

1-1 By: Anchia, Kolthorst (Senate Sponsor - Deuell) H.B. No. 3445
1-2 (In the Senate - Received from the House May 18, 2009;
1-3 May 19, 2009, read first time and referred to Committee on State
1-4 Affairs; May 23, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3445 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to requirements governing registration and authorized
1-11 activities of certain lobbyists.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter A, Chapter 305, Government Code, is
1-14 amended by adding a new subsection (c)(2) to Section 305.005 and
1-15 renumbering subsequent subsections to read as follows:

1-16 § 305.005. Registration

1-17 (a) Each person required to register under this chapter shall file
1-18 a written registration with the commission and shall submit a
1-19 registration fee.

1-20 (b) A registration filed under this chapter expires at midnight,
1-21 December 31, of each year unless the registrant submits a
1-22 registration renewal form to the commission on a form prescribed by
1-23 the commission and submits the registration renewal fee. The
1-24 registrant may file the registration renewal form and the fee
1-25 anytime in December of the year in which the registration expires.

1-26 (c) The registration fee and registration renewal fee are:

1-27 (1) \$100 for a registrant employed by an organization exempt from
1-28 federal income tax under Section 501(c)(3) or 501(c)(4), Internal
1-29 Revenue Code of 1986; ~~or~~

1-30 (2) \$50 for any person required to register solely because the
1-31 person is required to register under Sec. 305.0041 of this Chapter;

1-32 or

1-33 (3) \$500 for any other registrant.

1-34 SECTION 2. Section 305.002(1), Government Code, is amended
1-35 to read as follows:

1-36 (1) "Administrative action" means rulemaking,
1-37 licensing, or any other matter that may be the subject of action by
1-38 a state agency or executive branch office, including a matter
1-39 relating to the purchase of products or services by the agency or
1-40 office. The term includes the proposal, consideration, or approval
1-41 of the matter or negotiations concerning the matter.

1-42 SECTION 3. Subchapter A, Chapter 305, Government Code, is
1-43 amended by adding Section 305.0041 to read as follows:

1-44 Sec. 305.0041. EXCEPTIONS FOR CERTAIN ACTIVITIES FOR WHICH
1-45 COMPENSATION OR REIMBURSEMENT IS RECEIVED. (a) A person is not
1-46 required to register under this chapter in accordance with Section
1-47 305.003(a)(2) solely because the person receives or is entitled to
1-48 receive compensation or reimbursement to:

1-49 (1) communicate as an employee of a vendor of a
1-50 product or service to a member of the executive branch concerning
1-51 state agency purchasing decisions that do not exceed ten million
1-52 dollars involving a product, service or service provider or
1-53 negotiations regarding such decisions;

1-54 (2) communicate as an employee of a vendor of a
1-55 product or service to a member of the executive branch concerning
1-56 state agency purchasing decisions that exceed ten million dollars
1-57 involving a product, service or service provider or negotiations
1-58 regarding such decisions if the compensation for the communication
1-59 is not totally or partially contingent on the outcome of any
1-60 administrative action; or

1-61 (3) communicate in a capacity other than as an
1-62 employee of a vendor of a product or service to a member of the
1-63 executive branch concerning state agency purchasing decisions

2-1 involving a product, service or service provider or negotiations
2-2 regarding such decisions if the compensation for the communication
2-3 is not totally or partially contingent on the outcome of any
2-4 administrative action;

2-5 (4) communicate as a member of an advisory committee
2-6 or task force if the person is appointed to serve in that capacity
2-7 by a member of the legislative or executive branch; or

2-8 (5) communicate as a member of a board, task force, or
2-9 advisory committee on which a member of the legislative or
2-10 executive branch also serves.

2-11 (b) A registrant who performs an activity described by
2-12 Subsection (a) is not required to:

2-13 (1) provide information concerning that activity in
2-14 the registrant's registration statement under Section
2-15 305.005(f)(4) or (5)(B);

2-16 (2) provide information concerning the person who
2-17 reimburses, retains, or employs the registrant to perform that
2-18 activity under Section 305.005(f)(3) or (6) unless the registrant
2-19 performs, on behalf of that person, other activities that require
2-20 registration under this chapter; or

2-21 (3) provide information concerning a person employed
2-22 or retained by the registrant for the purpose of assisting in that
2-23 activity under Section 305.005(f)(5)(A) unless the person is also
2-24 employed or retained by the registrant to assist with other
2-25 activities that require registration under this chapter. For the
2-26 purposes of this chapter, a registrant is not required to list as an
2-27 assistant another person who is also registered for the same client
2-28 as the registrant.

2-29 SECTION 4. Section 305.022, Government Code, is amended by
2-30 amending Subsection (c) and adding Subsections (c-1), (c-2), (c-3)
2-31 and (e) to read as follows:

2-32 (c) For purposes of this chapter [section],

2-33 (i) a sales commission payable to an employee of a vendor of
2-34 a product or service is not considered compensation contingent on
2-35 the outcome of administrative action if the amount of the state
2-36 agency purchasing decision does not exceed ten million dollars.

2-37 (ii) A quarterly or annual compensation performance bonus
2-38 payable to an employee of a vendor of a product or service is
2-39 not considered compensation contingent on the outcome of
2-40 administrative action;

2-41 (c-1) For purposes of this chapter, a sales commission or other
2-42 such fee payable to an independent contractor of a vendor of a
2-43 product or service is not considered compensation contingent on the
2-44 outcome of an administrative action if the independent contractor

2-45 (i) is a registrant who reports the vendor as a client under
2-46 this chapter;

2-47 (ii) reports the full amount of the commission or fee in the
2-48 manner required by commission rule; and

2-49 (iii) if the amount of the state agency purchasing decision
2-50 does not exceed ten million dollars.

2-51 (c-2) For purposes of this chapter, a commission or fee paid
2-52 to a person by a state agency is not considered compensation
2-53 contingent on the outcome of an administrative action if the person
2-54 paid a commission or a fee by a state agency

2-55 (i) is a registrant who reports the state agency as a client
2-56 under this chapter; and

2-57 (ii) reports the full amount of the commission or fee in the
2-58 manner required by commission rule.

2-59 (c-3) If the amount of compensation or fee is not known at
2-60 the time of the disclosure required under Subsection (c-1), the
2-61 registrant must disclose:

2-62 (i) a reasonable estimate of the maximum amount of the
2-63 compensation or fee; and

2-64 (ii) the method under which the compensation or fee will be
2-65 computed; and

2-66 (iii) such other factors as may be required by the
2-67 commission by rule.

2-68 (e) For purposes of this section, the term "employee" means
2-69 a person employed full-time by an employer to perform services for

3-1 compensation. The term does not include an independent contractor
3-2 or consultant.

3-3 (f) The provisions of this chapter shall not be applicable
3-4 to a transaction for the sale, lease, or services provided in
3-5 connection with the sale or lease of any real properties or real
3-6 properties interest owned or managed by the Permanent School Fund
3-7 or General Land Office.

3-8 SECTION 5. Section 403.1067(b), Government Code, is amended
3-9 to read as follows:

3-10 (b) Except as provided by this subsection, the [The] persons
3-11 or entities described by Subsection (a) are not eligible to receive
3-12 the money or participate either directly or indirectly in the
3-13 contracts, funds, or grants awarded in Section 403.105, 403.1055,
3-14 403.106, 403.1065, or 403.1066. A registrant under Chapter 305 is
3-15 not ineligible under this subsection if the person is required to
3-16 register under that chapter solely because the person communicates
3-17 directly with a member of the executive branch to influence
3-18 administrative action concerning a matter relating to the purchase
3-19 of products or services by a state agency.

3-20 SECTION 6. Section 161.301, Health and Safety Code, is
3-21 amended by amending Subsection (d) and adding Subsection (f) to
3-22 read as follows:

3-23 (d) The commissioner may not award a contract under
3-24 Subsection (b) to:

3-25 (1) a person or entity that is required to register
3-26 with the Texas Ethics Commission under Chapter 305, Government
3-27 Code, except as provided by Subsection (f);

3-28 (2) any partner, employee, employer, relative,
3-29 contractor, consultant, or related entity of a person or entity
3-30 described by Subdivision (1) and not described by Subsection (f);
3-31 or

3-32 (3) a person or entity who has been hired to represent
3-33 associations or other entities for the purpose of affecting the
3-34 outcome of legislation, agency rules, or other government policies
3-35 through grassroots or media campaigns.

3-36 (f) A registrant under Chapter 305, Government Code, is not
3-37 ineligible under Subsections (d) and (e) if the person is required
3-38 to register under that chapter solely because the person
3-39 communicates directly with a member of the executive branch to
3-40 influence administrative action concerning a matter relating to the
3-41 purchase of products or services by a state agency.

3-42 SECTION 7. A person who is required to register under
3-43 Chapter 305, Government Code, solely as a result of the change in
3-44 law made by this Act is not required to register under that chapter
3-45 before January 1, 2010.

3-46 SECTION 8. This Act takes effect September 1, 2009.

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