

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Administrative Regulation)

915 KAR 1:090. Advertising.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing restrictions on advertising, marketing, and signage for cannabis businesses. This administrative regulation establishes those restrictions.

Section 1. Advertising by Cannabis Businesses.

(1) Cannabis businesses shall not advertise medicinal cannabis sales in print, broadcast, online, by paid in-person solicitation of customers, or by any other advertising device, except that cannabis businesses may:

- (a) Place appropriate signs on their property identifying their business;
- (b) Place listings in business directories;
- (c) Place listings in trade or medical publications;
- (d) Sponsor health or not-for-profit charity or advocacy events; and
- (e) Maintain an informational Web site and social media presence as provided in Section 2 of this administrative regulation.

(2) Cultivators, processors, and producers shall not display any signage, logos, products, or other identifying characteristics on the outside of their respective facilities to alert the public that medicinal cannabis is grown, processed, produced, or stored at the facility.

(3) A cannabis business shall not make any deceptive, false, or misleading assertions or statements on any advertising, advertising device, sign, listing, or informational material.

Section 2. Informational Web site and Social Media Presence.

(1) A cannabis business may maintain an informational Web site and social media presence that provides:

- (a) A description of their business and services;
- (b) A listing of medicinal cannabis or medicinal cannabis products cultivated, processed, produced, or sold by the cannabis business;
- (c) Educational materials and product information; and
- (d) Certificates of analysis provided by safety compliance facilities for its respective harvest batches and production batches.

(2) The Web site and social media presence may also provide contact information for the cannabis business and a listing of the dispensaries where its medicinal cannabis or medicinal cannabis products are sold, if applicable.

(3) A cannabis business shall provide the cabinet with a list of all informational Web site and social media accounts maintained by the cannabis business, including links to the respective webpages, and shall not block or prohibit the cabinet from accessing those informational Web site and any social media postings. A cannabis business shall continually update the list required under this provision and notify the cabinet of any changes within two (2) business days of the activation or deactivation of any informational Web site or social media account.

(4) An informational Web site or social media presence for a cannabis business shall not:

- (a) Contain statements that are deceptive, false, or misleading;
- (b) Contain any content that can reasonably be considered to target individuals under the age of eighteen (18), including images of minors, cartoons, toys, or similar images

- and items typically marketed towards minors, or references to products that are commonly associated with minors or marketed by minors;
- (c) Encourage the transportation of medicinal cannabis products across state lines or otherwise encourage illegal activity; and
 - (d) Display consumption of medicinal cannabis.
- (5) An informational Web site or social media presence for a cannabis business shall conspicuously display the following statements:
- (a) "Medicinal cannabis is for use by cardholders only"; and
 - (b) "Keep out of reach of children."
- (6) A cannabis business that maintains an informational Web site or social media presence shall utilize appropriate measures to ensure that individuals attempting to access the allowable content are eighteen (18) years of age or older.

Section 3. Removal of Objectionable and Non-conforming Advertising.

- (1) A cannabis business shall remove any advertising, advertising device, sign, listing, sponsorship, or online material that the cabinet determines to be in violation of this administrative regulation.
- (2) The cabinet shall provide written notice to a cannabis business of any violation of this administrative regulation and specify a reasonable time period for the cannabis business to remove any advertising, advertising device, sign, listing, sponsorship, or online material that the cabinet finds objectionable.

Section 4. Advertising to Other Cannabis Businesses.

- (1) Cultivators, processors, producers, or dispensaries may directly promote their business, services, medicinal cannabis, medicinal cannabis products, medicinal cannabis accessories, educational materials, and product information to other cultivators, processors, producers, or dispensaries.
- (2) A safety compliance facility shall only promote its medicinal cannabis testing services and other activities allowed by KRS 218B.125 to other cannabis businesses.

SAM FLYNN, Executive Director
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by March 18, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-

564-7476; fax 502-564-7091; email CHFSregs@ky.gov.