

CHAPTER 45-05-09
DEFENSE EXPENSES WITHIN THE LIMIT OF LIABILITY PROVISIONS

Section

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

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

1. 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:

- a. One million dollars for primary coverages; and
- b. One hundred thousand dollars for secondary coverages.

2. No admitted insurer shall issue or renew a policy of liability insurance in this state that includes defense expense allowance provision 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:

- a. Three hundred thousand dollars for damages and one hundred thousand dollars for defense for primary coverages except medical malpractice and legal malpractice;
 - (1) Three hundred thousand dollars for damages and fifty thousand dollars for defense for primary coverages for legal malpractice only;
 - (2) One million dollars for defense for primary coverages for medical malpractice; and
- b. One hundred thousand dollars for either damages or defense 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; amended effective October 1, 2019.

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 or defense costs are limited by an allowance must be disclosed on the declaration page in at least twelve-point bold print.

History: Effective April 1, 2015; amended effective October 1, 2019.

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 or claims expenses. Only one signed disclosure is required regardless of whether the disclosure is attached to an application or a renewal.

History: Effective April 1, 2015; amended effective October 1, 2019; April 1, 2022.

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