

SSN IN THE DAKOTAS

Across the United States, many government agencies are struggling with two competing interests. On one hand, there is the belief that government agencies should be transparent and provide the public with as much information as possible. On the other hand, many agencies have access to information that is highly personal and should be kept private, as well as information that could be used to steal someone's identity or engage in criminal activity.

In the world of UCC filing, this conflict is addressed in a variety of ways. Many of the filing offices involved with the filing and searching of UCC records have rules in place (statutory or administrative) that prohibit the filing of any documents containing personal information, such as social security numbers, accounts numbers, telephone numbers, birth dates, etc. Some filing offices will outright reject any documents that are submitted if they contain this type of information. Other offices may accept a filing that contains personal information, but will redact the information prior to providing copies of the filing to the public.

There are two filing offices that take a totally different approach. Both North Dakota and South Dakota have provisions that require a UCC-1 filing to provide either the debtor's social security number or federal employer identification number (FEIN). However, despite the fact that the information is required to be provided during the filing process, both states do take proactive action to remove the information from filings prior to providing copies of UCC records to the public when a search is conducted.

NORTH DAKOTA

Since 2016, North Dakota has mandated the electronic filing of UCC records. Section 41-09-87 of North Dakota's Article 9 statute (the equivalent to section 9-516 of the model act) provides that the filing office may reject a UCC filing that is "entered into the Secretary of State's online filing system" if the record does not contain the social security number or the Internal Revenue Service taxpayer identification number of the debtor".



To ensure compliance with this section, the secretary of state's UCC filing system contains a data field for the required information, and it will not allow a filer to submit a UCC filing without completing the field during the filing process. It is important to note that while the social security number or FEIN is required when filing, UCC records that are uncovered during a search will not contain this information. Instead, the secretary of state's office will redact the social security number or FEIN prior to making copies of the UCC filings available to parties searching the UCC index.

SOUTH DAKOTA

South Dakota also requires the debtor's social security number or FEIN to be included on a UCC filing. However, their statutory approach differs from that of North Dakota. Rather than utilizing section 9-516 and making the absence of the social security number or FEIN a cause for rejection of the filing, South Dakota instead requires the inclusion of the social security number or FEIN as a component of legal sufficiency.

In South Dakota, section 57A-9-502 provides that a financing statement is legally sufficient only if it provides "the name of the debtor and either the social security number or the Internal Revenue Service taxpayer identification number of the debtor". Therefore, while the filing office has no authority to reject the filing due to the absence of the information, the filer risks having the UCC financing statement itself be deemed legally insufficient. However, South Dakota's online filing system requires the debtor's social security number or FEIN to be entered as part of the filing process.

Similar to North Dakota, while the social security number or FEIN is required when filing, UCC records that are uncovered during a search will not contain this information. Instead, the Secretary of State's office will redact the social security number or FEIN prior to making copies of the UCC filings available to parties searching the UCC index.



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