

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary (Amended After Comments)

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 **as well as listing the respective product prices and inducements allowed pursuant to 915 KAR 1:070, Section 5(5)**;
- (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 **in a manner that does not provide an educational benefit.**

(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: May 14, 2024

FILED WITH LRC: May 15, 2024 at 11:15 a.m.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes restrictions on advertising, marketing, and signage in regard to operations or establishments owned by cannabis businesses necessary to prevent the targeting of minors. In response to comments received by the cabinet, the Amended After Comments version of the administrative regulation clarifies that a cannabis business's informational website and social media presence may list their product prices and inducements allowed by 915 KAR 1:070, Section 5(5) as well as clarifies that consumption of medicinal cannabis shall not be displayed in a manner that does not provide an educational benefit.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140(1)(c)(18).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing restrictions on advertising, marketing, and signage in regard to operations or establishments owned by cannabis businesses necessary to prevent the targeting of minors. This administrative regulation sets out those restrictions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation provides the advertising restrictions for cannabis businesses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation:

Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes:

Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes:

Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects cannabis businesses that have applied for and subsequently received licenses to conduct medicinal cannabis activities in the commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Cannabis businesses shall review and comply with the advertising restrictions contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Cannabis businesses will be able to properly provide cardholders and other cannabis businesses with information regarding their products, services, and educational materials.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce the advertising restrictions. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating cannabis business advertising.

(b) On a continuing basis:

It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce the advertising restrictions. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating cannabis business advertising.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State general funds provided by the commonwealth.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce the advertising restrictions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied. All cannabis businesses will be treated equally.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 218B.140(1)(c)(18).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

This administrative regulation is promulgated by the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(a) Estimate the following for the first year:

Expenditures:The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating cannabis business advertising.

Revenues:This administrative regulation is not expected to generate revenue in the first year.

Cost Savings:The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating cannabis business advertising. This administrative regulation is not expected to generate revenue in subsequent years. The cabinet does not anticipate any cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

If its application is approved, a proposed cannabis business will locate within a city or county in the commonwealth and be subject to the advertising restrictions contained in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures:Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

Revenues:Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

Cost Savings:The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Licensed cannabis businesses.

(a) Estimate the following for the first year:

Expenditures:Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

Revenues:Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

Cost Savings:Due to the advertising restrictions established in KRS 218B.095(2) (f), cannabis businesses are not likely to spend as much on advertising as they otherwise would without restrictions in place.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. A portion of the estimated staffing costs will go toward regulating cannabis business advertising.

(b) Methodology and resources used to determine the fiscal impact:

As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

. The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services.

(b) The methodology and resources used to reach this conclusion:

As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system required by KRS 218B.140.