South Dakota's Situs Advantages Over Illinois

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INTRODUCTION

South Dakota has emerged as the leading jurisdiction for modern trust planning in the United States, setting the gold standard in legal innovation, asset protection, and fiscal stability. This white paper explores the unique advantages of South Dakota's trust laws–most notably, its early abolition of the Rule Against Perpetuities (RAP), comprehensive privacy protections, and cutting-edge statutory mechanisms such as directed trusts, trust protectors, and decanting. These legislative advancements have established South Dakota as the premier location for perpetual and multigenerational trusts.

Illinois, by contrast, only began modernizing its trust code in 2020 with the enactment of the Illinois Trust Code–decades after South Dakota built out its directed trust, trust protector, decanting, and privacy statutes. Even where Illinois has since added comparable statutory tools, it lacks South Dakota's depth of case law, regulatory experience, and market infrastructure, and it continues to trail meaningfully on creditor protection, quiet trusts, taxation, and fiscal footing. This paper provides a detailed comparative analysis, highlighting the statutory, financial, and administrative advantages that continue to position South Dakota ahead of Illinois in trust law and practice.

PERPETUAL TRUSTS

South Dakota stands at the forefront of trust situs jurisdictions, setting the benchmark for trust law reform in the United States. In 1983, South Dakota became the pioneering state to abolish the Rule Against Perpetuities (RAP), a bold move that opened the door for the creation of dynasty trusts capable of lasting in perpetuity. By eliminating the time limits imposed by the RAP, South Dakota offers unparalleled estate planning opportunities, allowing families to preserve and transfer wealth across generations, free from the traditional restrictions that exist in other states. The statutory provision enabling this, SDCL § 43-5-8, has empowered South Dakota as a premier destination for perpetual trusts, securing its dominance in the field.

Illinois did not permit perpetual-duration trusts until 1997–fourteen years after South Dakota–and only for trusts holding personal property, under a provision that requires

the governing instrument to affirmatively opt out of the Rule Against Perpetuities and grant the trustee an unrestricted, unlimited power of sale. That provision was recodified in the 2020 Illinois Trust Code and now appears at 760 ILCS 3/1401–1404. The added drafting conditions mean Illinois' perpetual-trust option is narrower and less automatic than South Dakota's, and Illinois trusts holding real property outright do not enjoy the same unqualified perpetual treatment. [760 ILCS 3/1401–1404]

Not only did South Dakota lead in abolishing the RAP, but it also spearheaded further innovation with the adoption of the Trust Protector statute in 1997. This statute, codified in SDCL § 55-1B-6, revolutionized trust management by introducing a mechanism to ensure flexibility for future generations. A Trust Protector can be vested with broad powers, including the ability to amend trust terms, remove and replace trustees, and resolve disputes, all while preserving the original intent of the grantor. This foresight allows trusts to remain adaptable in the face of changing circumstances, ensuring their resilience over time.

Illinois did not codify trust protector and directing-party provisions until the Illinois Trust Code took effect on January 1, 2020–23 years after South Dakota's 1997 statute. Illinois' framework, now found at 760 ILCS 3/808–809, defines trust protectors, investment trust advisors, and distribution trust advisors as categories of "directing party" and extends liability protection to an "excluded fiduciary" that follows their direction. While this brings Illinois' statute closer to South Dakota's on paper, it remains untested by the decades of case law, trust company practice, and regulatory familiarity that back South Dakota's mature Trust Protector regime. [760 ILCS 3/808–809]

STRENGTH OF STATE

On the basis of its solvency in five separate categories, the Mercatus Center's last published fiscal-condition ranking placed South Dakota second among U.S. states, with between 4.76 and 6.78 times the cash needed to cover short-term obligations, revenues exceeding expenses by 2 percent, an improving net position of $106 per capita, and a net asset ratio of 0.34, with long-term liabilities of just 8 percent of total assets, or $650 per capita. That fiscal strength has held up since: South Dakota carries a Aaa/AAA credit rating from Moody's land S&P, reaffirmed as recently as

2025, and the South Dakota Retirement System was reported as essentially 100% funded in its June 2024 valuation–one of the best-funded public pension systems in the country.

Illinois' fiscal position was far weaker on the same measures–a cash ratio of just 0.67, a budget deficit near 7% annually, a worsening net position, and long-term liabilities well above the national average, with unfunded pension liabilities among the highest of any state. [Mercatus Center, Ranking the States by Fiscal Condition, 2018 Edition (the series' final installment; FY2016 data)] Illinois' finances have since improved: the state has received ten consecutive credit-rating upgrades since 2021, including Moody's move from A3 to A2 in October 2025, driven by a growing rainy-day fund and a reduced bill backlog. Even so, Moody's and other rating agencies continue to flag Illinois' roughly $144 billion in unfunded pension liabilities–a structural burden with no comparable counterpart in South Dakota, where the state pension system is fully funded–as an ongoing constraint on the state's fiscal outlook. [Moody's Investors Service, October 2025]

Even accounting for Illinois' recent ratings momentum, its last published net asset ratio stood at –0.43, versus South Dakota's 0.34—a balance-sheet gap that ratings upgrades alone do not close, particularly given Illinois' continued pension underfunding. For trust administration, where fiscal predictability and tax stability matter over decades rather than budget cycles, South Dakota's combination of a top-tier credit rating, a fully funded state pension system, and a constitutional bar on new taxes remains materially stronger than Illinois' improving but still strained finances.

STATE INCOME AND CAPITAL GAINS RATES

South Dakota does not impose a state income tax, whether on individuals or corporations. This policy, integral to the state's financial framework, is embedded in a constitutional prohibition on the imposition of new taxes or the increase of existing taxes without specific voter or legislative authorization.

Article XI, Section 14 of the South Dakota Constitution expressly bars the creation or expansion of taxes unless there is a voter-approved initiative or the proposed measure secures a two-thirds supermajority vote in both the House and Senate of the South Dakota Legislature. This constitutional safeguard against tax increases reflects a long-

standing commitment to maintaining a favorable tax environment, aimed at promoting economic growth, attracting businesses, and preserving individual wealth within the state. As a result, South Dakota has become a jurisdiction of choice for businesses and high-net-worth individuals seeking a tax-efficient domicile.

In contrast, Illinois presents a challenging environment for individuals and businesses due to its high state income and capital gains taxes. Individuals pay a flat 4.95% income tax rate, while corporations face a substantially higher effective rate: a 7% corporate income tax plus a 2.5% Personal Property Replacement Tax, for a combined 9.5%–among the highest corporate income tax burdens of any state. This high tax burden can deter investment and economic growth, making Illinois a less attractive location for financial activities. [35 ILCS 5/201(b)(14), (c), (d)]

In addition to high taxes, Illinois faces severe fiscal challenges, often resorting to increasing tax rates to cover budget deficits. This trend creates an unpredictable financial environment, further discouraging long-term financial planning and investment. The state's heavy reliance on income and capital gains taxes, coupled with its fiscal instability, makes Illinois a less favorable jurisdiction for those seeking to optimize their financial strategies and maintain higher net returns.

The Illinois Constitution does not provide robust safeguards against new taxes or tax increases. Illinois voters rejected a 2020 constitutional amendment that would have replaced the flat tax with a graduated structure, leaving the flat tax in place, but the legislature otherwise retains broad authority to raise rates by simple majority vote–unlike South Dakota, where new or increased taxes require either a voter-approved initiative or a two-thirds supermajority in both legislative chambers. This asymmetry contributes to Illinois' reputation for tax uncertainty relative to South Dakota's constitutionally anchored stability.

Overall, Illinois' high state income and capital gains tax rates, combined with its fiscal instability and lack of constitutional protections against tax increases, make it a less attractive jurisdiction for trusts and investment compared to states with more favorable tax environments.

PRIVACY

Under South Dakota law, trust documents that would otherwise become part of the public record in judicial proceedings are subject to a permanent seal of privacy. Pursuant to South Dakota Codified Laws (SDCL) § 21-22-28, this privacy protection is automatically applied, ensuring that trust-related documents remain confidential indefinitely. Once the seal is in place, it persists in perpetuity, offering a unique and robust layer of privacy for settlors, beneficiaries, and trustees involved in trust matters.

This statutory framework serves as a significant advantage for individuals and families seeking to safeguard sensitive financial and personal information from public disclosure. Unlike other jurisdictions where court records related to trust proceedings may be accessible to the public, South Dakota's automatic and perpetual seal of privacy provides a high degree of protection. This feature has made South Dakota a preferred jurisdiction for the establishment and administration of trusts, particularly for those who prioritize confidentiality.

In Illinois, trust documents that become part of any judicial proceeding are not automatically sealed and can be accessed by the public. To achieve any level of privacy, parties involved must petition the court to seal the records, which is not guaranteed and must demonstrate good cause. This absence of automatic privacy places a considerable burden on trustees and beneficiaries who wish to keep their financial matters confidential. [760 ILCS 3/813]

The lack of automatic and perpetual privacy protections for trust documents in Illinois makes it a less attractive jurisdiction for establishing trusts. The state's approach requires proactive and often complex legal actions to maintain the confidentiality of trust-related information, thereby exposing sensitive data to potential public scrutiny unless specific court orders are obtained. This significant gap in privacy measures contrasts sharply with jurisdictions that offer more secure and automatic privacy guarantees, highlighting Illinois' inadequacy in this regard.

CREDITORS CLAIMS

If the settlor is foreseeably solvent, South Dakota trusts are shielded from new claims of creditors of the settlor after two years of a transfer to the trust. A window of six months from discovery of the transfer is provided for existing claims, if longer. For self-settled trusts (for the benefit of the settlor) that are "qualified dispositions," there are exceptions for debts of spousal/child support and the division of marital property existing before the transfer. For third-party trusts (not self-settled), there are no such exceptions. [SDCL § 55-1-44] [SDCL § 55-16-10; 16]

Illinois' statutes do not offer the concise and favorable lookback periods that are available in South Dakota. The lookback period in Illinois is four years, creating an extended window during which creditors can challenge transfers to trusts. This prolonged exposure increases the risk for individuals seeking to protect their assets from future creditors. Illinois law provides that creditors can reach trust assets if the transfer to the trust was made with the intent to defraud creditors. The burden of proving the intent can be a significant hurdle, making asset protection less reliable. [740 ILCS 160/5]

Illinois law is particularly unfavorable when it comes to self-settled trusts. In Illinois, assets transferred to a self-settled trust remain accessible to creditors of the settlor. This means that any trust established for the benefit of the settlor offers no protection from the settlor's creditors, negating the benefits of such trusts for asset protection. [735 ILCS 5/2-1402]

Illinois provides exceptions similar to South Dakota for debts related to spousal and child support, but the state's broader creditor-friendly stance makes it more difficult to shield assets effectively. This lack of comprehensive protection can be especially problematic for individuals with complex financial situations or significant personal liabilities.

ASSET PROTECTION

Illinois lacks the comprehensive statutory protections that South Dakota offers. In South Dakota, the law thoroughly addresses numerous arguments made in court cases and disputes, weaknesses caused by the Restatement of Trusts, inadvertent or ill-advised actions by trust settlors and beneficiaries, withholding mandatory distributions to beneficiaries, and vulnerable provisions and drafting errors in trust documents. This comprehensive approach significantly enhances asset protection in South Dakota. [SDCL § 55-1-25, 32, 33, 38, 39]

Illinois does not rank favorably in asset protection compared to South Dakota, which consistently scores high in national rankings for asset protection. South Dakota's top-tier status is supported by its detailed and robust statutory framework designed to protect trust assets comprehensively. In contrast, Illinois' asset protection capabilities are significantly weaker, reflecting its less comprehensive legal framework for trust asset protection.

QUIET TRUSTS

There are detailed provisions in the South Dakota statute for the trust settlor, trust instrument and trust advisors (i.e., trust protector) to restrict or eliminate information to trust beneficiaries and to keep the trust instrument and trust actions quiet. The South Dakota statute directly addresses the ability to restrict the right of a beneficiary to receive a copy of the trust instrument and the right of the settlor, trust protector or trust advisor to retain the power to change the beneficiaries' rights to trust information. [SDCL § 55-2-13]

In contrast, Illinois does not have comparable statutory provisions. Illinois law generally requires that beneficiaries be kept informed about the trust and their rights under it. This lack of flexibility in withholding information can undermine the privacy and confidentiality that some settlors desire. The inability to create truly quiet trusts in Illinois means that beneficiaries must be informed about the trust's existence and their entitlements, which can lead to potential conflicts and a lack of discretion.

Illinois' failure to provide statutory provisions for quiet trusts similar to those in South Dakota represents a considerable disadvantage for individuals seeking confidentiality in their trust arrangements. The state's legal framework mandates beneficiary transparency, limiting the ability to restrict information and maintain discretion. For those prioritizing privacy and control over trust information, Illinois' trust laws fall short, making it a less attractive jurisdiction compared to South Dakota's robust and flexible approach to quiet trusts.

SPECIAL PURPOSE ENTITIES

South Dakota is the only state providing express legislative support for Special Purpose Entities. The 2011 law specifically permits individuals to serve in trust roles (i.e., investment advisor, distribution advisor, trust protector) for a particular family through an entity (i.e., a limited liability company) for their liability protection without meeting formal Department of Banking regulations and requirements. This feature gives individuals more comfort in serving and taking on these trust advisor roles.

Illinois does not provide similar statutory support for SPEs in trust roles. The absence of explicit legislative recognition and protection for SPEs means that individuals serving as trust advisors in Illinois do not enjoy the same level of liability protection. This lack of statutory backing can expose advisors to greater legal and financial risks, making it less appealing for individuals to serve in these capacities within Illinois trusts.

Illinois' lack of express legislative support for Special Purpose Entities in trust roles significantly undermines its competitiveness as a jurisdiction for sophisticated estate planning. The state's failure to offer statutory liability protection and regulatory flexibility for SPEs places it at a clear disadvantage compared to South Dakota. For individuals and families seeking to establish trusts with innovative structures and enhanced advisor protection, Illinois' legal framework falls short, making it a less favorable option for trust administration and asset protection.

DIRECTED TRUSTS

In South Dakota, the directed trustee model is the predominant trust company structure, significantly limiting trustee fees while allowing trusted family advisors to control the distributions and investment decisions of trust assets. This model is highly efficient and cost-effective, providing clear advantages for trust administration. South Dakota trust assets under administration reached approximately $906 billion at year-end 2025, spread across 114 chartered trust companies (69 public and 45 private)–scale built substantially on the directed trust model South Dakota pioneered. [South Dakota Division of Banking; South Dakota Trust Association, 2025]

Illinois did not add statutory support for directed trusts until the Illinois Trust Code took effect in 2020, which now defines investment trust advisors, distribution trust advisors, and trust protectors as "directing parties" and shields a cooperating trustee as an "excluded fiduciary." [760 ILCS 3/808–809] The framework remains new relative to South Dakota's, however, and Illinois has nothing comparable to South Dakota's specialized trust company infrastructure or multi-decade regulatory track record administering directed trusts at scale.

Illinois' late adoption of a directed trust framework–nearly a quarter-century after South Dakota—means trustees, advisors, and courts there have far less practical experience applying it. South Dakota's head start, its specialized trust company base, and its Division of Banking's deep regulatory familiarity with directed structures continue to make it the more established and predictable jurisdiction for directed trust administration.

RELIABILITY

In re Cleopatra Cameron Gift Trust, 931 N.W.2d 244 (S.D. 2019), the South Dakota Supreme Court affirmed a circuit court's decision concluding that the validity of a trust's spendthrift provision prohibiting direct payments of a trust beneficiary's child support obligation to her ex-husband was indeed recognized by South Dakota law. The court effectively sided with the trustees who had stopped paying support

claims to the ex-husband because those payments had been mandated when the trust was previously sitused in California. This case is widely accepted as one of the most favorable creditor protection cases in recent history.

South Dakota's legal framework strongly supports the enforceability of spendthrift provisions in trusts, providing trustees and beneficiaries with a high level of protection against creditor claims. This is critical for individuals seeking to protect their assets and ensure that trust distributions are managed according to their wishes, without interference from external claims.

Illinois, on the other hand, has a less favorable stance towards spendthrift trusts. The protections offered under Illinois law are not as comprehensive, leaving trust assets more vulnerable to creditor claims. This lack of robust protection can be particularly problematic for beneficiaries who need assurance that their trust assets will be safeguarded against external claims.

Illinois' failure to provide robust creditor protection and enforceable spendthrift provisions makes it a far less attractive jurisdiction for trust administration compared to South Dakota. The South Dakota Supreme Court's decision in In re Cleopatra Cameron Gift Trust highlights the significant advantages of South Dakota's legal framework in protecting trust assets from creditor claims. For individuals seeking to establish trusts with strong asset protection, South Dakota offers a clear legal advantage over Illinois. The deficiencies in Illinois' trust laws and judicial support underscore the need for substantial reforms to improve its competitiveness as a trust jurisdiction.

FORETHOUGHT

South Dakota reviews its trust law statutes annually and provides guidance on updating the laws through its highly effective Governor's Task Force on Trust Administration Review and Reform which is very responsive to the legal and advisor landscape. Examples of new trust laws in recent years in South Dakota include Community Property Trusts in 2016 (allowing nonresidents to get a full step-up in income tax basis of assets upon the death of one spouse), the 2016 Family Advisor (allowing for trusted family advisors to participate on the trust advisor team without taking on the fiduciary

responsibility), 2006/2008 Purpose Trusts of unlimited duration (trusts for pets, vacation homes or any non-charitable purpose without a beneficiary), and the 2025 addition of the tax trust advisor as a recognized directed trust fiduciary role under SDCL Chapter 55-1B, allowing a family's own tax advisor to serve as a trust advisor with authority over tax-related decisions alongside the existing investment trust advisor and distribution trust advisor categories. [SDCL § 55-17-5; SDCL §§ 55-1B-4, 55-1B-13 (2025 S.B. 69, eff. July 1, 2025)]

In stark contrast, Illinois does not have a comparable mechanism for regularly updating its trust laws. The absence of a dedicated task force means that Illinois' trust statutes are not reviewed or revised with the same frequency or foresight as those in South Dakota. This lack of proactive updates can result in outdated laws that do not meet the current needs of trustees, beneficiaries, or advisors.

Illinois' lack of proactive updates to its trust laws, the absence of Community Property Trusts, Family Advisor provisions, and Purpose Trusts of unlimited duration make it a far less competitive jurisdiction compared to South Dakota. South Dakota's innovative and regularly updated trust statutes provide significant advantages in terms of tax planning, flexibility, and modern trust management. For individuals seeking the most advantageous and forward-thinking trust environment, Illinois falls short, highlighting the need for substantial legal reforms to match the progressive approach seen in South Dakota.

DECANTING

South Dakota boasts the most flexible and highly ranked trust decanting statute in the nation. This statute allows for the expansion of an existing trust to a fully discretionary trust, providing the ability to distribute assets for any reason or purpose. Additionally, it permits the inclusion or exclusion of any beneficiaries, allowing both current and future beneficiaries to be changed. This flexibility offers significant opportunities for future planning concerning estate, gift, and income tax purposes for a family. [SDCL § 55-2-15]

Illinois enacted its own decanting statute in 2012, later folded into the Illinois Trust Code as Article 12 (760 ILCS 3/1201–1227) in 2020. It permits a trustee with discretion to distribute trust property to change situs, modify certain administrative provisions, and adjust some beneficial interests, but on a narrower two-tier model than South Dakota's: under "expanded discretion" a trustee may not add new current beneficiaries or eliminate a beneficiary's vested interest, and under "limited discretion" the resulting trust's beneficial interests must remain substantially similar to the original. [760 ILCS 3/1201–1227]

South Dakota's decanting statute allows for a broad range of modifications, enabling trustees to respond dynamically to the evolving needs of beneficiaries and changing financial circumstances. This includes the ability to convert a trust into a fully discretionary trust, which can be crucial for effective estate planning and asset management.

Because Illinois' decanting statute constrains a trustee's ability to add or remove beneficiaries and, in many cases, requires the resulting trust to mirror the original's beneficial interests, Illinois trustees have measurably less latitude than South Dakota trustees to restructure a trust in response to changing family circumstances or new tax planning opportunities.

One of the standout features of South Dakota's decanting statute is the ability to include or exclude beneficiaries, both current and future. This provides trustees with the crucial ability to respond to changes within the family structure or financial needs, ensuring that the trust remains relevant and effective over time.

Illinois' decanting statute, while a genuine modern tool, remains narrower than South Dakota's on the dimensions that matter most for multigenerational planning– the ability to add or exclude beneficiaries and to convert a trust to fully discretionary terms. South Dakota's broader decanting authority continues to give trustees and families more room to adapt a trust over time without resorting to court intervention.

PREMIUM TAX ON PRIVATE PLACEMENT LIFE INSURANCE

For trusts that purchase private placement life insurance, South Dakota has among the lowest insurance premium tax at 8 bps (.008%) on premiums in excess of $100,000 for both policies held by the trust or in a limited liability company (LLC) owned by the trust. [SDCL § 10-44-2]

Illinois imposes much higher insurance premium taxes, making it a less favorable jurisdiction for trusts involving PPLI. The insurance premium tax rate in Illinois is significantly higher, which increases the overall cost of maintaining life insurance policies within trusts. This higher tax burden can erode the financial benefits of using life insurance in estate planning and wealth management strategies.

The low insurance premium tax in South Dakota provides substantial savings and makes it easier to structure trusts and LLCs efficiently. This financial advantage allows trustees and beneficiaries to allocate more resources towards the growth and protection of trust assets rather than towards taxes. Additionally, it enhances the attractiveness of South Dakota as a jurisdiction for private placement life insurance programs, which are often used by high-net-worth individuals for sophisticated estate planning.

Illinois, with its higher insurance premium taxes, imposes greater financial constraints on trusts and LLCs. This increased tax liability can discourage the use of Illinois as a situs for trusts, particularly for those involving significant life insurance components. The higher costs associated with Illinois trusts make them less competitive and less appealing for wealth management and estate planning.

CONCLUSION

South Dakota's forward-thinking approach to trust legislation, coupled with its strong fiscal foundation and commitment to privacy, provides unparalleled advantages for successful trust planning. The state's legal infrastructure supports innovation, flexibility, and long-term wealth preservation in ways that few–if any–other jurisdictions can match. Illinois has modernized its own trust code since 2020, but its statutory advancements are recent and unproven relative to South

Dakota's decades of legal and administrative depth, and Illinois continues to trail on tax treatment, fiscal footing, and privacy protection.

For families, trustees, and advisors seeking the optimal environment for establishing and administering long-term trusts, South Dakota offers a clear and compelling choice. The combination of statutory strength, favorable tax treatment, and administrative efficiency makes it the jurisdiction of choice for modern trust architecture. Illinois, unless it embraces substantial reforms, will remain at a distinct disadvantage in the evolving landscape of trust law.

Illinois has narrowed some of these gaps since 2020, when the Illinois Trust Code brought its directed trust, trust protector, and decanting provisions closer to South Dakota's. But Illinois adopted these tools decades after South Dakota did, and statutory text alone does not replicate South Dakota's decades of case law, regulatory experience, and specialized trust company infrastructure. Combined with Illinois' higher taxes, weaker creditor protection, and lack of quiet trust or automatic privacy statutes, Illinois remains the less competitive jurisdiction for sophisticated, multigenerational trust planning.

South Dakota, by contrast, has spent over four decades continuously refining its trust statutes through a standing legislative task force, giving it an unmatched combination of legal maturity, administrative depth, and market scale. For those seeking the most established and adaptable trust jurisdiction in the country, South Dakota remains the clear choice.

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