

## Confidentiality Guidelines for Property & Casualty Insurance Filings in SERFF

In Nebraska, SERFF rate and form filings and their supporting documentation are available for public inspection, subject to the Nebraska Public Records Act exceptions at NE Statute 84-712 to 84-712.09. According to the Department of Insurance Bulletin CB-50 (Amended April 1, 2013), the following exceptions are protected from disclosure:

- Consent-to-rate filings for individual policyholders;
- Credit scoring plans; and
- Filings that have been submitted and have met the appropriate criteria for confidentiality.

Any company that wishes to keep information confidential under NE Statute 84-712.05(3) must demonstrate that:

- The information is a trade secret meeting the five-factor test from *Burlington Northern Railroad Co. v. Omaha Public Power Dist.*, 888 F.2d 1228 (8<sup>th</sup> Cir. 1989);
- Or
- The information would give a specified advantage to specified business competitors and the interests served by nondisclosure outweigh any public purpose served by disclosure. See AG Opinion 92068, April 27, 1992 and AG Opinion 97033, June 4, 1997.

Other exceptions at 84-712 to 84-712.09 may apply. It is the filer's burden to designate exactly which sections of the filing should be treated as confidential, request confidentiality and prove that an exception listed at NE Statute 84-712 to 84-712.09 applies.

More Information about NE Statute 84-712.05(3):

The Nebraska Public Records Act specifies that except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents of or belonging to this state. NE Statute 84-712.01(1). The Department has discretion to keep information confidential if it is either a trade secret or proprietary/commercial information which, if disclosed, would give advantage to competitors and serve no public purpose. NE Statute 84-712.05(3).

The Nebraska District Court defined "trade secret" in *Burlington Northern Railroad Co. v. Omaha Public Power Dist.*, 888 F.2d 1228 (9<sup>th</sup> Cir. 1989) (finding that a Burlington Northern contract satisfied the trade secret exemption at NE Statute 84-712.05(3) because it contained a rate setting formula for use in ongoing business). There are five requirements for a trade secret: (1) that the trade secret may consist of a "formula, pattern, device or compilation of information which is used in one's business, and which give him an opportunity to obtain an advantage over competitors who do not know or use it," (2) that the trade secret must be "for continuous use in the operation of the business," (3) that it may "relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates, or other concessions in a price list or catalog, or a list of specialized customers, or a method of bookkeeping or other office management," (4) that the trade secret must be secret and not generally known to the public or the industry, and (5) that the factors to be considered in determining whether a trade secret exists relate to the efforts of the owner to keep the information secret and its competitive value if disclosed.

The Nebraska Attorney General interprets the “commercial information” exemption in AG Opinion 92068, April 27, 1992 (“The mere assertion by an agency that some unknown business competitor may gain some unspecified advantage by disclosure of information does not provide an adequate basis for nondisclosure. Rather a finding that a specified competitor (or competitors) may gain a demonstrated advantage by disclosure is required to invoke the exception under NE Statute 84-712.05(3)”), and AG Opinion 97033, June 4, 1997 (emphasizing the need to name specific competitors which might gain an advantage and specify the nature of the advantage which could be gained by disclosure).