

By: Leach

H.B. No. 2778

Substitute the following for H.B. No. 2778:

By: Johnson of Dallas

C.S.H.B. No. 2778

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation and administration of the State Office of
3 Administrative Hearings.

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

5 SECTION 1. Section 12.032, Agriculture Code, is amended to
6 read as follows:

7 Sec. 12.032. HEARINGS CONDUCTED BY [~~COOPERATION WITH~~] STATE
8 OFFICE OF ADMINISTRATIVE HEARINGS. (a) [~~The commissioner and the~~
9 ~~chief administrative law judge of the State Office of~~
10 ~~Administrative Hearings by rule shall adopt a memorandum of~~
11 ~~understanding under which the State Office of Administrative~~
12 ~~Hearings conducts hearings for the department under this code. The~~
13 ~~memorandum of understanding shall require the chief administrative~~
14 ~~law judge, the department, and the commissioner to cooperate in~~
15 ~~connection with the hearings under this code and may authorize the~~
16 ~~State Office of Administrative Hearings to perform any~~
17 ~~administrative act, including giving of notice, that is required to~~
18 ~~be performed by the department or the commissioner under this code.~~
19 ~~The memorandum of understanding shall also require that hearings~~
20 ~~under this section be held at a location agreed upon by the State~~
21 ~~Office of Administrative Hearings and the department.~~

22 [(b)] For a hearing conducted by the State Office of
23 Administrative Hearings under this code, the department and the
24 commissioner retain the authority to decide whether the

1 administrative law judge conducting the hearing for the State
2 Office of Administrative Hearings shall:

3 (1) enter the final decision in the case after
4 completion of the hearing; or

5 (2) propose a decision to the department or the
6 commissioner for final consideration.

7 (b) [~~(e)~~] Any provision of this code that provides that the
8 department or the commissioner take an action at a hearing means:

9 (1) that the department or the commissioner shall take
10 the action after the receipt of a proposal for decision from the
11 State Office of Administrative Hearings regarding the hearing
12 conducted by that office; or

13 (2) if so directed by the department or the
14 commissioner, the State Office of Administrative Hearings shall
15 enter the final decision in the case after completion of the
16 hearing.

17 (c) [~~(d)~~] The department shall prescribe rules of procedure
18 for any cases not heard by the State Office of Administrative
19 Hearings.

20 [~~(e) The department by interagency contract shall reimburse~~
21 ~~the State Office of Administrative Hearings for the costs incurred~~
22 ~~in conducting administrative hearings for the department. The~~
23 ~~department may pay an hourly fee for the costs of conducting these~~
24 ~~hearings or a fixed annual fee negotiated biennially by the~~
25 ~~department and the State Office of Administrative Hearings to~~
26 ~~coincide with the department's legislative appropriations~~
27 ~~request.]~~

1 (d) [~~f~~] This section does not apply to hearings held under
2 Chapter 103.

3 SECTION 2. Subchapter F, Chapter 411, Government Code, is
4 amended by adding Section 411.1411 to read as follows:

5 Sec. 411.1411. ACCESS TO CRIMINAL HISTORY RECORD
6 INFORMATION: STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) In this
7 section, "office" means the State Office of Administrative
8 Hearings.

9 (b) The office is entitled to obtain from the department
10 criminal history record information maintained by the department
11 that relates to a person who is:

12 (1) an employee of, or an applicant for employment
13 with, the office;

14 (2) a contractor, volunteer, or intern of the office,
15 or an applicant to serve in one of those capacities; or

16 (3) a current or proposed contractor or subcontractor
17 of the office.

18 (c) State criminal history record information obtained by
19 the office under Subsection (b) may not be released or disclosed to
20 any person except by court order or with the written consent of the
21 person who is the subject of the criminal history record
22 information.

23 (d) The office shall destroy criminal history record
24 information obtained under Subsection (b) that relates to:

25 (1) an applicant for employment after the applicant is
26 employed by the office or, if the applicant is not employed by the
27 office, after the office has made a final employment determination

1 regarding the applicant; or

2 (2) an employee, contractor, volunteer, or intern of
3 the office after the office has completed a criminal history record
4 information check on the person.

5 (e) In accordance with Section 411.087, the office may
6 obtain through the Federal Bureau of Investigation criminal history
7 record information maintained or indexed by the bureau that
8 pertains to a person about whom the office is entitled to obtain
9 criminal history record information from the department under
10 Subsection (b).

11 (f) Criminal history record information obtained by the
12 office from the Federal Bureau of Investigation under Subsection
13 (e) may not be released or disclosed to any person.

14 SECTION 3. Subchapter C, Chapter 2003, Government Code, is
15 amended by adding Section 2003.0401 to read as follows:

16 Sec. 2003.0401. DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE. (a)
17 The chief administrative law judge may appoint one or more deputy
18 chief administrative law judges to assist with the administration
19 of the office. To be eligible for appointment as a deputy chief
20 administrative law judge, an individual must:

21 (1) be licensed to practice law in this state; and
22 (2) meet other requirements prescribed by the chief
23 administrative law judge.

24 (b) A deputy chief administrative law judge shall:

25 (1) perform the duties the chief administrative law
26 judge is required by law to perform when the chief administrative
27 law judge is absent or unable to act;

1 (2) supervise administrative law judges employed by
2 the office, including individuals appointed as senior or master
3 administrative law judges under Section 2003.0411; and

4 (3) perform other duties assigned by the chief
5 administrative law judge.

6 (c) A deputy chief administrative law judge serves at the
7 pleasure of the chief administrative law judge.

8 SECTION 4. Section 2003.041(c), Government Code, is amended
9 to read as follows:

10 (c) An administrative law judge employed by the office is
11 not responsible to or subject to the supervision, direction, or
12 indirect influence of any person other than the chief
13 administrative law judge or a deputy chief administrative law
14 judge, or a senior or master administrative law judge designated by
15 the chief administrative law judge. In particular, an
16 administrative law judge employed by the office is not responsible
17 to or subject to the supervision, direction, or indirect influence
18 of an officer, employee, or agent of another state agency who
19 performs investigative, prosecutorial, or advisory functions for
20 the other agency.

21 SECTION 5. Section 2003.0411(a), Government Code, is
22 amended to read as follows:

23 (a) The chief administrative law judge may appoint senior or
24 master administrative law judges to perform duties assigned by the
25 chief administrative law judge or a deputy chief administrative law
26 judge.

27 SECTION 6. Section 2003.045, Government Code, is amended to

1 read as follows:

2 Sec. 2003.045. OVERSIGHT OF ADMINISTRATIVE LAW JUDGES. The
3 chief administrative law judge or a deputy chief administrative law
4 judge may designate senior or master administrative law judges to
5 oversee the training, evaluation, discipline, and promotion of
6 administrative law judges employed by the office.

7 SECTION 7. Section [2003.055](#), Government Code, is amended to
8 read as follows:

9 Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief
10 administrative law judge shall develop and implement [~~a policy~~
11 ~~requiring the chief administrative law judge and office employees~~
12 ~~to research and propose~~] appropriate technological solutions to
13 improve the office's ability to perform its functions. The
14 technological solutions must:

15 (1) ensure that the public is able to easily find
16 information about the office on the Internet;

17 (2) ensure that persons who want to use the office's
18 services are able to:

19 (A) interact with the office through the
20 Internet; and

21 (B) access any service that can be provided
22 effectively through the Internet; [~~and~~]

23 (3) be cost-effective; and

24 (4) use, to the greatest extent practicable, the
25 technology standards of the Department of Information Resources and
26 the judicial committee on information technology [~~developed~~
27 ~~through the office's planning processes~~].

1 SECTION 8. Subchapter C, Chapter 2003, Government Code, is
2 amended by adding Sections 2003.0551 and 2003.0552 to read as
3 follows:

4 Sec. 2003.0551. USE OF VIDEOCONFERENCING TECHNOLOGY FOR
5 ADMINISTRATIVE PROCEEDINGS. (a) In this section,
6 "videoconferencing technology" has the meaning assigned by Section
7 402.0213.

8 (b) Notwithstanding any other law, an administrative law
9 judge assigned to preside over a contested case or alternative
10 dispute resolution proceeding may order the use of
11 videoconferencing technology to conduct a proceeding the office is
12 authorized to conduct. The presiding judge and the parties and
13 their attorneys may participate in the proceeding from any location
14 when using videoconferencing technology.

15 (c) The office may assist a party in attending a proceeding
16 conducted by videoconferencing technology by making the technology
17 available for the party's use at the permanent location of the
18 office nearest to the party if:

19 (1) the party:

20 (A) is not represented by counsel; or

21 (B) is unable to participate in the proceeding
22 due to insufficient access to videoconferencing technology; and

23 (2) making the technology available does not pose a
24 credible risk to the health or safety of employees or other persons
25 physically present at the office.

26 (d) If a party objects within a reasonable time after the
27 party receives notice of an order under Subsection (b) authorizing

1 the use of videoconferencing technology to conduct a proceeding and
2 states good cause for the objection, the administrative law judge
3 presiding over the proceeding shall:

4 (1) consider the objection in a manner consistent with
5 the Texas Rules of Civil Procedure; and

6 (2) rule on the objection in a timely manner before the
7 scheduled proceeding.

8 Sec. 2003.0552. USE OF ELECTRONIC FILING TECHNOLOGY FOR
9 SERVICE OF ADMINISTRATIVE DECISIONS AND ORDERS. (a)

10 Notwithstanding any other law, the office may deliver a decision or
11 order issued by the office using:

12 (1) an electronic filing system, as defined by Section
13 72.031, that is approved by the Office of Court Administration of
14 the Texas Judicial System; or

15 (2) a method of electronic delivery other than the
16 system described by Subdivision (1), including by e-mail sent to
17 the current e-mail address of the party's attorney of record or, if
18 the party is not represented by counsel, to the party's current
19 e-mail address.

20 (b) The office may require a party and the party's attorney
21 of record to provide and maintain an e-mail address on file with the
22 office for the purpose of receiving electronic delivery of
23 documents and communications from the office.

24 SECTION 9. Section 40.066, Human Resources Code, is amended
25 to read as follows:

26 Sec. 40.066. HEARINGS CONDUCTED BY [~~COOPERATION WITH~~] STATE
27 OFFICE OF ADMINISTRATIVE HEARINGS. (a) If the State Office of

1 Administrative Hearings conducts a contested case hearing for the
2 department under Chapter 2001, Government Code, the [~~Except as~~
3 ~~provided by Subsection (e), the department and the chief~~
4 ~~administrative law judge of the State Office of Administrative~~
5 ~~Hearings shall adopt a memorandum of understanding under which the~~
6 ~~State Office of Administrative Hearings, on behalf of the~~
7 ~~department, conducts all contested case hearings authorized or~~
8 ~~required by law to be conducted by the department under the~~
9 ~~administrative procedure law, Chapter 2001, Government Code.~~

10 [~~(b) The memorandum of understanding shall require the~~
11 ~~chief administrative law judge, the department, and the~~
12 ~~commissioner to cooperate in connection with a contested case~~
13 ~~hearing and may authorize the State Office of Administrative~~
14 ~~Hearings to perform any administrative act, including the giving of~~
15 ~~notice, that is required to be performed by the department or~~
16 ~~commissioner.~~

17 [~~(c) The~~] administrative law judge who conducts the [~~a~~
18 ~~contested case~~] hearing [~~for the State Office of Administrative~~
19 ~~Hearings on behalf of the department~~] shall enter the final
20 decision in the case after completion of the hearing.

21 [~~(d) The department by interagency contract shall reimburse~~
22 ~~the State Office of Administrative Hearings for the costs incurred~~
23 ~~in conducting contested case hearings for the department. The~~
24 ~~department may pay an hourly fee for the costs of conducting those~~
25 ~~hearings or a fixed annual fee negotiated biennially by the~~
26 ~~department and the State Office of Administrative Hearings to~~
27 ~~coincide with the department's legislative appropriations~~

1 ~~request.]~~

2 **(b)** ~~[(e)]~~ This section does not apply to a personnel
3 grievance hearing involving a department employee.

4 **(c)** ~~[(f)]~~ Unless otherwise agreed by all parties to a
5 contested case, a hearing conducted by the State Office of
6 Administrative Hearings on behalf of the department under this
7 section must be held in the department's administrative region in
8 which the conduct at issue in the case occurred.

9 SECTION 10. Section [402.073](#), Labor Code, is amended to read
10 as follows:

11 Sec. 402.073. HEARINGS CONDUCTED BY ~~[COOPERATION WITH]~~
12 STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) ~~[The commissioner~~
13 ~~and the chief administrative law judge of the State Office of~~
14 ~~Administrative Hearings shall adopt a memorandum of understanding~~
15 ~~governing administrative procedure law hearings under this~~
16 ~~subtitle conducted by the State Office of Administrative Hearings~~
17 ~~in the manner provided for a contested case hearing under Chapter~~
18 ~~2001, Government Code. The memorandum of understanding must~~
19 ~~address the payment of costs by parties to a medical fee dispute~~
20 ~~under Section [413.0312](#).~~

21 ~~[(b)]~~ In a case in which a hearing is conducted by the State
22 Office of Administrative Hearings under Section [413.031](#) or [413.055](#),
23 the administrative law judge who conducts the hearing for the State
24 Office of Administrative Hearings shall enter the final decision in
25 the case after completion of the hearing.

26 **(b)** ~~[(e)]~~ In a case in which a hearing is conducted in
27 conjunction with Section ~~[402.072,]~~ [407.046](#), [408.023](#), [415.0215](#), or

1 415.034, and in other cases under this subtitle that are not subject
2 to Subsection (a) [~~(b)~~], the administrative law judge who conducts
3 the hearing for the State Office of Administrative Hearings shall
4 propose a decision to the commissioner for final consideration and
5 decision by the commissioner.

6 (c) [~~(d)~~] The notice of the commissioner's order must
7 include a statement of the right of the person to judicial review of
8 the order.

9 (d) [~~(e)~~] In issuing an order under this section, the
10 commissioner shall comply with the requirements applicable to a
11 state agency under Section 2001.058, Government Code.

12 SECTION 11. Section 524.031, Transportation Code, is
13 amended to read as follows:

14 Sec. 524.031. HEARING REQUEST. If, not later than the 15th
15 day after the date on which the person receives notice of suspension
16 under Section 524.011 or is presumed to have received notice under
17 Section 524.013, the department receives at its headquarters in
18 Austin, in writing[~~, including a facsimile transmission,~~] or by
19 another manner prescribed by the department, a request that a
20 hearing be held, a hearing shall be held as provided by this
21 subchapter.

22 SECTION 12. Section 524.032(b), Transportation Code, is
23 amended to read as follows:

24 (b) A hearing shall be rescheduled if, before the fifth day
25 before the date scheduled for the hearing, the person who requested
26 the hearing requests a [~~request for a~~] continuance [~~from the person~~
27 ~~who requested the hearing is received in accordance with the~~

1 ~~memorandum of understanding adopted under Section 524.033(c)].~~
2 Unless both parties agree otherwise, the hearing shall be
3 rescheduled for a date not earlier than the 30th [~~fifth~~] day after
4 the date the request for continuance is granted [~~received~~].

5 SECTION 13. Section 524.034, Transportation Code, is
6 amended to read as follows:

7 Sec. 524.034. HEARING LOCATION. A hearing under this
8 subchapter shall be held:

9 (1) at a location designated by the State Office of
10 Administrative Hearings:

11 (A) in the county of arrest if the arrest
12 occurred in a county with a population of 300,000 or more; or

13 (B) in the county in which the person is alleged
14 to have committed the offense for which the person was arrested or
15 not more than 75 miles from the county seat of the county in which
16 the person was arrested; or

17 (2) [~~with the consent of the person and the~~
18 ~~department,~~] by videoconferencing technology as provided by
19 Section 2003.0551, Government Code [~~telephone conference call~~].

20 SECTION 14. Section 724.041(e), Transportation Code, is
21 amended to read as follows:

22 (e) A hearing shall be held:

23 (1) at a location designated by the State Office of
24 Administrative Hearings:

25 (A) in the county of arrest if the county has a
26 population of 300,000 or more; or

27 (B) in the county in which the person was alleged

1 to have committed the offense for which the person was arrested or
2 not more than 75 miles from the county seat of the county of arrest
3 if the population of the county of arrest is less than 300,000; or

4 (2) [~~with the consent of the person requesting the~~
5 ~~hearing and the department,~~] by videoconferencing technology as
6 provided by Section 2003.0551, Government Code [~~telephone~~
7 ~~conference call~~].

8 SECTION 15. The following provisions are repealed:

9 (1) Sections [2003.021\(c\)](#) and (d), [2003.024\(a-2\)](#),
10 [2003.046](#), [2003.050\(c\)](#), and [2003.108](#), Government Code;

11 (2) Section [22.018](#), Human Resources Code; and

12 (3) Sections [524.033\(c\)](#) and (d), Transportation Code.

13 SECTION 16. Effective September 1, 2023, Section [40.004](#),
14 Insurance Code, is repealed.

15 SECTION 17. Except as otherwise provided by this Act, this
16 Act takes effect immediately if it receives a vote of two-thirds of
17 all the members elected to each house, as provided by Section [39](#),
18 Article III, Texas Constitution. If this Act does not receive the
19 vote necessary for immediate effect, this Act takes effect
20 September 1, 2023.