

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF INSURANCE

1560 Broadway, Suite 850
Denver, Colorado 80202



AMENDED REGULATION 5-1-1

MASS MERCHANDISING OF PROPERTY AND LIABILITY INSURANCE

Section 1.	Authority
Section 2.	Background and Purpose
Section 3.	Applicability and Scope
Section 4.	Definitions
Section 5.	Mass Merchandising of Group Property and Liability Insurance
Section 6.	Mass Merchandising of Non-Group Property and Liability Insurance
Section 7.	Cancellation and Nonrenewal
Section 8.	Conversion
Section 9.	Maintenance of Records
Section 10.	Premium Rates
Section 11.	Experience Rating
Section 12.	Producers
Section 13.	Compulsory Participation Prohibited
Section 14.	Tie-In Sales Prohibited
Section 15.	Disclosure Required
Section 16.	Enforcement
Section 17.	Severability
Section 18.	Effective Date
Section 19.	History

Section 1. Authority

This regulation is promulgated pursuant to the authority of §10-1-109, C.R.S.

Section 2. Background and Purpose

The purpose of this regulation is to prescribe rules to prevent abuses in connection with the sale of property liability insurance in this state pursuant to mass marketing plans, while preserving for consumers the potential benefits of this form of marketing.

Section 3. Applicability and Scope

This regulation is in addition to, and not a substitution for, other applicable requirements of the Colorado insurance laws. It is not applicable to group life or group accident and health insurance or to marketing

methods other than mass merchandising as defined herein.

Section 4. Definitions

As used in this regulation:

- A. "Mass merchandising" means the marketing of property and liability insurance through the sponsorship and assistance of an eligible group for the benefit of the eligible members thereof.
- B. "Property and liability insurance" means all insurance to which the provisions of § 10-3-102(1)(a) and (c), C.R.S. apply.
- C. "Group property and liability insurance" means all property and liability insurance issued to an eligible group for the benefit of the eligible members thereof, under a single insurance program, without individual underwriting, on a guaranteed issue basis, subject to the provisions of Section 5.
- D. "Non-group property and liability insurance" means all property and liability insurance issued to individual members of an eligible group, with individual underwriting for determination of proper premium rates, on a guaranteed issue basis, subject to the provisions of Section 6.
- E. "Eligible group" means any organization or association of persons which has not been organized principally for the purpose of obtaining insurance under a mass merchandising plan. An eligible group may consist of members of a union, employees of a common employer, members of an association, and the like, or any class or classes thereof, as determined by the conditions pertaining to employment or membership. Any such association must have been in existence for at least two (2) years prior to the purchase of insurance under a mass merchandising plan.
- F. "Eligible members" means all the employees or members, in good standing, of an eligible group.
- G. "Employees" means all active employees of a common employer, including proprietors, partners and directors, who are engaged in at least thirty (30) hours of employment per week. The term may apply to one or more subsidiaries or affiliates.
- H. "Eligible member insured" means an eligible member of an eligible group who is provided insurance coverage under a mass merchandising plan.

Section 5. Mass Merchandising of Group Property and Liability Insurance

Group property and liability insurance may be issued in Colorado under a mass merchandising plan provided the following conditions are complied with:

- A. At the inception date of the group mass merchandising plan, the group must consist of at least 50 eligible members of which at least 50% said eligible members must agree in writing to

participate in the mass merchandising plan at the expiration of existing insurance. At all times thereafter at least 50% of all eligible members must participate in the mass merchandising plan.

B. Insurance coverage must be provided to all eligible members of the eligible group desiring to participate in the mass merchandising plan, unless at least one of the reasons for cancellation or nonrenewal listed in paragraph A of Section 7 is known to exist.

C. Each eligible member insured must be issued the same form of policy, varying only as to the amounts of insurance coverage and limits of liability; except that, in the case of automobile insurance, uniform limits for bodily injury and property damage perils may be established and uniform comprehensive, collision and other supplemental coverages may be made optional.

D. Insurance must be provided either by individual policies, or individual certificates issued under a master policy and subject to the same terms and conditions as therein contained, to each subscribing member of the group.

Section 6. Mass Merchandising of Non-Group Property and Liability Insurance

Non-group property and liability insurance may be issued in this state under a mass merchandising plan providing the following conditions are complied with:

A. All subscribing members must be eligible members of an eligible group, but the provisions of paragraph A of Section 5 regarding the minimum number of eligible members and percentage of participation shall not apply to mass merchandising of non-group property and liability insurance.

B. Insurance coverage must be provided to all eligible members of the eligible group desiring to participate in the mass merchandising plan at a premium rate based upon the applicant's proper classification unless at least one of the reasons for cancellation or nonrenewal listed in paragraph A of Section 7 is known to exist.

C. Insurance must be provided by individual policies to each subscribing member.

Section 7. Cancellation and Non-Renewal

A. Insurance coverage provided an eligible member insured under a mass merchandising plan for any line of business may be canceled or nonrenewed pursuant to Colorado insurance laws and regulation and the terms of the insurance contract.

B. All mass marketing plans shall provide the eligible member insured under such plan with an opportunity to purchase individual equivalent coverage from the same insurer or one of its affiliates upon termination of employment or membership or upon the discontinuance of the mass marketing plan. The failure of the eligible group to remit premiums when due shall not be regarded as non-payment of premium by an eligible member insured under any mass merchandising plan, unless such insured shall have been given written notice of such failure to remit and has not paid such premium by the later of: (a) thirty (30) days after such notice; or (b)

the due date of such premium remittance under the mass merchandising plan.

C. Any notice of cancellation or non-renewal of any coverage of an eligible member insured under a non-group property and liability insurance plan shall be accompanied by a notice that, at his or her request, the insurer will afford a reasonable opportunity to the eligible member insured and/or the eligible group to present facts in opposition to cancellation or non-renewal.

Section 8. Conversion

A. Every policy of mass merchandised property and liability insurance shall contain a provision that if the eligible member insured's employment or membership in the eligible group is terminated or if the mass merchandising plan is terminated, the eligible member insured shall be entitled to:

1. Continue his or her insurance coverage at the then existing premium rate for thirty (30) days after such termination upon payment of the premium; and

2. After the expiration of the 30 day period, the insurer, or one of its affiliates, if any, shall provide the eligible member insured an individual policy affording the same or similar coverage. The insured shall return the application, provided by the insurer and payment of premium within the thirty (30) day period provided above, providing the member insured is qualified for insurance coverage under any insurance program currently filed by the insurer or any of its affiliates, with the Colorado Division of Insurance; or

3. If such person is not so eligible for insurance coverage with the insurer or its affiliates, the insurer shall render him or her all reasonable assistance to obtain insurance from other sources. As to motor vehicle insurance coverage, the insurer's assistance will include, where applicable, making available and processing an application for the Colorado Motor Vehicle Insurance Plan, if so desired by the applicant.

B. The premium for any individual insurance policy issued by the insurer pursuant to this section shall be at the insurer's then customary rate applicable to the coverage provided and to the class of risk to which the insured belongs on an individual basis.

C. The failure of the eligible member insured to exercise his or her conversion privileges under this Section shall be treated as a voluntary termination of the coverage by the eligible member insured.

Section 9. Maintenance of Records

Every insurer writing insurance under mass merchandising plans shall keep and maintain separate statistics for each classification of insurance within such plans, to include but not limited to complete records of premium income, losses and expenses, and adding thereto appropriate expense factors for acquisition, advertising, tax liabilities, legal, accounting, data processing and research and development expense. Said statistics from each of the above-listed factors shall be used to promulgate the premium

rates and rating plans and to insure that the costs of the mass merchandising plans are in no way transferred to the rates of individuals who are not insured under such plans.

Section 10. Premium Rates

Premium rates under a mass merchandising plan must not be excessive, inadequate or unfairly discriminatory. Rates shall not be deemed to be unfairly discriminatory because different premiums result for policyholders with like exposures, but different expense factors, or like expense factors, but different loss exposures, so long as the rates reflect the difference with reasonable accuracy. Rates shall not be deemed to be unfairly discriminatory if they are averaged broadly among persons insured under a mass merchandising plan.

Section 11. Experience Rating

Experience rating must be applied to any eligible group based on the experience of that group during the preceding insurance year or years.

Section 12. Producers

No person shall act as an insurance producer in connection with any mass merchandising plan for any kind of insurance unless such person is duly licensed as a producer for such kind of insurance. For the purposes of this regulation, the following activities, if performed by the sponsoring eligible group, shall not require a producer's license:

- A. Collection and remittance of premium.
- B. Distribution to eligible members of insurer prepared information pertaining to the mass merchandising plan.
- C. Administrative services in connection with the mass merchandising plan.

Section 13. Compulsory Participation Prohibited

No employee or member shall be subject to any penalty, coercion, intimidation, or be discriminated against because of nonparticipation in any mass merchandising plan.

Section 14. Tie-In Sales Prohibited

No insurer shall sell insurance pursuant to a mass merchandising plan if the purchase of insurance available under such plan is contingent upon the purchase of any other insurance, product or service, or if the purchase or price of any other insurance, product or service is contingent upon the purchase of insurance available under such plan. This provision shall not be deemed to prohibit the reasonable requirement of safety devices, such as heat detectors, lightning rods, theft prevention equipment, and the like.

Section 15. Disclosure Required

Every insurer or producer selling insurance, pursuant to a mass merchandising plan shall, prior to sale, provide full and fair disclosure to all prospective eligible member insureds, of all essential features of such plan, whether favorable or unfavorable, including, but not limited to, premium rates, benefits, duration of coverage, conversion privileges, and policyholder services.

Section 16. Enforcement

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of all applicable sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws, which include the imposition of fines and/or suspension or revocation of license.

Section 17. Severability

If any provisions of this regulation or its application to any person or circumstances are for any reason held to be invalid, the remainder of the regulation shall not be affected in any way.

Section 18. Effective Date

This regulation shall take effect January 1, 2005.

Section 19. History

Originally issued as Regulation 72-8, effective April 1, 1972.
Renumbered as Colorado Regulation 5-1-1 on June 1, 1992.
Amended Regulation effective January 1, 2002.
Amended Regulation effective April 1, 2002.
Sections 2, 3, 7, 18 and 19 amended effective February 1, 2004.
Sections 7 and 18 amended effective January 1, 2005.