

By: Anchia

H.B. No. 3445

A BILL TO BE ENTITLED

AN ACT

1
2 Relating to requirements governing the registration of lobbyists
3 and authorized activities of certain registrants.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 305.003, Government Code, is amended by
6 adding Subsections (b-3), (d), and (e) to read as follows:

7 (b-3) Subsection (a)(2) does not require a person to
8 register if the person spends not more than five percent of the time
9 for which the person is compensated, reimbursed, or entitled to be
10 compensated or reimbursed during the calendar quarter engaging in
11 activity to communicate directly with a member of the legislative
12 or executive branch to influence legislation or administrative
13 action.

14 (d) A corporation, association, firm, partnership,
15 committee, club, organization, or other group of persons is not
16 required to register under this section if the expenditures made on
17 behalf of the entity, and compensation paid to or promised to the
18 entity, to communicate directly with a member of the legislative or
19 executive branch to influence legislation or administrative action
20 are reported by an individual who is a registrant in accordance with
21 this chapter and rules of the commission.

22 (e) An expenditure made by a member of the judicial,
23 legislative, or executive branch acting in the member's official
24 capacity is not included for purposes of determining whether a

1 person is required to register in accordance with Subsection
2 (a)(1).

3 SECTION 2. Section 305.004, Government Code, is amended to
4 read as follows:

5 Sec. 305.004. GENERAL EXCEPTIONS. The following persons are
6 not required to register under this chapter:

7 (1) a person who owns, publishes, or is employed by a
8 newspaper, any other regularly published periodical, a radio
9 station, a television station, a wire service, or any other bona
10 fide news medium that in the ordinary course of business
11 disseminates news, letters to the editors, editorial or other
12 comment, or paid advertisements that directly or indirectly oppose
13 or promote legislation or administrative action, if the person does
14 not engage in further or other activities that require registration
15 under this chapter and does not represent another person in
16 connection with influencing legislation or administrative action;

17 ~~(2) [a person whose only direct communication with a~~
18 ~~member of the legislative or executive branch to influence~~
19 ~~legislation or administrative action is an appearance before or~~
20 ~~testimony to one or more members of the legislative or executive~~
21 ~~branch in a hearing conducted by or on behalf of either the~~
22 ~~legislative or the executive branch and who does not receive~~
23 ~~special or extra compensation for the appearance other than actual~~
24 ~~expenses incurred in attending the hearing,]~~

25 [~~3~~] a person whose only activity is to encourage or
26 solicit members, employees, or stockholders of an entity by whom
27 the person is reimbursed, employed, or retained to communicate

1 directly with members of the legislative or executive branch to
2 influence legislation or administrative action;

3 (3) [~~(4)~~] a person whose only activity to influence
4 legislation or administrative action is to compensate or reimburse
5 an individual registrant to act in the person's behalf to
6 communicate directly with a member of the legislative or executive
7 branch to influence legislation or administrative action;

8 (4) [~~(5)~~] a person whose only activity to influence
9 legislation or administrative action is attendance at a meeting or
10 entertainment event attended by a member of the legislative or
11 executive branch if the total cost of the meeting or entertainment
12 event is paid by a business entity, union, or association;

13 (5) [~~(6)~~] a person whose only compensation subject to
14 Section 305.003(a)(2) consists of reimbursement for any wages not
15 earned due to attendance at a meeting or entertainment event,
16 travel to and from the meeting or entertainment event, admission to
17 the meeting or entertainment event, and any food and beverage
18 consumed at the meeting or entertainment event if the meeting or
19 entertainment event is attended by a member of the legislative or
20 executive branch and if the total cost of the meeting or
21 entertainment event is paid by a business entity, union, or
22 association; and

23 (6) [~~(7)~~] a person who communicates directly with a
24 member of the legislative or executive branch on behalf of a
25 political party concerning legislation or administrative action,
26 and whose expenditures and compensation, as described in Section
27 305.003, combined do not exceed \$5,000 a calendar year.

1 SECTION 3. Subchapter A, Chapter 305, Government Code, is
2 amended by adding Section 305.0041 to read as follows:

3 Sec. 305.0041. EXCEPTIONS FOR CERTAIN ACTIVITIES FOR WHICH
4 COMPENSATION OR REIMBURSEMENT IS RECEIVED. (a) A person is not
5 required to register under this chapter in accordance with Section
6 305.003(a)(2) solely because the person receives or is entitled to
7 receive compensation or reimbursement to:

8 (1) request a written opinion that interprets a law,
9 regulation, rule, policy, practice, or procedure administered by a
10 state office or agency;

11 (2) merely provide, in preparing or submitting an
12 application or other written document, information that:

13 (A) is required by law, rule, regulation, order,
14 or subpoena; or

15 (B) responds to a document prepared by a state
16 agency;

17 (3) communicate merely for the purpose of
18 demonstrating compliance with an audit, inspection, examination of
19 a financial institution, or government investigation to interpret
20 and determine compliance with existing laws, rules, policies, and
21 procedures;

22 (4) communicate to achieve compliance with existing
23 laws, rules, policies, and procedures, including communicating to
24 show qualification for an exception of general applicability that
25 is available under existing laws, rules, policies, and procedures;

26 (5) communicate as a member of an advisory committee
27 or task force, if the person is appointed to serve in that capacity

1 by a member of the legislative or executive branch;

2 (6) communicate to respond to a specific request for
3 information from a member of the legislative or executive branch,
4 if the request was not solicited by or on behalf of the person
5 providing the information;

6 (7) communicate to legal counsel of a state agency, an
7 administrative law judge, or a hearings examiner concerning:

8 (A) litigation or adjudicative proceedings to
9 which the agency is a party; or

10 (B) adjudicative proceedings of that agency;

11 (8) communicate to provide testimony, make an
12 appearance, or make any other type of communication documented as
13 part of a public record in a proceeding of an adjudicative nature of
14 the type authorized by or subject to Chapter 2001, without regard to
15 whether that proceeding is subject to Chapter 551;

16 (9) provide oral or written comments, making an
17 appearance, or any other type of communication, if documented as
18 part of a public record in an agency's rule-making proceeding under
19 the Administrative Procedure Act, Government Code, Chapter 2001, or
20 in public records kept in connection with a legislative hearing;

21 (10) provide only clerical assistance to another in
22 connection with the other person's activities that require
23 registration under this chapter, such as merely typing or
24 delivering another person's letter to a member of the legislative
25 or executive branch;

26 (11) communicate to a member of the executive branch
27 concerning state agency purchasing decisions of a product, or

1 negotiations regarding such decisions if the compensation for the
2 communication is not totally or partially contingent on the outcome
3 of any administrative action; or

4 (12) perform any combination of activities described
5 by Subdivisions (1)-(11).

6 (b) A registrant who performs an activity described by
7 Subsection (a) is not required to provide information concerning
8 the activity in the registrant's registration statement under
9 Section 305.005(f)(4) or (5)(B).

10 (c) A registrant who performs an activity described by
11 Subsection (a) is not required to provide information concerning
12 the person who reimburses, retains, or employs the registrant to
13 perform that activity under Section 305.005(f)(3) or (6) unless the
14 registrant performs, on behalf of that person, other activities
15 that require registration under this chapter.

16 (d) A registrant who performs an activity described by
17 Subsection (a) is not required to provide information concerning a
18 person employed or retained by the registrant for the purpose of
19 assisting in that activity under Section 305.005(f)(5)(A), unless
20 the person is also employed or retained by the registrant to assist
21 with other activities that require registration under this chapter.

22 SECTION 4. Amend Section 305.022 as follows:

23 Sec. 305.022. CONTINGENT FEES. (a) A person may not
24 retain or employ another person to influence legislation or
25 administrative action for compensation that is totally or partially
26 contingent on the passage or defeat of any legislation, the
27 governor's approval or veto of any legislation, or the outcome of

1 any administrative action.

2 (b) A person may not accept any employment or render any
3 service to influence legislation or administrative action for
4 compensation contingent on the passage or defeat of any
5 legislation, the governor's approval or veto of any legislation, or
6 the outcome of any administrative action.

7 (c) For purposes of this chapter [~~section~~], a sales
8 commission payable to an employee of a vendor of a product is not
9 considered compensation contingent on the outcome of
10 administrative action.

11 (d) For purposes of this chapter, a sales commission payable
12 to an independent contractor of a vendor of a product is not
13 considered compensation contingent on the outcome of an
14 administrative action if the independent contractor is a registrant
15 who reports the vendor as a client under this chapter and reports
16 the full amount of the contingent fee in the manner required by
17 commission rule.

18 (e) [~~(d)~~] This section does not prohibit the payment or
19 acceptance of contingent fees:

20 (1) expressly authorized by other law; or

21 (2) for legal representation before state
22 administrative agencies in contested hearings or similar
23 adversarial proceedings prescribed by law or administrative rules.

24 SECTION 5. Section 403.1067(b), Government Code, is amended
25 to read as follows:

26 (b) Except as provided by this subsection, the [~~The~~] persons
27 or entities described by Subsection (a) are not eligible to receive

1 the money or participate either directly or indirectly in the
2 contracts, funds, or grants awarded in Section 403.105, 403.1055,
3 403.106, 403.1065, or 403.1066. A registrant under Chapter 305 is
4 not ineligible under this subsection if the person is required to
5 register under that chapter solely because the person communicates
6 directly with a member of the executive branch to influence
7 administrative action concerning a matter relating to the purchase
8 of products by a state agency.

9 SECTION 6. Section 161.301, Health and Safety Code, is
10 amended by amending Subsection (d) and adding Subsection (f) to
11 read as follows:

12 (d) The commissioner may not award a contract under
13 Subsection (b) to:

14 (1) a person or entity that is required to register
15 with the Texas Ethics Commission under Chapter 305, Government
16 Code, except as provided by Subsection (f);

17 (2) any partner, employee, employer, relative,
18 contractor, consultant, or related entity of a person or entity
19 described by Subdivision (1) and not described by Subsection (f);
20 or

21 (3) a person or entity who has been hired to represent
22 associations or other entities for the purpose of affecting the
23 outcome of legislation, agency rules, or other government policies
24 through grassroots or media campaigns.

25 (f) A registrant under Chapter 305, Government Code, is not
26 ineligible under Subsections (d) and (e) if the person is required
27 to register under that chapter solely because the person

1 communicates directly with a member of the executive branch to
2 influence administrative action concerning a matter relating to the
3 purchase of products by a state agency.

4 SECTION 7. A person who is required to register under
5 Chapter 305, Government Code, solely as a result of the change in
6 law made by this Act is not required to register under that chapter
7 before January 1, 2010.

8 SECTION 8. This Act takes effect September 1, 2009.