

**House Bill 3445**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

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

§ 305.005. Registration

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

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

(c) The registration fee and registration renewal fee are:

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

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

(3) \$500 for any other registrant.

No equivalent provision.

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

(1) "Administrative action" means rulemaking, licensing, or any other matter that may be the subject of

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action by a state agency or executive branch office, including a matter relating to the purchase of products or services by the agency or office. The term includes the proposal, consideration, or approval of the matter or negotiations concerning the matter.

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

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

(1) communicate to a member of the executive branch concerning state agency purchasing decisions involving a product, or negotiations regarding such decisions,

if the compensation for the communication is not totally or

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

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

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

(2) communicate as an employee of a vendor of a product or service to a member of the executive branch concerning state agency purchasing decisions that exceed ten million dollars involving a product, service or service provider or negotiations regarding such decisions if the compensation for the communication is not totally or

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partially contingent on the outcome of any administrative action;

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

(3) communicate as a member of a board, task force, or advisory committee on which a member of the legislative or executive branch also serves.

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

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

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

(3) provide information concerning a person employed or retained by the registrant for the purpose of assisting

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partially contingent on the outcome of any administrative action; or

(3) communicate in a capacity other than as an employee of a vendor of a product or service to a member of the executive branch concerning state agency purchasing decisions involving a product, service or service provider or negotiations regarding such decisions if the compensation for the communication is not totally or partially contingent on the outcome of any administrative action;

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

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

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

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

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

(3) provide information concerning a person employed or retained by the registrant for the purpose of assisting

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in that activity under Section 305.005(f)(5)(A) unless the person is also employed or retained by the registrant to assist with other activities that require registration under this chapter.

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

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

(c-1) For purposes of this chapter, a sales commission payable to an independent contractor of a vendor of a product is not considered compensation contingent on the outcome of an administrative action if the independent contractor is a registrant who reports the vendor as a client under this chapter and reports the full amount of the **contingent** fee in the

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in that activity under Section 305.005(f)(5)(A) unless the person is also employed or retained by the registrant to assist with other activities that require registration under this chapter. For the purposes of this chapter, a registrant is not required to list as an assistant another person who is also registered for the same client as the registrant.

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

(c) For purposes of this chapter [~~section~~],  
(i) a sales commission payable to an employee of a vendor of a product **or service** is not considered compensation contingent on the outcome of administrative action **if the amount of the state agency purchasing decision does not exceed ten million dollars.**  
(ii) **A quarterly or annual compensation performance bonus payable to an employee of a vendor of a product or service is not considered compensation contingent on the outcome of administrative action;**

(c-1) For purposes of this chapter, a sales commission **or other such fee** payable to an independent contractor of a vendor of a product **or service** is not considered compensation contingent on the outcome of an administrative action if the independent contractor (i) is a registrant who reports the vendor as a client under this chapter; (ii) reports the full amount of the **commission or** fee in

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manner required by commission rule.

(c-2) If the amount of contingent compensation is not known at the time of the disclosure required under Subsection (c-1), the registrant must disclose:

- (1) a reasonable estimate of the amount of the contingent compensation; and
- (2) the method under which the contingent compensation will be computed.

(e) For purposes of this chapter, the term "product" means goods acquired for direct consumption or use by the agency in the day-to-day support of the agency's administrative operations, such as office supplies and equipment, and does not include services or the selection of a service provider.

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the manner required by commission rule; and  
(iii) if the amount of the state agency purchasing decision does not exceed ten million dollars.

(c-2) For purposes of this chapter, a commission or fee paid to a person by a state agency is not considered compensation contingent on the outcome of an administrative action if the person paid a commission or a fee by a state agency  
(i) is a registrant who reports the state agency as a client under this chapter; and  
(ii) reports the full amount of the commission or fee in the manner required by commission rule.

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

- (i) a reasonable estimate of the maximum amount of the compensation or fee; and
- (ii) the method under which the compensation or fee will be computed; and
- (iii) such other factors as may be required by the commission by rule.

(e) For purposes of this section, the term "employee"

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means a person employed full-time by an employer to perform services for compensation. The term does not include an independent contractor or consultant.  
(f) The provisions of this chapter shall not be applicable to a transaction for the sale, lease, or services provided in connection with the sale or lease of any real properties or real properties interest owned or managed by the Permanent School Fund or General Land Office.

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

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

SECTION 4. Section 161.301, Health and Safety Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. Same as House version.

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SECTION 6. This Act takes effect September 1, 2009.

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SECTION 8. Same as House version.

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