

**PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-05-09
DEFENSE EXPENSES WITHIN THE LIMIT OF LIABILITY PROVISIONS**

Chapter 45-05-09 is created as follows:

Section

<u>45-05-09-01</u>	<u>Defense Expenses Within Limit of Liability Prohibited - Exceptions</u>
<u>45-05-09-02</u>	<u>Policies Within Which Defense Expenses Within Limit of Liability Permitted</u>
<u>45-05-09-03</u>	<u>Notice Required</u>
<u>45-05-09-04</u>	<u>Acknowledgment</u>
<u>45-05-09-05</u>	<u>Defense-Only Policies Excepted</u>

45-05-09-01. Defense expenses within limit of liability prohibited - Exceptions.

No admitted insurer shall issue or renew a policy of liability insurance in this state that includes defense expenses within the limit of liability unless the policy's minimum limit per occurrence or the aggregate liability limit for all liability risks and coverages under the policy is at least:

1. One million dollars for primary coverages; and
2. One hundred thousand dollars for secondary coverages.

"Primary coverages" means the main or intended coverage of the policy.

"Secondary coverages" means coverage which is in addition to the main policy by endorsement, rider or additional coverages.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-02. Policies within which defense expenses within limit of liability permitted.

Defense expenses within the limit of liability provisions are allowed only within the following types of policies or coverages within a policy with the limits of liability as required in section 45-05-09-01:

1. Cyber liability;
2. Fiduciary liability;
3. Directors and officers liability;
4. Errors and omissions liability;
5. Employer practices liability;
6. Medical malpractice liability;
7. Pollution liability;
8. Liquor liability;
9. Nuclear liability;
10. Fidelity bond;
11. Umbrella and excess policies; and
12. Other policies permitted within the discretion of the insurance commissioner.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-03. Notice required.

The fact that defense expenses are within the limit of liability must be disclosed on the declaration page in at least twelve-point bold print.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-04. Acknowledgment.

The applicant or insured must sign a disclosure form as part of the application or renewal process wherein the applicant or insured acknowledges that the subject policy has limits of liability which may be reduced or completely eliminated by payments for legal defense costs and claims expenses.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-05. Defense-only policies excepted.

Defense-only policies are excepted from the requirements of chapter 45-05-09.
A defense-only policy is a policy which is purchased solely to provide a legal defense
and is not meant to provide indemnification or to be a source of payment for damages to
a third party.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02