

FILED WITH LRC
TIME: 11:10 am
JAN 04 2024
Emily B Caudill
REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of the Secretary

3 (New Administrative Regulation)

4 915 KAR 1:090. Advertising.

5 RELATES TO: KRS Chapter 218B

6 STATUTORY AUTHORITY: KRS 218B.140

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

11 Section 1. Advertising by cannabis businesses.

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

15 (a) Place appropriate signs on their property identifying their business;

16 (b) Place listings in business directories;

17 (c) Place listings in trade or medical publications;

18 (d) Sponsor health or not-for-profit charity or advocacy events; and

19 (e) Maintain an informational website and social media presence as provided in Section

20 2.

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

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

6 Section 2. Informational website and social media presence.

7 (1) A cannabis business may maintain an informational website and social media
8 presence that provides:

9 (a) A description of their business and services;

10 (b) A listing of medicinal cannabis or medicinal cannabis products cultivated, processed,
11 produced, or sold by the cannabis business;

12 (c) Educational materials and product information; and

13 (d) Certificates of analysis provided by safety compliance facilities for its respective
14 harvest batches and production batches.

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

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

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

2 (a) Contain statements that are deceptive, false, or misleading;

3 (b) Contain any content that can reasonably be considered to target individuals under the
4 age of eighteen (18), including images of minors, cartoons, toys, or similar images and items
5 typically marketed towards minors, or references to products that are commonly associated with
6 minors or marketed by minors;

7 (c) Encourage the transportation of medicinal cannabis products across state lines or
8 otherwise encourage illegal activity; and

9 (d) Display consumption of medicinal cannabis.

10 (5) An informational website or social media presence for a cannabis business shall
11 conspicuously display the following statements:

12 (a) "Medicinal cannabis is for use by cardholders only"; and

13 (b) "Keep out of reach of children."

14 (6) A cannabis business that maintains an informational website or social media presence
15 shall utilize appropriate measures to ensure that individuals attempting to access the allowable
16 content are eighteen (18) years of age or older.

17 Section 3. Removal of objectionable and non-conforming advertising.

18 (1) A cannabis business shall remove any advertising, advertising device, sign, listing,
19 sponsorship, or online material that the cabinet determines to be in violation of this
20 administrative regulation.

21 (2) The cabinet shall provide written notice to a cannabis business of any violation of this
22 administrative regulation and specify a reasonable time period for the cannabis business to

1 remove any advertising, advertising device, sign, listing, sponsorship, or online material that the
2 cabinet finds objectionable.

3 Section 4. Advertising to other cannabis businesses.

4 (1) Cultivators, processors, producers, or dispensaries may directly promote their
5 business, services, medicinal cannabis, medicinal cannabis products, medicinal cannabis
6 accessories, educational materials, and product information to other cultivators, processors,
7 producers, or dispensaries.

8 (2) A safety compliance facility shall only promote its medicinal cannabis testing services
9 and other activities allowed by KRS 218B.125 to other cannabis businesses.

915 KAR 1:090

REVIEWED:

DocuSigned by:
Sam Flynn
7226208BAA56414

1/2/2024

Sam Flynn
Executive Director
Kentucky Medical Cannabis Program
Cabinet for Health and Family Services

Date

APPROVED:

DocuSigned by:
Eric Friedlander
0AFA1D8C15D6431

1/2/2024

Eric C. Friedlander
Secretary
Cabinet for Health and Family Services

Date

PUBLIC HEARING AND PUBLIC 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, KY 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 915 KAR 1:090
Agency Contact: Oran S. McFarlan, III
Phone Number: (502) 564-5313
Email: oran.mcfarlan@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-7476
Email: CHFSregs@ky.gov

(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.

(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? Explain why or why not. Tiering is not applied. All cannabis businesses will be treated equally.

FISCAL NOTE

Administrative Regulation: 915 KAR 1:090
Agency Contact: Oran S. McFarlan, III
Phone Number: (502) 564-5313
Email: oran.mcfarlan@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-7476
Email: CHFSregs@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? 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.

(d) How much will it cost to administer this program for subsequent years? 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.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Due to the advertising restrictions established in KRS 218B.095, cannabis businesses are not likely to spend as much on advertising as they otherwise would without restrictions in place.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Due to the advertising restrictions established in KRS 218B.095, cannabis businesses are not likely to spend as much on advertising as they otherwise would without restrictions in place.

(c) How much will it cost the regulated entities for the first year? Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies.* [KRS 13A.010(13)] 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, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.