

**PUBLIC HEALTH CODE (EXCERPT)**  
**Act 368 of 1978**

\*\*\*\*\* 333.12606a.added THIS ADDED SECTION IS EFFECTIVE MAY 1, 2010 \*\*\*\*\*

**333.12606a.added Cigar bar or tobacco specialty retail store in existence on effective date of section; exemption from smoking prohibition; affidavit; request for additional information; failure to file affidavit.**

Sec. 12606a. (1) A cigar bar in existence on the effective date of this section that meets all of the requirements of this section is exempt from the smoking prohibition of section 12603 and may allow smoking on its premises. To qualify for the exemption under this section, the person who owns or operates a cigar bar shall file an affidavit with the department on or before the expiration of 30 days after the effective date of this section and on January 31 of each year after the effective date of this section. The affidavit shall be signed by the owner or operator of the cigar bar and shall certify that the cigar bar was in existence on the effective date of this section and that it meets all of the following requirements:

(a) In the 30-day period immediately preceding the effective date of this section, the cigar bar generated 10% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors.

(b) For each calendar year after the calendar year in which the first affidavit is filed under this subsection, the cigar bar generates 10% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors.

(c) The cigar bar is located on premises that are physically separated from any areas of the same or adjacent establishment in which smoking is prohibited under this part or part 129 and where smoke does not infiltrate into those nonsmoking areas. As used in this subdivision, "physically separated" means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from the floor to ceiling.

(d) The cigar bar has installed on its premises an on-site humidor.

(e) The cigar bar prohibits entry to a person under the age of 18 during the time the cigar bar is open for business.

(f) The cigar bar allows only the smoking of cigars on the premises that retail for over \$1.00 per cigar.

(g) The cigar bar prohibits the smoking of all other tobacco products.

(2) A tobacco specialty retail store in existence on the effective date of this section that meets all of the requirements of this section is exempt from the smoking prohibition of section 12603 and may allow smoking on its premises. To qualify for the exemption under this section, the person who owns or operates a tobacco specialty retail store shall file an affidavit with the department on or before the expiration of 30 days after the effective date of this section and on January 31 of each year after the effective date of this section. The affidavit shall be signed by the owner or operator of the tobacco specialty retail store and shall certify that the tobacco specialty retail store was in existence on the effective date of this section and that it meets all of the following requirements:

(a) In the 30-day period immediately preceding the filing of the effective date of this section, the tobacco specialty retail store generated 75% or more of its total gross annual income from the on-site sale of tobacco products and smoking paraphernalia.

(b) For each calendar year after the calendar year in which the first affidavit is filed under this subsection, the tobacco specialty retail store generated 75% or more of its total gross annual income from the on-site sale of tobacco products and smoking paraphernalia.

(c) The tobacco specialty retail store is located on premises that are physically separated from any areas of the same or adjacent establishments in which smoking is prohibited under this part or part 129 and where smoke does not infiltrate into those nonsmoking areas. As used in this subdivision, "physically separated" means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from the floor to ceiling.

(d) The tobacco specialty retail store prohibits entry to a person under the age of 18 during the time the tobacco specialty retail store is open for business.

(3) The department may request additional information from a cigar bar or tobacco specialty retail store to verify that the cigar bar or tobacco specialty retail store meets the requirements of this section. A cigar bar or tobacco specialty retail store shall comply with requests from the department under this section.

(4) Except as otherwise provided in this subsection, a cigar bar or tobacco specialty retail store that does not meet the requirements of this section or violates this section is not exempt from the smoking prohibition of section 12603 and shall immediately prohibit smoking on its premises. A cigar bar or tobacco specialty retail store that meets all of the requirements of this section other than filing the affidavit as required under

subsection (1) or (2), retains its exemption and may continue to allow smoking during the period beginning on the date the affidavit is due and ending on the expiration of 21 days after that date. However, if the affidavit remains unfiled after the 21-day grace period, the cigar bar or tobacco specialty retail store is not exempt from the smoking prohibition of section 12603 and shall immediately prohibit smoking on its premises. A cigar bar or tobacco specialty retail store that loses its exemption under this subsection is not exempt from the smoking prohibition of section 12603, shall immediately prohibit smoking on its premises, and may only again qualify for the exemption under this section by filing an affidavit and meeting all of the requirements of subsection (1) or (2), as applicable.

**History:** Add. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368