



**PCA**

PREMIUM CIGAR ASSOCIATION

**STATE  
ASSOCIATION  
HANDBOOK**

**A GUIDE TO  
ESTABLISHING AN  
ASSOCIATION IN  
YOUR STATE**

[premiumcigars.org](http://premiumcigars.org)

# CONTENTS



<b>FORWARD: THE STATES ARE THE INCUBATORS FOR TOBACCO LEGISLATION</b>	<b>3</b>
<b>WHO WE ARE AND OUR PURPOSE</b>	<b>6</b>
<b>PROPOSED BYLAWS</b>	<b>9</b>
<b>INCORPORATION</b>	<b>13</b>
<b>SAMPLE STATE ASSOCIATION STEERING COMMITTEE INVITATION LETTER</b>	<b>14</b>
<b>SAMPLE FORM: ARTICLES OF INCORPORATION FORM DNP-1</b>	<b>15</b>
<b>SAMPLE STATE ASSOCIATION MEMBERSHIP RECRUITMENT LETTER</b>	<b>17</b>
<b>WHAT LOBBYISTS DO AND HOW TO ENGAGE THEIR SERVICES</b>	<b>18</b>
<b>THE LOBBYIST DUTIES CHECKLIST</b>	<b>23</b>
<b>SAMPLE LOBBYIST AGREEMENT</b>	<b>24</b>
<b>SETTING UP A STATE POLITICAL ACTION COMMITTEE (PAC)</b>	<b>26</b>
<b>TIPS FOR LETTING YOUR VOICE BE HEARD</b>	<b>27</b>
<b>SAMPLE LETTER TO LEGISLATOR</b>	<b>28</b>
<b>REFERENCE CHART: HOW TO ADDRESS YOUR LEGISLATOR</b>	<b>39</b>
<b>PCA SUMMARY OF CHAPTER AFFILIATION AGREEMENT</b>	<b>30</b>
<b>PCA CHAPTER AFFILIATION AGREEMENT</b>	<b>31</b>

## THE STATES ARE THE INCUBATORS FOR TOBACCO LEGISLATION

By J. Glynn Loope, PCA Director of State Advocacy

As each New Year rings in, and thoughts of renewal and resolutions come to mind, there is another annual tradition that begins this time of year - the opening and gathering of state legislatures from coast to coast. While in some cases it has only been months since some of them adjourned, you would think there has been seismic shifts in the political landscape, given the number of new bills and resolutions introduced.

In some cases, new legislation is obviously needed to respond to public needs, pass budgets, or perhaps a new governor's agenda. In other cases, a legislator is simply trying to raise his or her profile, perhaps pursue a personal agenda, or simply seeking political relevance among peers.

However, in the realm of tobacco legislation, there is always a bottomless pit of attempts to regulate, tax, or generally infringe upon the production, sale, or enjoyment of perfectly legal tobacco products. Make no mistake, the opposition that promotes, drafts and advocates for these measures are sophisticated, dedicated, and have a vast network of supporters and resources at their disposal to attack the simple ability to enjoy a cigar, or run a retail establishment that sells to discerning adults.

The years 2021-2022 have been no different. Hundreds of bills have been and will be introduced, and many will demand attention from pro-business advocacy organizations, working to protect the interests of community tobacconists, the consumer, and manufacturers alike.

While there is always a proliferation of legislation to tax or prohibit use of tobacco products at the state level, we now have to be mindful of the ever more creative approaches the forces of tobacco control are taking to enact an agenda that is nothing short of prohibition. In this respect Indiana stands out.

Indiana State Senator Liz Brown, R-Fort Wayne, introduced Senate Bill 23, which would repeal what is labeled as the "smoker's bill of rights," which prohibits employers from testing or controlling the use of tobacco, even outside of the place of employment.

The action could allow employers to withhold health coverage, and even to deny employment, including dismissal, for tobacco use - on their own time, in their own home, in a local lounge - anywhere, anytime. It only takes one bill in Indiana, for it to become introduced in a dozen other states, even if it fails in Indianapolis.

Like the advocacy for a national 21 minimum age requirement to purchase tobacco being advocated in the FDA final rule that deemed products beyond cigarettes and smokeless to be under their domain, it only takes the power of suggestion for such notions to become living pieces of legislation in the world of tobacco control.

One legislator reads that banning smoking in tobacco shops passed in one community, and it becomes an introduced ordinance in another.

The other tactic being attempted throughout the nation is casting tobacco associated questions to a referendum. You see, when the opposition can't get their way through the legislative process, they advocate "Let the People Decide!" Such measures are expensive, and difficult to defeat.

I call it The Bloomberg Syndrome, named in 'honor' of former New York City Mayor Michael Bloomberg who has dedicated a piece of his fortune to advancing tobacco control. The anti-tobacco political playbook spreads based upon the 'agenda of the year,' by attempts at social engineering by demonizing certain products by use of questionable science or manipulated polling data.

Such legislation also includes mandates on packaging, while not differentiating between types of cigars, efforts to control the number of cigars in a package, or imposition of floor stocks taxes, increases in licensure fees, whether you can have smoking if you're not in a free-standing building, regulating smoking in gaming facilities, or new zoning restrictions on where retail establishments can be located, much less the efforts to place additional burdens on local law enforcement by requiring them to cite patrons to enforce local smoking bans. Indeed, you would think there are higher priorities. It's a distinguished list.

As in past years, patrons must let their voices be heard. In the case of the Premium Cigar Association, we will keep a weekly posting of legislation impacting the retail, enjoyment, or production of premium handmade cigars from capitol to capitol. Petitions and calling campaigns will be made available, as well as legislative testimony, citizen's advocacy strategies, coalition building and visits and communications with legislators. Other groups and organizations will be doing the same to protect interests across the spectrum.

The theme needs to be, there are indeed, higher priorities. Protecting Main Street America small businesses, that are predominately family owned and, in many cases, passed down from generation to generation.

The reciprocal is true as well. There is positive legislation, introduced by allies and done so annually. Exemptions for cigar (only) bars, tax caps, tax reductions, regulatory leniency, permits for cigar events, and small business assistance measures, are each meaningful examples of bills introduced to help your business. But you have to cultivate legislative alliances, to make such bills a reality.

When I first started in this arena I used to tell local cigar shops, "Politics is now in our job description." It's as true today, as it was over a decade ago.

It seems that every level of government is targeting premium retail tobacconists, manufacturers and even consumers in an effort to advance a prohibitionist agenda against all tobacco products. This handbook is an effort to help organize America's Main Street premium tobacconists into effective advocates for their local business and the industry.

The Premium Cigar Association has helped many state tobacconist retail groups throughout the country to organize their fellow tobacconists into state associations that can in turn, advocate for a legislative agenda in their state capitols and city halls. The need for a strong united voice has never been more critical. The premium cigar and pipe industry remains a target as tax, regulatory, and even across the board bans on the sale and enjoyment of specific products still threaten our unique selections for the discerning adult consumer.

# FORWARD



Today, about half the nation has organized a premium tobacconist state association, but it is time to organize the nation, and take our collective level of effectiveness to new levels. Thankfully, great case studies exist from which we can each learn. Retailers in Maryland, Virginia, Georgia, Texas, Michigan, and New York, among others, have successfully won battles and created agendas from which we can all learn.

They have worked to keep state legislators aware of their issues and concerns and to ensure our right to succeed and continue in the sale of quality tobacco products. We have found that the best way to succeed is to unite by following the suggested steps laid out in this handbook.

As with any legal paperwork, we encourage you to consult with an attorney who will be able to help you through the process of establishing your state group, and to work with the staff of PCA on guidance to effective advocacy in your capitol, and local government chambers.

Again, this document is a guide to assist you in organizing other tobacconists in your state. It has been used by other established PCA state-level groups. However, various facets of this process such as corporate registration may vary by state and will need the guidance of legal counsel. Additionally, the By-Laws presented in this guide are also for guidance purposes.

# WHO WE ARE AND OUR PURPOSE



## PROPOSED ROAD MAP FOR THE CREATION OF STATE ASSOCIATIONS FOR PREMIUM TOBACCONISTS

### WHO WE ARE

First, determine your organization's purpose. What are your goals? What group of people will your organization target? These are the types of questions you need to answer to determine your not-for-profit organization's purpose and vision. Choose a name.

Incorporate your organization's focus and vision into the name if possible. Check the names of other not-for-profit organizations in your state to avoid duplication. The name you choose should not only reflect your purpose, but it should also be as unique as possible.

Example: The Premium Cigar Retailers of State X (suggested name) is comprised of small family-owned retail tobacconists, their dedicated employees, their customer base that supports them, and others that have interests in the products they sell and the businesses they run.

(X)PCA members believe that the enjoyment of premium cigars and other tobacco products is both a pleasure and a right reserved for adults.

### PURPOSE AND MISSION

Develop your "constitution" and By-Laws. Your constitution states your group's purpose, and the By-Laws help your group conduct business in an orderly way. Some not-for-profit organizations hire an attorney to help develop their constitution and By-Laws, but this is not necessary.

The primary purpose and goals of the (X)PCA are to:

- Organize, administer and operate to receive, and expend funds to promote the business interests and conditions of its members
- Support or oppose legislation that affects the premium tobacco industry in our state
- Protect the rights of tobacco store owners and their customers from unreasonable restrictions, regulations, taxations and bans
- Monitor local, state and federal legislative activity that has the potential to impact the premium cigar retailers in (insert state here)
- Be proactive and work directly with local, state and federal representatives to support both our goals and our customer's interests.

# WHO WE ARE AND OUR PURPOSE



## MEMBERSHIP ELIGIBILITY

Eligible businesses are those that may commonly be described as tobacconists, cigar stores, smoke shops, etc. and whose primary business function is the sale of premium cigars and other tobacco products to retail consumers.

The annual membership is \$XXX per premium tobacconist store (or company)

## BOARD OF DIRECTORS

Elect a board of directors. In order to incorporate, you must have at least three people on your board. However, it's advisable to have a few more. The Internal Revenue Service usually expects non-profit organizations to have more members than the minimum requirement of the state.

- Establish a board of directors through referrals or by nominating yourself
- Setup a bank account for the association
- Establish a dues structure for members and general membership
- Conduct annual meetings, and at least one additional meeting a year at the annual PCA trade show

## LEGAL

With any legal work and filings, it is recommended that you obtain legal counsel. By doing so, you protect your state association from any unintended consequences when filing your required paperwork. Additionally, a legal professional will be able to assist your group in the necessary procedures for filing your paperwork with the state.

Incorporate your state group with your state (Secretary of State's office). This is a fairly simple and inexpensive process. Articles of Incorporation establish the existence a corporation and set forth basic information about the new not-for-profit organization. Obtain an Employer Identification Number. An Employer Identification Number (EIN) is used to identify a business entity. You will need an EIN to open a bank account for your not-for-profit organization. The application is easy to fill out and can be downloaded from the Internal Revenue Service website.

Obtain a State Sales Tax number. To receive a State Sales Tax number, file an application with your State Department of Revenue. Your State Sales Tax number will exempt your not-for-profit organization from state sales tax.

Apply for your 501(c)3 or letter of exemption. As a not-for-profit organization most of your financial support will come from donations or grants. Having a letter of exemption will allow contributors to receive tax credit from the Internal Revenue Service. To complete this part, contact the IRS at 800-829-4933 to obtain an Employer Identification Number.

# WHO WE ARE AND OUR PURPOSE

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## MARKETING

- Establish a name and logo for your organization
- Have a letterhead package produced on which to write and send your correspondence
- Create an online presence with a website
- Maintain an updated email database (to be tied in with PCA alerts)
- Hold fundraising events to offset some of your costs

# PROPOSED BYLAWS



We have provided your state association with suggested bylaws. Your association, upon approval of your board of directors, may revise these suggested bylaws for your specific needs.

## BYLAWS OF THE [STATE] PREMIUM CIGAR ASSOCIATION

### ARTICLE I

#### Name of Corporation

The name of the corporation is The [State Name] Premium Cigar Association (hereinafter the "Association"), a corporation organized under the laws of the State of (State Name).

### ARTICLE II

#### Purposes of the Corporation

##### **Section 1. Purposes**

The Association is a not-for-profit organization whose purpose is to represent and provide a collective voice in support of the interests of premium retail tobacconists in the State of [State Name] before the general public, the business community, and such governmental agencies as may be involved in regulating, promoting, or developing such businesses interests and to engage in any other lawful activity as provided in its Articles of Incorporation. The Association shall engage in activities, do things, perform acts, and exercise powers conferred upon not-for-profit corporations by the Laws of the State of [State]; all of which, however, shall be consistent with and necessary, incidental, or desirable in the furtherance of the purposes set forth herein and engage in any other lawful activities as provided in its Articles of Incorporation.

### ARTICLE III

#### Membership

##### **Section 1. Membership**

Membership in this Association shall be open to premium retail tobacconists having their principal place of business located in the State of [State Name] and which are primarily engaged in the retail sale of premium cigars and pipe tobacco. All members shall have one vote on all matters, and shall designate, upon joining, their representative to the corporation.

# PROPOSED BYLAWS



## Section 2. Annual Meeting

The annual membership meeting of the Association shall be held at a time and place to be determined by the Board of Directors. The Secretary shall cause to be mailed to every member in good standing at his address as it appears in the membership roll book of the Association a notice telling the time, place, and agenda of such annual meeting. If for any reason the annual meeting shall not be held, the Board of Directors may call a Special Meeting to conduct the business of the annual meeting. At all membership meetings a majority of members shall constitute a quorum.

## **ARTICLE IV**

### **Officers and Duties**

#### **Section 1. General**

- a) The officers of the Association shall be a Chair of the Board, a Vice Chair and a Secretary-Treasurer, who shall be elected by the Directors at the first board meeting after the annual meeting of the Association.
- b) The officers shall hold office from their respective elections until their respective successors are elected and qualified; provided, however, that any officer may be removed at any time by a vote of two-thirds (2/3) of all Directors, provided the officer is given the opportunity to confront the charges at a meeting of the Board of Directors. The Directors may fill any vacancy occurring in any office for the unexpired term of such office.
- c) The Board of Directors may from time to time create other offices, assistant, or subordinate to any of the offices above named, as they shall deem necessary to the proper conduct of the business of the Association, and may prescribe the terms of office, qualifications and powers and duties of the holders of the offices created.

#### **Section 2. Chair of the Board**

The Chair of the Board shall exercise supervision over all the affairs of the Association and its several officers and shall perform generally all the duties as may from time to time be required of the Chair by the Directors. The Chair's duties shall include calling and presiding at meetings of the Board of Directors as needed for the purpose of reporting on the general state of the Association and recommending policies and courses of action; calling and presiding at meetings of members; assisting the Board of Directors on the formation of Association policies on both long-range and short-range activities; interpreting and implementing policies and programs established by the Board of Directors in the management of the Association and its programs and activities; reviewing budgets and appropriations before submission to the Directors; appointing, with the approval of the Board of Directors, such administrative or special committees as may be required, including the Chairs thereof; conferring with committee Chairs often enough to see that their duties are being carried out; and exercising general supervision over Association finances by periodically reviewing budgetary performance and consulting

# PROPOSED BYLAWS



with the Secretary-Treasurer in preparation and submission of the budget.

## **Section 3. Vice Chair**

At the request of the Chair, or in the Chair's absence or disability, the Vice Chair shall perform all the duties of Chair and when so acting shall have all the powers of Chair, and further shall perform such other duties as may from time to time be required of the Chair by the Board of Directors.

## **Section 4. Secretary-Treasurer**

The Secretary-Treasurer or designee shall give all required notices and keep and/or otherwise provide for the taking of the minutes of all meetings of members and Directors. The Secretary-Treasurer shall be responsible for such books as may be required by the Board of Directors and shall be responsible for keeping an accurate up-to-date list of all members of the Association. The Secretary-Treasurer shall generally perform all duties usually incident to the office of Secretary and other duties as from time to time may be prescribed by the Board of Directors.

## **ARTICLE V**

### **Board of Directors**

- a) The affairs of the Association shall be managed by a Board of Directors consisting of no fewer than four directors and no more than eight. Directors shall be elected for a term of one year by majority vote of the members at the annual meeting (in person or via conference call) of the Association. A majority of all directors shall constitute a quorum at all meetings. At all meetings of Directors, decisions, unless otherwise provided in these Bylaws, shall be by majority vote.
- b) Directors may not vote by proxy but, with the consent of the Board, may send a substitute from their company if they are unable to attend.
- c) The Board of Directors may make such rules and regulations governing its meetings as it may deem necessary for its operation, all of which shall be consistent with the Articles of Incorporation and the Bylaws. Vacancies in the Board of Directors shall be filled by majority vote of the remaining members for the balance of the unfilled term.
- d) The Board of Directors may establish such committees as they believe are necessary to assist in the operation of the Association and to achieve the goals of the Association, which may include membership, the setting by the Board of Directors of dues for the members, legislative and regulatory affairs, and such others they may deem appropriate.
- e) A director may be removed for cause provided that any such charges are placed in writing and given to the director so affected, who shall have the right to respond to them at a specially called meeting of the Board, where a vote of two-thirds of all Directors shall be required to remove a director.

# PROPOSED BYLAWS



- f) All officers and directors may be required to furnish bond for the faithful performance of their duties, in such amount and with such sureties as may be required by the Board of Directors, the cost for which shall be paid by the Association.

## **ARTICLE VI**

### **Executive Director**

The Board of Directors may employ or retain an Executive Director to assist the officers and directors in the conduct of the Association's activities. The Executive Director may be an employee of the Association, or an employee of a firm, partnership or corporation retained in a management capacity. The Executive Director shall be accountable to and may be removed by the Board of Directors.

## **ARTICLE VII**

### **Notice**

Wherever in these Bylaws notice is required to be given, such notice shall be deemed to have been delivered and received if addressed to the Director at the address as it appears on the records of the Association and if deposited prepaid in the United States mail, or if transmitted via facsimile or electronically to numbers or addresses listed in the Association's records.

## **ARTICLE VIII**

### **Dissolution**

If the Association ceases to carry out the purposes for which it was created, the Association shall be dissolved in accordance with the law, and all of its assets, after paying or adequately providing for the debts and obligations of the Association, shall be distributed to a not-for-profit association or organization that subscribes to the purposes set forth in the Association's Articles of Incorporation and Bylaws.

# INCORPORATION



When PCA tobacconists in a state determine they want to formally start a state organization, the first thing they should do is look into incorporation. This will provide protection for the directors, officers, executives, and members from liability for the financial and contractual obligations of the corporation. Every state has laws and regulations which govern the start-up and operation of their domestic (incorporated in that state) corporations. Those laws and regulations vary from state to state, so there is no “model” form.

The easiest way to start this process is to go online. While the source may vary in each state, it could be the (state name) Secretary of State’s office, the (state name) Commissioner of Corporations office, etc. There will be forms and information available which track the process.

While you may have to explore some, a good start would be something like this: “incorporating a not-for-profit membership corporation in (state name).” This will likely lead to a form for a not-for-profit which can be printed out. Most states will also have a site for assistance or telephone number (please see appendix for example from the District of Columbia).

There are also companies who, for a modest fee, will do the incorporation for you. One nationwide filer is CT Corporation System. Since you are required, in every state, to have a “resident agent”—a person or entity who can receive process or communications for the corporation. CT and other filers offer that service too.

Generally speaking, dues paid to a not-for-profit membership corporation which seeks to protect and enhance an industry are tax deductible as a business expense. Sometimes, however, the incorporators may wish to file with the Internal Revenue Service an application for tax exempt status as a 501(c)(6) trade association, which is PCA’s tax status. If this is the case, it is important to include in the “purpose description” on the state incorporation form and in the bylaws that you intend to file with the IRS for tax exempt status to become a 501(c)(6) corporation.

Part of this package includes a model set of bylaws, which addresses the purpose of the corporation and operational framework. In filling out the incorporation form you will find guidelines in these bylaws for things such as: the name of the corporation; the purpose of the corporation; who the members are; where the assets of the corporation go if it is dissolved, etc. Most states have a minimum number of incorporators (those filing) and directors (those who will govern) which will be set forth on the form.

Creating an on-going entity in your state will not only allow you to gain recognition in government and legislative circles, it will also allow you to discuss trade issues and common problems with your colleagues; and most importantly, protect your business and livelihood.

# SAMPLE: STEERING COMMITTEE INVITATION LETTER



[Address block]

Dear [State] [Retailer's Name]:

As all of you know, our industry is a contentious one, constantly targeted by our state legislature for additional tax revenues and increased business restrictions and regulations. Working with the PCA, I am organizing a state-level group to better represent our specific interests in the capitol. I am contacting you to ask for your active support and direct participation in this effort. Working as an organized state group will give us a greater, visible edge at the capitol, as we will be speaking as one group and not just individual business owners.

As the core organizing and steering committee, we will set up our state group, name it, develop our strategy, and once formally filed with the state as a non-profit group, we will then invite other state tobacconists to join the group.

While this endeavor is not complicated, it does require strong leadership in getting it off the ground-that is why I am calling on you to join me in working together to protect our businesses and industry in the state.

I appreciate your time and commitment and look forward to working with you.

Thank you,

Sincerely,

[Signature of state association board member charged with recruitment]

[Name of state association board member charged with recruitment]

# SAMPLE FORM: ARTICLES OF INCORPORATION FORM DNP-1



**DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS**  
**District of Columbia Government**  
**Corporations Division**

## Instruction Sheet for Articles of Incorporation for Domestic Nonprofit Corporation Form DNP-1, Version 2, January 2012.

Use this instruction to draft articles of incorporation for your corporation; or use the fillable Articles of Incorporation on page 2. This will establish your new Nonprofit Corporation in the District of Columbia.

ENTITY TYPE	FILING FEE
Domestic Nonprofit Corporation	Refer to Corporate Fee Schedule posted online.

The following information is required for articles of incorporation.

1. Corporation name.
2. State whether the corporation will have members.
3. State that the corporation is incorporated as a nonprofit corporation under Title 29 Chapter 4.
4. Registered Agent's name and address in the District Columbia. (review Registered Agent Combined Form for more information)
5. Incorporators names and address; each Incorporator must sign and date the articles.

The following information is not required for articles of incorporation but may be included. (use miscellaneous provision section)

- (1) The names of the individuals who are to serve as the initial directors;
- (2) Provisions creating one or more designated bodies;
- (3) The names of the initial members of a designated body;
- (4) The names of the initial members, if any;
- (5) Provisions not inconsistent with law regarding:
  - (A) The purpose or purposes for which the nonprofit corporation is organized;
  - (B) Managing the business and regulating the affairs of the corporation;
  - (C) Defining, limiting, and regulating the powers of the corporation, its board of directors, any designated body, and the members, if any;
  - (D) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; or
  - (E) The distribution of assets on dissolution;
  - (D) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; or
  - (E) The distribution of assets on dissolution;
- (7) A provision permitting or making obligatory indemnification of a director for liability, as defined in § 29-406.50, to any person for any action taken, or any failure to take any action, as a director;
- (8) Provisions required if the corporation is to be exempt from taxation under federal, state, or local law.

**Mail all forms and required payment to:**

Department of Consumer and Regulatory Affairs  
 Corporations Division  
 PO Box 92300  
 Washington, DC 20090  
 Phone: (202) 442-4400

**Corporate Online Services Information:**

Many corporate filings are available by using CorpOnline Service. Go to CorpOnline site at <https://corp.dhra.dc.gov>, create the profile, access the online services main page and proceed. Online filers must pay by using the credit card.

Please check [dcra.dc.gov](http://dcra.dc.gov) to view organizations required to register, to search business names, to get step-by-step guidelines to register an organization, to search registered organizations, and to download forms and documents. Just click on "Corporate Registrations."



# SAMPLE MEMBERSHIP RECRUITMENT LETTER



[Address block]

Dear [State] [Retailer's Name]:

As part of the legislative strategy I developed coming on board with the Association several years ago was the development of state-level retail associations. The objective in organizing a state's PCA retailers, specifically Indiana, is to develop a strong network from that you, an PCA retail member, will have the communication channels to better lobby and talk with your state representatives and state senators and with your fellow retailers.

Working and communicating together, we will ultimately prove more effective at the state capitol when facing legislation directly impacting your small businesses and the premium cigar and premium tobacco industry in Indiana. While the PCA works directly other industry lobbyists and interest groups, it is critical that you participate in the legislative process. It is you, the small business owner, whose voice and presence makes the difference at the state capitol. It comes down to the legislators hearing from you, the constituent.

We face several challenges when it comes to organizing a state group, though these are not insurmountable. The one commitment I ask of you is your willingness to work with your fellow retailers from across the state. While you may view another retailer as your competition, that retailer is also an asset in your objectives-working together for the same result-protecting your businesses. Together we will prove to be voice and authority at the state capitol.

Right now, I ask you for two things-your commitment in working with me and your fellow retailers to protect your businesses. I will also need several of you to step up to assist in organizing your group. Please let me know that you are ready and willing to work with me and your peers to help protect and promote our businesses at the state capitol.

Sincerely,

[Signature of state association board member charged with recruitment]

[Name of state association board member charged with recruitment]

# WHAT LOBBYISTS DO AND HOW TO ENGAGE THEIR SERVICES



## LOBBYISTS 101: WHAT DO LOBBYISTS DO?

Although lobbyists can open doors for you, a good lobbyist will do a lot more than that. Lobbyists can offer a whole range of services, including:

- **Set Goals:** you should know what your goals are before you talk to any lobbyists. Lobbyists can help translate your goals (which may be business-oriented or end results-oriented) into goals that make sense in the context of the government
- **Strategy Timing & Focus:** help you develop a strategy and focus your efforts where they'll be most successful at the proper time
- **Education:** educate you on legislative processes, regulations and strategy
- **Representation:** represent you and your interests to the government, so you don't have to be there in person doing it yourself most of the time
- **Relationships:** help you develop relationships with people in government that can help you achieve your goals
- **Champions:** find and support "champions" within the government who are willing to push for your objectives from within
- **Legislation:** support your legal and political interests in new laws considered and enacted by the legislature. Note that lobbyists do a lot of work writing actual legislation.

Like any other professional service, you will never know as much about the legislative process as your lobbyist. In fact, when hiring an advocate, besides the regular issues like fees, duties, and strategy decisions, associations should consider the following factors:

- Advocates often have better connections on one side of the aisle or the other, so clients must determine whether they need someone who is better at lobbying
- Democrats or republicans, or one that has ties to both parties;
- Is the lobbyist who made the pitch going to do the work or hand you off to colleagues?

**To achieve the above mentioned concepts, a lobbyist should have the following qualities:**

- Be an honest information broker to their clients and lawmakers.
- Be knowledgeable about the issue(s) they have to deal with (if not, they must be willing to learn).
- Because lawmaking doesn't work the way it's written in books, they have to know where to find a political edge.
- Be willing to work with you to create the right information for the right people, for the right strategy, and at the right time.

# WHAT LOBBYISTS DO AND HOW TO ENGAGE THEIR SERVICES



Although you should be involved in all major decisions related to your legislative activities, you will not be able to micro-manage the process any more than a patient can manage their own case. Therefore, the single most important step in managing a lobbyist is communications, covered in this handbook.

The lobbyists with the best receptions are well-known and have established relationships with legislators, staff and other advocates.

## KEY ATTRIBUTES A GOOD LOBBYIST WILL POSSESS:

- **Strategy, Timing, and Focus:** If a lobbyist doesn't specifically mention this in your talks with them, you might want to talk to another lobbyist. No matter how many contacts a lobbying firm has, without the proper strategy, and execution at the right time, it won't be effective.
- **Representation:** Simply put, the lobbyists are in the Capitol, talking with lawmakers, their staff, civil servants, and everyone else involved in the process, day in and day out. Everyone working in the Capitol has so much work to do and so many people talking with them all the time that, even if your issue is very important to someone, it probably won't get enough attention without someone there to remind them about it. A good lobbyist should do that for you.
- **Relationships:** This is where contacts come in; if you have a good lobbyist, they know enough people that, even if they don't know the specific people you really need to talk to, they can get introduced to them through someone else they know. Often all it takes to get a meeting with a lawmaker who hasn't returned your calls is a call from another lawmaker mentioning your name. The six degrees of separation are at work here, except it's usually more like 2 or 3 degrees of separation—it's a pretty tight club.

It is important to keep in mind that although your lobbyists don't have to know the exact people you need to talk to for them to be effective, they do need to know a lot of people. So, the size of their contact pool is more important than the specific people in the pool. Quality of contacts is the next most important, so the lobbyist who goes on hunting trips a few times a year with the Chair of the Appropriations Committee is probably going to be able to help you get more done faster than the lobbyist who plays poker twice a week with a first term lawmaker—seniority matters.

Before undertaking any activity on behalf of a client, the most important service a lobbyist can provide is assisting in the creation of a legislative strategy that not only educates the client, but fits the client's needs, goals and image. With that in mind, lobbyists are specialists in developing effective political strategies for specific legislative bodies and agencies.

Additionally, they understand the issues, politics, processes, and people that make decisions. Hiring an experienced Lobbyist can (and will) provide you with options by describing them (just ask for detail), as well as their possible risks and rewards.

Finally, a good lobbyist can and will, recommend a solution that best profiles success. Even so, the final decision on the implementation of any policy remains in the client's hands.

# WHAT LOBBYISTS DO AND HOW TO ENGAGE THEIR SERVICES



Remember you're starting to build a relationship here, and you need to make sure they're motivated to work with you, too.

## HOW TO FIND A LOBBYIST

Decide your budget-- how much do you want to spend in the first 12 months? You need to determine how much you are willing to pay for a lobbyist before seeking representation at the Capitol.

There are several ways to identify potential candidates:

- Internet search for state lobbyists
- State lobby referral services
- Customer referrals/advice

When vetting a lobbyist, what questions do you ask? There are a variety of questions you can ask your potential advocate, divided into stages:

### STAGE 1: Initial Contact

The best way to start interviewing a lobbyist is to pick up the phone and call their office. When you do, talk to the person who answers the phone, and ask them a few questions. Explain to them that you're looking for a lobbyist and want to find out some basic information about their firm. You can ask a few quick questions, with the goal being to find out if the firm is a fit and what you can expect from the advocate. Your goal is to speak with someone other than a salesperson (Note: All lobbyists and all managers at lobbying firms are salespeople.

If they ask you any questions, simply respond by telling them about your company, but not a lot about why you need a lobbyist or your project. Please understand this: The goal here isn't to be evasive, rather it's to honestly find out what their strengths and weaknesses are without them trying to answer questions or act a certain way before they know what you want.

### STAGE 2: Initial Phone Interview/Investigation

- How long have you been in business?
- How many lobbyists do you have?
- How many of them work for you full-time?
- How many clients do you have right now?
- Are there any particular agencies you have particular strength in?
- Are there any particular issues you have particular strength in?

# WHAT LOBBYISTS DO AND HOW TO ENGAGE THEIR SERVICES



- Are there any particular industries you specialize in?

If the initial questions are satisfactorily answered and it sounds like a match, ask to speak to a lobbyist about your association and your desire to retain a lobbyist. When you speak with the lobbyist, give them some details about your association and objectives. The following should be covered in your discussion:

- Discuss what your organization is attempting to do
- Discuss how the lobbying firm may help you and your project
- How many lobbyists do you have?
- How many clients do you have right now?
- Are there any particular industries you specialize in?
- Do you work for, or have you worked for, any company or industry that we might have a conflict with?
- Ask the background of the firms advocates
- Ask who will be managing your project (make sure they don't give you a bait- and-switch, having a senior person sell you, then assigning your project to a lesser experienced lobbyist)
- Provide details about your subject or issues
- Explain your lobbying goals
- Know exactly when you are looking to start
- Have a clear picture of what are their fees (it's OK to ask for a bid)
- Ask them if they have any questions
- Be willing to answer any reasonable questions
- Feel free to promote your state association and its members (remember you're starting to build a relationship, and you need to make sure they're motivated to work with you).

## STAGE 3: The In-Person Meeting/Interview

After completing your initial phone interviews:

- Look up each firm online
- Review their websites, going through each page, including any bias listed
- Call their references

Following the initial interviews and research, narrow your candidate list down to the top two to three choices and proceed with the second round of interviews. Ideally this next round of interviews should be

# WHAT LOBBYISTS DO AND HOW TO ENGAGE THEIR SERVICES



conducted in their offices at the state capitol. You'll learn a lot about them and how they do business by visiting their office.

NOTE: If you need the support of anyone else in your organization, make sure they meet the lobbyists too. If your team can't travel with you to meet the lobbyists, arrange with the lobbyists for them to travel to visit you and meet your group at your office. This trip (for them to come visit you) should be paid for by them, not you- it's a sales opportunity for them.

## STAGE 4: Follow-up Interview Questions

- Please explain in detail your relationships with legislative leadership and other key legislators (germane to our issues-specifically smoking bans and additional OTP excise taxes).
- At the broadest level, our problem is that policymakers fail to distinguish between premium cigars and premium pipe tobacco and other forms of tobacco.
- How would you deal with that problem as it relates to perceptions at the Capitol and related agencies?
- What do you think PCA advocacy assets could be and how would you help us make use of those assets? What is your approach to the relationship between grass roots advocacy and core lobbying activities?
- Some within our industry feel we may only succeed when the entire cigar community (the far larger machine-made cigar sector and much smaller premium cigar sector) work together present a unified front. Others believe that we must differentiate ourselves from non-premium cigars. As our lobbyist, how would you handle the relationship between our small retail shops and the larger machine-made cigar industry's advocates in legislative and regulatory affairs?
- How do you typically work with the following committees?
  - Finance
  - Health
  - Business
  - Other committees germane to our issues
- How important is an active political contribution strategy and given limited resources what is the best way to target the contributions we may make?
- How do you focus your efforts regarding staff or political appointees in the Administration? Agencies? Legislative staffs?
- Who would manage our account- who do we call whenever we have a question or concern? Who would the core team be behind that individual?

# THE LOBBYIST DUTIES CHECKLIST



## WHAT A LOBBYIST WILL DO AND HOW THEY WILL HELP YOU DEVELOP SOLUTIONS OR STRATEGIES

A lobbyist influences legislative and regulatory actions on behalf of his or her clients and is a vital link between a client and a policy maker. In this position, the lobbyist distills political positions and presents them in a context understood by the political body that deals with them. With that in mind, here is a basic check list of duties that a lobbyist would undertake on your behalf (check the ones that interest you):

- \_\_\_ Create & implement strategies
- \_\_\_ Meet with policy makers
- \_\_\_ Negotiate with other interests
- \_\_\_ Prepare position papers
- \_\_\_ Draft legislative & regulatory language
- \_\_\_ Assist in group's testimony before legislative committees & agencies
- \_\_\_ Build coalitions with stakeholders, lobbyists, and groups with common interests
- \_\_\_ Help raise your association and industry profile among decision makers Raise issue awareness among decision makers
- \_\_\_ Track and monitor legislation
- \_\_\_ Legislative research & analysis
- \_\_\_ Distribution of information
- \_\_\_ Monitor legislative & regulatory developments in identified areas.

Lobbying Firm Name \_\_\_\_\_

Industry specialties/concentration \_\_\_\_\_

Contact \_\_\_\_\_

Phone \_\_\_\_\_

# SAMPLE: LOBBYIST AGREEMENT



**INTRODUCTION:** Thank you very much for hiring (me/firm name) to help you with your legislative agenda. It's our understanding that you wish for us to follow the actions of the \_\_\_\_\_ State Government, including but not limited to the \_\_\_\_\_ Legislature and its governing boards and commissions.

**OFFICIAL DUTIES:** I understand that I/we have been hired to conduct comprehensive legislative representation on behalf of \_\_\_\_\_ (company name) \_\_\_\_\_. Your representation includes, but is not limited to:

1. Testimony before Legislative bodies and meetings with elected officials regarding legislative affairs that affect your business interests;
2. The creation of specific pre-approved, legislative material and preparing to support or oppose those positions;
3. Interaction with support and/or opposition.

**LEGISLATIVE MATERIAL:** On a regular basis, I will supply you or your designated representatives with the following:

1. Copies of bills, resolutions and amendments;
2. Copies of official legislative analysis reports and other material related to issues we both determine to be of interest to your business;
3. Appointments with Legislators and Staff when needed;

**EXPENSES:** It is understood by both parties that there will be certain expenses provided by myself on your behalf. Those expenses include, but are not limited to, printing, travel, phone calls and the creation and filing of quarterly Secretary of State Advocacy Forms (as required by Law). It is understood by both parties that those expenses will be paid by you and that any expenses over \$50 must be pre-approved.

**REMUNERATION:** In return for conducting the above duties as your registered Legislative Advocate, will pay me a flat fee of \$ \_\_\_\_\_ (dollars) per month.

**BILLING:** Each month an invoice will be prepared for services rendered" that will include the following summarized information:

1. Activities and actions taken on your behalf complete with "attachments" when necessary;
2. Billing will take place during the first week of the month, and will be due and payable by the last day of the month;
3. Checks should be made payable to:
4. A retainer of \$ \_\_\_,000 is requested.

**LENGTH OF AGREEMENT AND RENEWAL:** This agreement shall be in effect for \_\_\_\_\_, and shall commence starting \_\_\_\_\_. This agreement shall end \_\_\_\_\_, unless renewed. Renewal of this agreement can take place at any time with written consent of both parties.

**CANCELLATION:** This agreement is cancelable with 30 (thirty) days notice by either party.

# SAMPLE: LOBBYIST AGREEMENT



**SIGNATURES:** This agreement is understood and accepted by, on behalf of (both parties need to sign at the end of the document. Signatures should be made on the signature line).

## State Association Representative

Name and Title \_\_\_\_\_

Signature: \_\_\_\_\_

## Lobby Firm Representative

Name and Title \_\_\_\_\_

Signature: \_\_\_\_\_

# SETTING UP A STATE POLITICAL ACTION COMMITTEE (PAC)



## WHAT IS A PAC?

A Political Action Committee, or PAC, is a body formed for the purpose of raising and spending money to elect and defeat candidates. Most PACs represent business, labor, or ideological interests. A PAC must register with the FEC within 10 days of its formation, providing name and address for the PAC, its treasurer, and any connected organizations.

PACs have been around since 1944, when the Congress of Industrial Organizations (CIO) formed the first one to raise money for the re-election of President Franklin D. Roosevelt. The PAC's money came from voluntary contributions from union members rather than union treasuries, so it did not violate the Smith Connally Act of 1943, which forbade unions from contributing to federal candidates. Although commonly called PACs, federal election law refers to these accounts as "separate segregated funds" because money contributed to a PAC is kept in a bank account separate from the general corporate or union treasury.

Creating a PAC takes a great deal of time and energy, so it is imperative to select several dedicated state association members to take lead roles. Laws governing the operation and establishment of a PAC vary from state to state and can be quite complex so your best starting point will be your Secretary of State's office or your state's fair political practices commission. These departments will provide you the necessary information and resources, including paperwork, ethics guidelines, and statement of economic interest. Many states hold workshops and seminars explaining the most efficient way to organize a PAC (please note: the name of the commission may vary by state).

To ensure you are following all state campaign laws and regulations, in addition to contacting the state, your group may want to seek the advice and guidance of a qualified attorney.

### Before establishing your PAC, consider and plan the following:

- Designate a PAC administrator
- Develop a realistic budget—include costs for initial strategic consulting and campaign contributions
- Develop a campaign strategy—how are you going to raise money?
- Branding your retail tobacconist PAC
- An accounting system to log expenditures, contributions, and disbursements

Again, as this may be complex in your state, you may want to consider recruiting an attorney experienced in campaign finance issues for your steering committee to act as the advisor for all the group's activities.

# TIPS FOR LETTING YOUR VOICE BE HEARD



1. **Identify Yourself.** Let them know your name and where you live.
2. **Be Honest and Open.** Maintain credibility with legislators by being sincere.
3. **Be Respectful.** Speak courteously and avoid being confrontational.

## WHY IT'S IMPORTANT

Legislators are elected to serve their constituents' interests, and they need to hear from you. By contacting them, you will hold them accountable for their positions and let them know they won't get your vote if they aren't representing your interests.

### Phone Calls

- State your purpose for calling. Identify why you are calling and ask to speak to the legislator or an aide that handles that issue.
- Leave a message. Tell the aide you would like to leave a brief message and repeat your position on the issue or legislation in your message.
- Request a response. Leave your name and address so that your legislator can respond to you.
- Be persistent, but respectful. Consider sending a follow-up note to the legislator or staff member with whom you spoke, emphasizing your position and your appreciation for his/ her attention to the matter.

### Letters

- Keep your letter short and to the point. Address only one Issue In your letter or e-mail and try to keep your letter to one page.
- Get their attention. State your purpose for writing in the first paragraph. If your letter is about a specific piece of legislation, identify it by the bill number or the common name for the legislation.
- Make it personal. Describe how the issue affects you personally and Include facts. Doing so will make your letter stronger.
- Ask where they stand. A request for a response from your legislator underscores your ongoing interest in the issue.
- Request a response. Included your name and complete address, even in your e-mail, so your legislator can respond.

# SAMPLE LETTER TO LEGISLATOR



[Your legislator's Name (reference chart next page)]

[Your legislator's Street Address]

[Your legislator's City, State, Zip]

Dear [Title (reference chart next page)]:

I am writing to [support or oppose] the proposal to [insert Issue]. This proposed legislation would [insert information on why you support or oppose the measure. Remember to be courteous and respectful, not confrontational. Describe how the issue affects you and, whenever possible, included facts and examples to support your position. Personal experience can strengthen your position on the issue and encourage the legislator to listen more closely to your position.]

I urge you to [support or oppose] this measure, and to let me know how you plan to vote on it.

Sincerely,

[Your signature]

[Your First and Last Name]

# REFERENCE CHART: HOW TO ADDRESS YOUR LEGISLATOR



LEGISLATOR	ADDRESS	SALUTATION
President of the United States	President [first & last name] The White House Washington DC 20500	Dear Mr. President:
US Senator	The Honorable [first & last name] United States Senate Washington DC 20510	Dear Senator [Last Name]:
US Representative	The Honorable [first & last name] United States House of Representatives Washington DC 20515	Dear Representative [Last Name]:
Governor	The Honorable [first & last name] State Capitol [City, State and Zip]	Dear Governor [last name]:
State Representative State Assembly Person	The Honorable [first & last name] [State] House of Representatives <i>or</i> [State] Assembly [Capitol City, State and Zip]	Dear Representative [last name] <i>or</i> Dear Assemblyman/woman [last name]:
Mayor	The Honorable [first & last name] Mayor of [City] [City, State and Zip]	Dear Mayor [last name]:
City or County Legislator (Various Titles)	The Honorable [first & last name] [Name of City or County] Office of Address at Town Hall or County Office [City, State and Zip]	Dear Freeholder [last name]: Dear Commissioner [last name]: Dear Alderwoman/man [last name]: Dear Selectwoman/man [last name]: Dear Councilwoman/man [last name]:

# PCA SUMMARY OF CHAPTER AFFILIATION AGREEMENT



The Chapter Affiliation Agreement outlines the relationship between the Premium Cigar Association (PCA) and its local Chapters. While many of the topics addressed in the agreement are common sense, the intent of the agreement is to establish clearly defined roles, responsibilities, and expectations for PCA and each local Chapter. The summary below provides a section-by-section overview of the agreement.

**Section I, Grant of Charter to Chapter**, formally grants a charter to be a Chapter of PCA and defines the Chapter's service area or "Territory." The charter authorizes the Chapter to serve the needs of PCA members through various activities within the designated Territory. The charter remains effective until terminated by PCA or the Chapter.

**Section II, Membership**, states the membership requirements for the Chapter. Chapter members must also be members of PCA. Chapters may set their own terms and conditions of membership within the Chapter bylaws, so long as they are consistent with the PCA bylaws. PCA must approve the Chapter terms of membership.

**Section III, Obligations of PCA**, describes PCA's obligations under the Agreement, which include providing certain program resources and maintaining a membership database.

**Section IV, Obligations of Chapter**, describes the minimum expectations for the Chapter's organization and operation, including reporting obligations.

**Section V, Intellectual Property and Confidential Information**, grants the Chapter the right to use PCA Intellectual Property, including its name and logo, copyrighted materials, membership lists, and other proprietary information and materials. This section also grants the Chapter the right to sub-license the PCA Intellectual Property under the terms set forth herein. Except as otherwise authorized, the Chapter also agrees not to disclose PCA's Confidential Information.

**Section VI, Relationship of Parties**, states that PCA and the Chapter are separate legal entities, and neither party has the right to contract on behalf of or obligate the other.

**Section VII, Indemnification and Insurance**, requires the Chapter to reimburse PCA for any claim arising out of (1) the Chapter's performance of its obligations under the Agreement, (2) the Chapter's failure to comply with any term or condition of the Agreement, and/or (3) the Chapter's breach of any representation or warranty under the Agreement. This section protects PCA and its other Chapters from liability.

**Section VIII, Revocation or Surrender of Charter** establishes procedures to be undertaken by PCA in the rare event it decides to revoke a Chapter's charter, which includes notice and an opportunity to cure. In addition, in the event the Chapter no longer wishes to be a Chapter of PCA, the Chapter has the right to surrender its charter upon providing notice to PCA.

**Section IX, Miscellaneous**, contains several boilerplate provisions commonly used in contracts. These provisions address how the Agreement is interpreted, governed, and enforced.

# PCA CHAPTER AFFILIATION AGREEMENT



THIS CHAPTER AFFILIATION AGREEMENT (the “Agreement”), is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between the Premium Cigar Association (“PCA”), a New York nonprofit corporation, with its principal place of business at 513 Capitol Ct., NE, Suite 300, Washington, DC 20002, and the \_\_\_\_\_ (“CHAPTER”), a [STATE] [TYPE OF ENTITY] with its principal place of business at [ADDRESS]. PCA and CHAPTER may each be referred to herein as a “Party” and collectively as the “Parties.” The Parties, intending to be legally bound, hereby agree as follows:

## I. Grant of Charter to CHAPTER

- A. **Charter.** PCA hereby grants to CHAPTER a charter to be a Chapter of PCA, pursuant to the terms and conditions of this Agreement. CHAPTER accepts this charter, and PCA and CHAPTER each agree to abide by this Agreement and all PCA Bylaws, rules, policies, and procedures relating to Chapters, as adopted by the PCA Board of Directors (the “Chapter Policies”).
- B. **Territory.** CHAPTER shall represent PCA as PCA’s affiliate in the boundaries as defined by the official charter, (the “Territory”), pursuant to and in accordance with PCA’s mission and purposes as set forth in PCA’s Articles of Incorporation and Bylaws, the Chapter Policies, and the terms of this Agreement. PCA agrees that CHAPTER shall be the sole and exclusive local professional Chapter of PCA in the Territory during the Term. CHAPTER agrees that, except as approved in writing by PCA, PCA shall be the sole and exclusive national association representing the interests of professionals within the premium cigar industries with which CHAPTER is affiliated or represents. CHAPTER acknowledges that PCA may sponsor or conduct programs, accept members, and perform other activities within the Territory.
- C. **Authorized Activities.** PCA specifically authorizes CHAPTER to conduct activities within the Territory consistent with and in furtherance of the tax-exempt mission and purposes of each PCA and CHAPTER, including but not limited to CHAPTER meetings, learning events, professional development activities, networking functions, and all such other activities as mutually agreed upon by CHAPTER and PCA (“Authorized Activities”). CHAPTER and PCA agree to coordinate activities within the Territory, with the mutual goal of devoting their combined knowledge and resources for the benefit of all Members.

## II. Membership of CHAPTER

- A. All Members of CHAPTER must be members in good standing of PCA (each, a “Member”). Members of CHAPTER shall reside or work within CHAPTER’s Territory, unless otherwise approved by PCA pursuant to the Chapter Policies. The terms and conditions of membership in PCA are determined exclusively by PCA, but CHAPTER may create supplemental requirements for membership in CHAPTER if such requirements are consistent with the requirements of membership in PCA.

# PCA CHAPTER AFFILIATION AGREEMENT



## III. Obligations of PCA

- A. PCA's obligations under this Agreement shall include:
- i. Providing general membership structure, function, and services for PCA members.
  - ii. Performing outreach, advertising, and other activities to recruit new members to PCA and CHAPTER and providing assistance with growth and/or maintenance of PCA and CHAPTER's membership base.
  - iii. Providing administrative support and operational guidance/direction, particularly regarding fiscal, insurance, membership, certification, educational programs, and other matters requiring coordination with PCA programs or functions.
  - iv. Maintaining or providing for the maintenance of, a database of all CHAPTER members.
  - v. Providing or facilitating coordination between CHAPTER and other PCA Chapters to allow CHAPTER optimal opportunities for synergy from interaction with other Chapters of PCA.
  - vi. Assisting CHAPTER in its mission to pursue the overall PCA goals and objectives within the Territory, to the degree and level decided by the PCA Board of Directors

## IV. Obligations of CHAPTER

- A. CHAPTER's obligations under this Agreement shall include:
- i. Premium Cigar Definition. When possible, and where it is deemed advantageous where a premium cigar definition is already on record, CHAPTER shall work towards establishing the FDA approved definition of a Premium Cigar in state policy, namely:  
  
*“Premium” cigars means a type of cigar that: (1) is wrapped in whole tobacco leaf; (2) contains a 100 percent leaf tobacco binder; (3) contains at least 50 percent (of the filler by weight) long filler tobacco (i.e., whole tobacco leaves that run the length of the cigar); (4) is handmade or hand rolled (i.e., no machinery was used apart from simple tools, such as scissors to cut the tobacco prior to rolling); (5) has no filter, non-tobacco tip, or non-tobacco mouthpiece; (6) does not have a characterizing flavor other than tobacco; (7) contains only tobacco, water, and vegetable gum with no other ingredients or additives; and (8) weighs more than 6 pounds per 1,000 units.”*
  - ii. Governing Documents. CHAPTER agrees that its governing documents and stated purposes therein are and shall remain consistent in all material respects with PCA's governing documents and stated purposes, as currently in effect and as may be amended from time to time. CHAPTER agrees that it will conduct its activities at all times in accordance with such purposes. In the event CHAPTER's governing documents are not consistent in all material respects with PCA's governing documents, CHAPTER shall work with PCA and amend the governing documents to become consistent in all material respects with PCA's governing documents. Any proposed amendments to CHAPTER's Articles (or Certificate) of Incorporation or Bylaws must first be submitted to and approved by PCA's Chief Executive Officer or his/her designee.

# PCA CHAPTER AFFILIATION AGREEMENT



- iii. Compliance with Laws. CHAPTER warrants that it is, and shall remain, in full compliance with all applicable laws, regulations, and other legal standards that may affect its performance under this Agreement and shall otherwise conduct its activities at all times in accordance with all applicable laws and regulations. CHAPTER agrees to obtain, and shall maintain at all times, all permits, licenses, and other governmental approvals that may be required in the Territory in connection with its performance under this Agreement.
- iv. Employer Identification Number. CHAPTER warrants that it has received an Employer Identification Number ("EIN") from the Internal Revenue Service.
- v. Corporate and Tax Status. CHAPTER warrants and represents that it is an incorporated nonprofit corporation or shall incorporate as a nonprofit corporation under state law within sixty (60) days of the Effective Date of this Agreement, and that it shall at all times be in good standing with its state of incorporation and operate in a manner consistent with CHAPTER's tax-exempt purposes. Chapter further warrants and represents that it is and shall remain exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code. In the event that CHAPTER elects to be governed by a group federal tax exemption under PCA, CHAPTER agrees to adopt a substantially similar version of the Model Chapter Bylaws attached herein.
- vi. Record-keeping, Reporting, and Inspection. CHAPTER shall maintain all records related to its corporate and tax-exempt status and shall forward to PCA copies of its Articles of Incorporation, Bylaws, and tax exemption correspondence from the Internal Revenue Service, as well as any adverse notices or other correspondence received from any governmental agency (e.g., Internal Revenue Service, state Secretary of State, or corresponding agency). CHAPTER shall maintain reasonable records related to all of its programs, activities, and operations. CHAPTER shall annually submit to PCA a copy of its most recently filed Form 990, Return of Organization Exempt from Income Tax, as submitted to the Internal Revenue Service, within 30 days of such filing. If required to file, upon the written request of PCA and at PCA's expense, CHAPTER will permit PCA or PCA's designated agent(s) to review appropriate records of CHAPTER pertaining to its programs, activities, and operations. Alternatively, CHAPTER shall send to PCA copies of such records upon the request of PCA.
- vii. Programs and Activities. CHAPTER shall endeavor to sponsor and conduct programs and activities that further the purposes and objectives of PCA and CHAPTER and shall use its best efforts to ensure that these programs and activities are of the highest quality with respect to program content, materials, and logistical preparation. CHAPTER shall send to PCA on a regular basis a schedule of upcoming meetings, conferences, and activities that CHAPTER intends to sponsor or conduct.
- viii. Merger, Affiliation, Transfer of Assets. During the Term, CHAPTER agrees that it will provide sixty (60) days prior written notice in the form of a letter or memorandum to the Chief Executive Officer of PCA before taking any of the following actions: 1) merging or combining with any other entity; 2) agreeing to be managed under contract by any other entity; 3) joining, representing, or affiliating in any way with any other local or national association or organization which directly or indirectly consists of or represents individuals in the premium cigar profession; or 4) transferring all or substantially all of CHAPTER's assets to any other entity or organization. Any such proposed action by CHAPTER identified under this Section must first be submitted to and approved by PCA's Board of Directors.

# PCA CHAPTER AFFILIATION AGREEMENT



- ix. Related Entities. CHAPTER shall inform PCA of (i) any organization in which CHAPTER has the power to appoint, elect, remove, or replace a majority of such organization’s directors or (ii) any organization in which a majority of the organization’s directors are directors of CHAPTER (each a “Related Entity”). CHAPTER acknowledges and agrees that any of its Related Entity’s governing documents shall be subject to the review and approval of PCA. CHAPTER shall send to PCA copies of a Related Entity’s governing documents upon the request of PCA.

In the event that CHAPTER is related or affiliated to any other organization that uses the name and logo of PCA or CHAPTER, CHAPTER shall assist PCA in engaging such organization to enter into an affiliation agreement with PCA. During the Term, CHAPTER shall not enter into, create, dissolve, or divest of any Related Entity, subsidiary, partnership, or limited liability company without the prior written approval of PCA.

## V. Intellectual Property and Confidential Information

- A. Grant of License. In accordance with PCA’s exclusive grant to CHAPTER to be a local professional Chapter of PCA in the Territory, and subject to CHAPTER remaining in good standing with PCA, CHAPTER is hereby granted a limited, revocable, non-exclusive license to: (i) use the PCA trademarks PCA, PREMIUM CIGAR ASSOCIATION and the PCA logo design shown immediately below (collectively, “Licensed Marks”) as follows and subject to the additional controls set out in this section V:



with the word “Chapter” immediately following the geographic location or other geographic indicator of CHAPTER (e.g., “Arkansas Razorback Chapter”, “Mile High Chapter”) shown in a conspicuous manner and placed in immediate proximity to the combined full-name-and-circle logo below (“Combined Logo”), without modifying the Licensed Marks or combining them with any other attention-getting terms or designs, the first and most prominent time the Licensed Marks are used on a website or in any other materials; and (b) with PCA immediately followed by the word “Chapter” and then the geographic location or other geographic indicator of CHAPTER (e.g., “PCA Arkansas Razorback Chapter”) after “(a)” is satisfied; use PCA’s membership mailing, telephone, fax, and electronic mail lists with respect to past, current or prospective members of PCA located within the Territory (the “Mailing List”); (iii) reproduce, distribute, or display within the Territory during the Term all copyrighted materials provided by PCA to CHAPTER (“Copyrighted Materials”); and (iv) use other proprietary information and materials provided by PCA to CHAPTER (“Proprietary Information”) (the Mailing List, Copyrighted Materials, Proprietary Information, and Licensed Marks are collectively hereinafter referred to as “Intellectual Property”) within the Territory during the Term of this

# PCA CHAPTER AFFILIATION AGREEMENT



Agreement for official CHAPTER-related purposes, with the limited authority to use the Intellectual Property solely in connection with the Authorized Activities.

- B. Grant of Sub-license Authority. PCA hereby grants to CHAPTER a revocable license to sub-license the Intellectual Property to third parties solely in connection with the Authorized Activities, subject to acceptance by sub-licensees of the terms and conditions imposed on CHAPTER herein. With respect to approved sub-licensees, the Parties agree that CHAPTER shall require sub-licensees to present the Intellectual Property in the manner set forth above, to ensure conformity with quality control as set out in this Section V. Sub-licensees are not permitted to further sub-license the Intellectual Property. PCA reserves the right to revoke the grant of sub-license authority at any time.
- C. Ownership of Intellectual Property. PCA owns all rights, title, and interest to the Intellectual Property. Use of the Intellectual Property shall create no rights for CHAPTER or sub-licensees in or to the Intellectual Property or its use beyond the terms and conditions of this limited, revocable, non-exclusive license. CHAPTER agrees that its usage of PCA's Intellectual Property shall be restricted solely to the Authorized Activities, and CHAPTER further agrees that the exploitation of such right of usage shall protect the name and goodwill of PCA.
- D. Quality Standards. In order to ensure and maintain quality standards with respect to the use of the Intellectual Property, all uses of the Intellectual Property by CHAPTER shall be subject to the terms and conditions of this Agreement and any written branding guidelines subsequently provided to CHAPTER by PCA from time to time. CHAPTER's and sub-licensees' use of the Licensed Marks and the nature and quality of goods/services connected therewith must conform to standards set by, and remain under the control of, PCA.
- i. CHAPTER shall use the Licensed Marks only in the Territory, for the Term, and as a collective membership mark and as a service mark, specifically, CHAPTER shall use the Licensed Marks only to (i) indicate that it is a Chapter of PCA in good standing in the Territory and (ii) provide services that, in the view of PCA, promote the interests and purposes of PCA. CHAPTER's and sub-licensees' use of the Licensed Marks inures solely and permanently to the benefit of PCA, its successors and assigns.
  - ii. CHAPTER may not at any time challenge this section V of the Agreement or PCA's rights, use, applications, registrations, or third-party licensing with respect to the Intellectual Property or assist or encourage others to do so. CHAPTER may not seek to register or claim rights in the Intellectual Property, parts thereof, or marks confusingly similar to the Licensed Marks, or assist or encourage others to do so. CHAPTER may not use marks that are parts of, or confusingly similar to, the Licensed Marks. CHAPTER may not use the Intellectual Property in a way that violates the law or, in PCA's view, might mis-characterize the relationship between PCA and CHAPTER (including, but not limited to mis-characterizing the fact that CHAPTER is a separate and distinct legal entity from PCA); tarnish or disparage the positive image and goodwill of PCA and the Intellectual Property; or cause confusion, mistake, or deceive others into thinking that PCA is the origin of, sponsors, or certifies CHAPTER or CHAPTER's goods, services, or commercial activities (other than as allowed by this section of the Agreement). CHAPTER may not sue or threaten to sue PCA for contributory infringement regarding activity by other licensees who use the Intellectual Property. CHAPTER shall release PCA, hold PCA harmless,

# PCA CHAPTER AFFILIATION AGREEMENT



and indemnify and defend PCA from all third-party claims of liability for acts or omissions committed by CHAPTER during CHAPTER's use of the Intellectual Property, except CHAPTER shall have the right to defend third-party claims of copyright or trademark infringement regarding the Intellectual Property. This subsection applies during the Term of the Agreement and after termination.

- iii. CHAPTER must use the most current versions of the Intellectual Property, which may be updated from time to time, including to the extent the "TM," "®," or "©" symbol is shown. CHAPTER may not revise or alter the Intellectual Property in any way, and CHAPTER must display the Intellectual Property in the same form as produced by PCA. Except as otherwise permitted herein under Section V.B. of this Agreement, CHAPTER may not use the Intellectual Property in conjunction with any other trademark, service mark, or other mark without the express prior written approval of PCA. The Intellectual Property must be used by CHAPTER in a professional manner and solely for official CHAPTER-related purposes. Parties who wish to use the Intellectual Property in a manner other than permitted above (including but not limited to use of the Licensed Marks for merchandising purposes), or wish to use PCA's other Intellectual Property, must obtain separate written licenses from PCA.
  - iv. In any authorized use by CHAPTER of the Intellectual Property, CHAPTER shall ensure that the applicable trademark and copyright notices are used pursuant to the requirements of United States law, the laws of the Territory, and any other guidelines that PCA may prescribe.
  - v. PCA shall have the right, from time to time, to request samples of use of the Intellectual Property from which it may determine compliance with these terms and conditions. PCA reserves the right to prohibit use of any of the Intellectual Property, as well as to impose other sanctions, if it determines, in its sole discretion, that CHAPTER's usage thereof is not in strict accordance with the terms and conditions of this limited and revocable license.
  - vi. Use of the Intellectual Property shall create no rights for CHAPTER or sub-licensees in or to the Intellectual Property or its use beyond the terms and conditions of this limited and revocable license. All rights in the Intellectual Property granted to CHAPTER under this Agreement shall terminate immediately upon the revocation, surrender or other termination of this Agreement. PCA may also terminate the License or prohibit any particular use of the Intellectual Property by written notice to CHAPTER, at any time CHAPTER violates one or more of the terms of the Agreement, in the determination of PCA. Once the License terminates, Licensees must immediately and permanently stop using the Intellectual Property and may not use marks confusingly similar to the Licensed Marks. CHAPTER's obligations to protect the Intellectual Property shall survive the revocation, surrender, or other termination of this Agreement.
- E. Confidential Information. During the Term of this Agreement, CHAPTER's directors, officers, employees, members, and agents may receive or have access to data and information that is confidential and proprietary to PCA. All such data and information ("Confidential Information") made available to, disclosed to, or otherwise made known to CHAPTER in connection with this Agreement shall be considered the sole property of PCA. Confidential Information may be used by CHAPTER only for purposes of performing its obligations under this Agreement. CHAPTER shall not disclose Confidential Information to any third party without the prior written consent of PCA, except as

# PCA CHAPTER AFFILIATION AGREEMENT



required or permitted by law. CHAPTER shall not use nor duplicate any Confidential Information except as authorized by PCA. Upon any revocation, surrender or other termination of this Agreement, CHAPTER shall: (i) deliver immediately to PCA all Confidential Information of PCA, including but not limited to all written and electronic documentation of all Confidential Information, and all copies thereof; and (ii) make no further use of it.

## VI. Relationship of Parties

- A. PCA and CHAPTER agree that they are, and shall remain, separate legal entities. Nothing in this Agreement is intended to create any partnership, joint venture, or agency relationship of any kind between the Parties. Neither Party has the right or authority to make any representation or warranty or incur any obligation or liability on behalf of the other Party.

## VII. Indemnification and Insurance

- A. Each Party shall indemnify, defend and hold harmless the other Party, and such indemnified Party's subsidiaries, affiliates, and related entities and their directors, officers, employees, agents, and members from and against any loss, damage, injury, accident, casualty, liability, claims, liens, judgments, penalties, fines, costs or expenses (including, but not limited to, reasonable attorneys' fees) of any kind (collectively, "Claims"), and all amounts paid in the investigation, defense or settlement of any of the foregoing Claims, that arise out of, or involve in any way, (i) any act or omission, including breach of this Agreement, by the indemnifying Party or any of its subsidiaries, affiliates, related entities, partners, officers, directors, employees, members, shareholders or agents; or (ii) the inaccuracy or breach of any of the covenants, representations and warranties made by the indemnifying Party in this Agreement. Each Party shall promptly notify the other Party upon receipt of any Claim. Each Party shall maintain comprehensive liability insurance and other insurance necessary to protect itself against any Claims arising from any activities in connection with this Agreement, and to fulfill its obligations under this Agreement. A Party shall provide the other Party an insurance certificate reflecting such insurance policies upon request. The provisions of this Section shall survive any revocation, surrender or other termination of this Agreement.

## VIII. Term and Termination

- A. The charter granted by PCA to CHAPTER hereunder shall become effective on the Effective Date set forth above and shall remain in full force and effect unless and until revoked by PCA or surrendered by CHAPTER in accordance with the provisions of this Agreement.
- B. Revocation of Charter. PCA, through its Board of Directors, shall have the authority to revoke the charter of CHAPTER if the PCA Board of Directors determines that the conduct of CHAPTER is in breach of any provision of this Agreement. Any decision by the PCA Board of Directors to revoke CHAPTER's charter shall be initiated by sending written notice to CHAPTER specifying the grounds upon which the revocation is based; provided, however, that PCA shall provide CHAPTER with a minimum of thirty (30) days from the date of such notice to cure any alleged breach of this

# PCA CHAPTER AFFILIATION AGREEMENT



Agreement. In the event that PCA determines, in its sole discretion, that CHAPTER has not corrected the condition leading to PCA's decision to revoke CHAPTER's charter, PCA shall so notify CHAPTER in writing. PCA's decision shall become final unless, within ten (10) days of its receipt of written notice from PCA, CHAPTER delivers to PCA a written notice to appeal such determination. Upon the filing of such an appeal notice, CHAPTER shall have the opportunity to present its case, by written communication or in person, to the PCA Board of Directors. The decision of PCA's Board of Directors upon such appeal shall be final and not subject to further appeal.

- C. Surrender of Charter. CHAPTER may surrender its charter by delivering to PCA written notice of its intention to do so no less than thirty (30) days prior to the effective date of such surrender.
- D. Effect of Termination. Upon revocation or termination of CHAPTER's Charter, CHAPTER shall immediately cease any use of PCA's Intellectual Property. CHAPTER shall return all Confidential Information in its possession or destroy any such information that it is unable to return. In addition, upon revocation or termination of CHAPTER's Charter, CHAPTER shall return any remaining net assets, after satisfying any and all debts, to PCA to be used for the benefit of all other chapters.

## IX. Miscellaneous

- A. Entire Agreement. This Agreement constitutes the entire agreement between PCA and CHAPTER with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written.
- B. Warranties. Each Party covenants, warrants, and represents that it shall comply with all laws, regulations, and other legal standards applicable to this Agreement, and that it shall exercise due care and act in good faith at all times in performance of its obligations under this Agreement. The provisions of this Section shall survive any revocation, surrender, or other termination of this Agreement.
- C. Waiver. Either Party's waiver of, or failure to exercise, any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement. No waiver, amendment or other modification of any provision of this Agreement shall be effective unless in writing and signed by authorized representatives of each Party.
- D. Arbitration. Any and all disputes arising under this Agreement shall be subject to mandatory and binding arbitration under the rules of the American Arbitration Association then in force, before a single arbitrator. Said arbitration shall take place in the District of Columbia. Neither party shall have any right to bring an action relating to this Agreement in a court of law, except insofar as to either enforce or appeal the results of any such arbitration, which may be brought only before a court of competent jurisdiction located within the District of Columbia, United States of America. In any such arbitration, and subsequent court action, the prevailing party shall be entitled to collect its fees and costs associated therewith from the non-prevailing party, as well as the costs of the arbitration. In connection with the resolution of any dispute, the Parties to this Agreement hereby expressly waive their right to litigate or otherwise resolve matters in a trial by jury or in any civil court. Further, each Party waives its rights to any extra contractual damages of any kind.

# PCA CHAPTER AFFILIATION AGREEMENT



- E. Governing Law. All questions with respect to the construction of this Agreement or the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the District of Columbia without regard to conflicts of laws principles.
- F. Assignment. CHAPTER may not sub-license or assign any of its rights or obligations under this Agreement without the prior written consent of PCA.
- G. Heirs, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, approved sub-licensees of CHAPTER, and permitted assigns; however, CHAPTER may not assign or sub-license the rights granted herein without prior written permission from PCA, except as otherwise provided herein.
- H. Headings. The headings of the various paragraphs hereof are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this Agreement.
- I. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
- J. Severability. All provisions of this Agreement are severable. If any provision or portion hereof is determined to be invalid or unenforceable then the remaining portions of the Agreement shall remain in full effect.
- K. No Third-Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties hereto and their respective heirs, successors and permitted assigns.
- L. Notice. All notices and other communications between the Parties must be in writing. All notices must be given by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, or (iv) electronic mail to the party's address specified in this Agreement, or to the address that a party has notified to be that party's address for the purposes of this section. A notice given in accordance with this Agreement will be effective upon receipt by the Party to which it is given or, if mailed, upon the earlier of receipt and the fifth business day following mailing.

## **If to PCA:**

Premium Cigar Association  
513 Capitol Court NE  
Suite 300  
Washington, DC 20002  
Attn: PCA Executive Director  
info@premiumcigars.org

# PCA CHAPTER AFFILIATION AGREEMENT



**If to CHAPTER:**

Attn:

Mailing Address:

Email:

In the event that CHAPTER lacks a permanent business address for service of notice, CHAPTER shall maintain some form of current address on record with PCA for service of legal notice and other communications. PCA may serve notice upon CHAPTER at such address according to the provisions of this Section.

\* \* \* \* \*

*[Signature Page Follows]*

# PCA CHAPTER AFFILIATION AGREEMENT



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

## Premium Cigar Association

PCA Executive Director or Executive Designee

By: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## CHAPTER

CHAPTER President

By: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_