOSES OF THIS SECTION:
24 1. "GOODS" MEANS ANY MERCHANDISE, EQUIPMENT, PRODUCTS, SUPPLIES OR
25 MATERIALS.
26 2. "HOME-BASED BUSINESS" MEANS ANY BUSINESS FOR THE MANUFACTURE,
27 PROVISION OR SALE OF GOODS OR SERVICES THAT IS OWNED AND OPERATED BY THE
28 OWNER OR TENANT OF THE RESIDENTIAL DWELLING.
29 3. "IMMEDIATE FAMILY MEMBER" MEANS A SPOUSE, CHILD, SIBLING,
30 PARENT, GRANDPARENT, GRANDCHILD, STEPPARENT, STEPCHILD OR STEPSIBLING
31 WHETHER RELATED BY ADOPTION OR BLOOD.
32 4. "NO-IMPACT HOME-BASED BUSINESS" INCLUDES A VACATION RENTAL OR
33 SHORT-TERM RENTAL AS DEFINED IN SECTION 9-500.39.
34 Sec. 2. Section 11-820, Arizona Revised Statutes, is amended to
35 read:
36 11-820. Restriction on regulation; home-based business;
37 exceptions; definitions
38 ~~A. Any ordinance authorized by this chapter shall not restrict or~~
39 ~~otherwise regulate the owner of a home-based business that holds a valid~~
40 ~~license from:~~
41 A. THE USE OF A RESIDENTIAL DWELLING FOR A HOME-BASED BUSINESS IS A
42 USE PERMITTED BY RIGHT, EXCEPT THAT THIS PERMISSION DOES NOT SUPERSEDE ANY
43 OF THE FOLLOWING:
44 1. ANY DEED RESTRICTION, COVENANT OR AGREEMENT RESTRICTING THE USE
45 OF LAND.

1 2. ANY MASTER DEED, BYLAW OR OTHER DOCUMENT APPLICABLE TO A COMMON
2 INTEREST OWNERSHIP COMMUNITY.

3 B. EXCEPT AS PRESCRIBED IN SUBSECTION C OF THIS SECTION, A COUNTY
4 MAY NOT PROHIBIT THE OPERATION OF A NO-IMPACT HOME-BASED BUSINESS OR
5 OTHERWISE REQUIRE A PERSON TO APPLY FOR, REGISTER FOR OR OBTAIN ANY
6 PERMIT, LICENSE, VARIANCE OR OTHER TYPE OF PRIOR APPROVAL FROM THE COUNTY
7 TO OPERATE A NO-IMPACT HOME-BASED BUSINESS. FOR THE PURPOSES OF THIS
8 SECTION, A RESIDENTIAL PROPERTY QUALIFIES FOR USE AS A NO-IMPACT
9 HOME-BASED BUSINESS IF ITS ACTIVITIES ARE LIMITED TO THE FOLLOWING:

10 1. Making residential property improvements to add doors, shelving
11 or display racks for use by the home-based business.

12 2. Displaying a temporary commercial sign on the residential
13 property during business hours, if the sign is not more than twenty-four
14 inches by twenty-four inches.

15 3. Selling or offering for sale any **LAWFUL** goods **OR SERVICES**.

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

19 ~~5. Having more than one client on the property at one time.~~

20 ~~6.~~ 5. Employing any of the following:

21 (a) Residents of the **primary RESIDENTIAL** dwelling.

22 (b) Immediate family members **OF THE OWNER OF THE HOME-BASED**
23 **BUSINESS**.

24 (c) ~~One or two~~ **NOT MORE THAN THREE** individuals who are not
25 residents of the **primary RESIDENTIAL** dwelling ~~or immediate family members~~.

26 ~~B. This section does not preclude a county from imposing reasonable~~
27 ~~operating requirements on a home-based business or a residential property~~
28 ~~used by a home-based business.~~

29 6. BUSINESS ACTIVITIES THAT ARE CHARACTERIZED BY ALL OF THE
30 FOLLOWING:

31 (a) INVOLVE HAVING MORE THAN ONE CLIENT ON THE PROPERTY AT ONE
32 TIME.

33 (b) OCCUR INSIDE THE RESIDENTIAL DWELLING.

34 (c) ARE NOT VISIBLE FROM THE STREET.

35 (d) DO NOT VIOLATE ANY NARROWLY TAILORED REGULATION ESTABLISHED
36 PURSUANT TO SUBSECTION C OF THIS SECTION.

37 C. A COUNTY MAY ESTABLISH REASONABLE REGULATIONS ON A HOME-BASED
38 BUSINESS IF THE REGULATIONS ARE NARROWLY TAILORED FOR ANY OF THE FOLLOWING
39 PURPOSES:

40 1. THE PROTECTION OF THE PUBLIC HEALTH AND SAFETY, INCLUDING
41 REGULATIONS RELATED TO FIRE AND BUILDING CODES, HEALTH AND SANITATION,
42 TRANSPORTATION OR TRAFFIC CONTROL, SOLID OR HAZARDOUS WASTE, POLLUTION AND
43 NOISE CONTROL.

44 2. ENSURING THAT THE BUSINESS ACTIVITY IS BOTH OF THE FOLLOWING:

45 (a) COMPATIBLE WITH THE RESIDENTIAL USE OF THE PROPERTY AND THE
46 SURROUNDING RESIDENTIAL USE.

- 1 (b) SECONDARY TO THE PROPERTY'S USE AS A RESIDENTIAL DWELLING.
2 3. LIMITING OR PROHIBITING THE USE OF A HOME-BASED BUSINESS FOR ANY
3 OF THE FOLLOWING PURPOSES:
4 (a) SELLING ILLEGAL DRUGS.
5 (b) SELLING LIQUOR.
6 (c) OPERATING OR MAINTAINING A STRUCTURED SOBER LIVING HOME.
7 (d) PORNOGRAPHY.
8 (e) OBSCENITY.
9 (f) NUDE OR TOPLESS DANCING.
10 (g) OTHER ADULT-ORIENTED BUSINESSES.
11 D. A COUNTY MAY NOT REQUIRE A PERSON AS A CONDITION OF OPERATING A
12 HOME-BASED BUSINESS TO:
13 1. REZONE THE PROPERTY FOR COMMERCIAL USE.
14 2. OBTAIN A HOME-BASED BUSINESS LICENSE OR OTHER GENERAL BUSINESS
15 LICENSE.
16 3. INSTALL OR EQUIP FIRE SPRINKLERS IN A SINGLE-FAMILY DETACHED
17 RESIDENTIAL DWELLING OR ANY RESIDENTIAL DWELLING WITH NOT MORE THAN TWO
18 DWELLING UNITS IN VIOLATION OF SECTION 11-861.
19 E. WHETHER A REGULATION COMPLIES WITH THIS SECTION IS A JUDICIAL
20 QUESTION, AND THE COUNTY THAT ENACTED THE REGULATION SHALL ESTABLISH BY
21 CLEAR AND CONVINCING EVIDENCE THAT THE REGULATION COMPLIES WITH THIS
22 SECTION.
23 ~~F.~~ F. For the purposes of this section:
24 1. "Goods" means any merchandise, equipment, products, supplies or
25 materials.
26 2. "Home-based business" means any business for the ~~limited~~
27 manufacture, provision or sale of goods or services that is owned and
28 operated by the owner or tenant of the residential property.
29 3. "Immediate family member" means a spouse, child, sibling,
30 parent, grandparent, grandchild, stepparent, stepchild or stepsibling
31 whether related by adoption or blood.
32 ~~4. "License" means any permit, certificate, approval, registration,~~
33 ~~charter or similar form of authorization that is required by law and that~~
34 ~~is issued by any agency, department, board or commission of this state or~~
35 ~~of any political subdivision of this state for the purpose of operating a~~
36 ~~business in this state or to an individual who provides a service to any~~
37 ~~person and the license is required to perform that service.~~
38 4. "NO-IMPACT HOME-BASED BUSINESS" INCLUDES A VACATION RENTAL OR
39 SHORT-TERM RENTAL AS DEFINED IN SECTION 11-269.17.