

**PUBLIC HEALTH CODE (EXCERPT)**

**Act 368 of 1978**

**333.12606a 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 May 1, 2010 that meets the requirements of this section is exempt from the smoking prohibition of section 12603 and may allow smoking on its premises. Except as otherwise provided in subsection (3), to qualify for the exemption under this section, the person that owns or operates a cigar bar must file an affidavit with the department on or before the expiration of 30 days after May 1, 2010 and on January 31 of each year after May 1, 2010. The affidavit must be signed by the owner or operator of the cigar bar and must certify that the cigar bar was in existence on May 1, 2010 and that it meets all of the following requirements:

(a) In the 30-day period immediately preceding May 1, 2010, 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) Except as otherwise provided in this subdivision, 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 for each calendar year after the calendar year in which the first affidavit is filed under this subsection. If the cigar bar has qualified for the exemption under this section pursuant to subsection (2), the requirement under this subdivision does not include the 3 calendar years immediately preceding the calendar year in which the affidavit under subsection (2) was filed.

(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 an individual who is less than 21 years of age 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) For 1 calendar year only, a cigar bar qualifies for the exemption under this section if an affidavit, signed by the person that owns or operates the cigar bar, is filed with the department and certifies that all of the following circumstances apply to the cigar bar:

(a) The cigar bar is located in a city with a population of more than 32,000 and less than 34,000 that is located in a county with a population of more than 100,000 and less than 105,000.

(b) Not earlier than 2023, the cigar bar failed to file an affidavit under subsection (1) for not less than 1 calendar year and not more than 3 calendar years.

(c) The cigar bar has not previously filed an affidavit under this subsection.

(3) If a cigar bar has qualified for the exemption under this section pursuant to subsection (2), the cigar bar's affidavit filing requirement under subsection (1) does not include the range of calendar years described in subsection (2)(b), as applicable to the cigar bar.

(4) A tobacco specialty retail store in existence on May 1, 2010 that meets 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 that owns or operates a tobacco specialty retail store must file an affidavit with the department on or before the expiration of 30 days after May 1, 2010 and on January 31 of each year after May 1, 2010. The affidavit must be signed by the owner or operator of the tobacco specialty retail store and must certify that the tobacco specialty retail store was in existence on May 1, 2010 and that it meets all of the following requirements:

(a) In the 30-day period immediately preceding May 1, 2010, 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 an individual who is less than 21 years of age during the time the tobacco specialty retail store is open for business.

(5) 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.

(6) 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 the requirements of this section, other than filing the affidavit as required under subsection (1) or (4), 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 the requirements of subsection (1), (2), or (4), as applicable.

**History:** Add. 2009, Act 188, Eff. May 1, 2010;—Am. 2022, Act 168, Imd. Eff. July 21, 2022;—Am. 2023, Act 318, Imd. Eff. Dec. 14, 2023.

**Popular name:** Act 368