

1 AN ACT relating to judicial review of state agency action.

2 WHEREAS, in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the
3 United States Supreme Court ruled that the federal judiciary's deference to the
4 interpretation of statutes by federal agencies as articulated in *Chevron U.S.A., Inc. v.*
5 *Natural Resources Defense Council, Inc.*, 487 U.S. 837 (1984), and its progeny was
6 unlawful; and

7 WHEREAS, the opinions in several cases decided by the Kentucky Supreme Court,
8 including without limitation, *Metzinger v. Kentucky Retirement Systems*, 299 S.W. 3d
9 541 (Ky. 2009), and *Kentucky Occupational Safety and Health Review Commission v.*
10 *Estill County Fiscal Court*, 503 S.W. 3d 924 (Ky. 2016), appeared to adopt the deference
11 articulated in the *Chevron* decision as a model for the review by the Kentucky Court of
12 Justice of a state agency's interpretation of statutes; and

13 WHEREAS, the General Assembly does not create state agencies with an
14 expectation that those agencies will possess a proficiency in interpreting a statute that is
15 superior to that of the Court of Justice; and

16 WHEREAS, the General Assembly does not believe that any state agency possesses
17 a proficiency in interpreting a statute that is superior to that of the Court of Justice; and

18 WHEREAS, the General Assembly believes that judicial deference to a state
19 agency's interpretation of a statute is inconsistent with the role of the Court of Justice
20 within the separation of powers provisions of the Constitution of Kentucky; and

21 WHEREAS, the General Assembly declares that de novo review is the only
22 appropriate standard for judicial review of a state agency's interpretation of a statute or
23 regulation;

24 NOW, THEREFORE,

25 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

26 ➡SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO
27 READ AS FOLLOWS:

1 (1) An administrative body shall not interpret a statute or administrative regulation
2 with the expectation that the interpretation of the administrative body is entitled
3 to deference from a reviewing court.

4 (2) The interpretation of a statute or administrative regulation by an administrative
5 body shall not be entitled to deference from a reviewing court.

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO
7 READ AS FOLLOWS:

8 A court reviewing an administrative body's action, including without limitation a
9 petition for judicial review of an administrative body's rulemaking or adjudicatory
10 actions, shall apply de novo review to the administrative body's interpretation of
11 statutes, administrative regulations, and other questions of law.

12 ➔Section 3. KRS 13B.150 is amended to read as follows:

- 13 (1) Except as provided in KRS 452.005, review of a final order shall be conducted by
14 the court without a jury and shall be confined to the record, unless there is fraud or
15 misconduct involving a party engaged in administration of this chapter. The court,
16 upon request, may hear oral argument and receive written briefs. Challenges to the
17 constitutionality of a final order shall be reviewed in accordance with KRS 452.005.
- 18 (2) The court shall not substitute its judgment for that of the agency as to the weight of
19 the evidence on questions of fact. The court may affirm the final order or it may
20 reverse the final order, in whole or in part, and remand the case for further
21 proceedings if it finds the agency's final order is:
- 22 (a) In violation of constitutional or statutory provisions;
 - 23 (b) In excess of the statutory authority of the agency;
 - 24 (c) Without support of substantial evidence on the whole record;
 - 25 (d) Arbitrary, capricious, or characterized by abuse of discretion;
 - 26 (e) Based on an ex parte communication which substantially prejudiced the rights
27 of any party and likely affected the outcome of the hearing;

- 1 (f) Prejudiced by a failure of the person conducting a proceeding to be
2 disqualified pursuant to KRS 13B.040(2); or
3 (g) Deficient as otherwise provided by law.
- 4 **(3) The court shall apply de novo review of the agency's final order on questions of**
5 **law. An agency's interpretation of a statute or administrative regulation shall not**
6 **be entitled to deference from a reviewing court.**