South Dakota's Situs Advantages Over New Hampshire

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INTRODUCTION

Both South Dakota and New Hampshire have strong trust laws and tax benefits that favor the high-net-worth client. A comprehensive comparison of the two states' trust laws reveals many similarities, which is itself a testament to New Hampshire's determination to be a top-tier trust jurisdiction. The more telling points of contrast lie in New Hampshire's fiduciary services industry narrative and its historical evolution. It is imperative that wealth planning professionals and advisors understand not only the differences in trust law and how they affect clients and beneficiaries, but also the larger political and economic landscape that may directly or indirectly affect clients in each jurisdiction. Trusts established in favorable jurisdictions provide the most effective means of wealth transfer across generations, but without long-term stability, even the most favorable laws today may be immaterial tomorrow.

South Dakota has historically instituted some of the most progressive trust laws in the country. Each term, the governor assembles a new trust task force whose sole purpose is to work with state legislators to proactively monitor industry trends and adjust state law accordingly. This collaboration is unique to South Dakota and gives trust industry leaders a direct hand in the development of trust law.

This commitment and support from the highest levels of state government continually strengthen South Dakota's position as the top destination for trust situs. Grantors, beneficiaries, and their trusted advisors are well served establishing trust structures in South Dakota.

TRUST FRIENDLY STATES

In 1983, South Dakota was the first state to recognize the advantages of dynasty trusts by allowing trusts to last perpetually for all assets. [SDCL § 43-5-8] As an estate planning tool, the ability for a trust to exist across multiple generations without terminating allows those trust assets to grow without the taxation that comes with the trust's termination and distribution.

New Hampshire, by contrast, did not effectively end its rule against perpetuities until trusts created on or after January 1, 2004, under legislation enacted in 2003. [N.H. RSA 564-B:4-402A]

The 21-year gap between the two states is significant–not only because it reflects South Dakota's head start as a leader in the trust industry, but because of when each repeal occurred relative to a major piece of federal tax legislation. South Dakota abolished the Rule Against Perpetuities (RAP) in 1983, a decade in which lawmakers were also getting creative about closing perceived loopholes in the federal tax code. Among the mechanisms that came under scrutiny was the use of trusts to concentrate, preserve, and perpetuate wealth across multiple generations without triggering estate tax at each generational transfer. The result was the Generation-Skipping Transfer Tax, or GSTT: an additional tax on a transfer of property that skips a generation, or on a gift or bequest to a beneficiary (other than a spouse) who is at least 37½ years younger than the donor. The GSTT closed the loophole that had allowed wealthy individuals to gift and bequeath property to subsequent generations without paying estate tax at every step. The GSTT rate remains a flat 40% today. [26 U.S.C. Ch. 13]

The modern GSTT applies to transfers made after October 23, 1986–the day after President Reagan signed the Tax Reform Act of 1986–with certain trusts that were already irrevocable as of September 25, 1985 grandfathered from the tax entirely. According to Dukeminier and Krier's widely cited history of perpetual trusts, Idaho, South Dakota, and Wisconsin were the only three states in the nation that had abolished the Rule Against Perpetuities before the GSTT took effect in 1986. [Dukeminier & Krier, The Rise of the Perpetual Trust, 50 UCLA L. Rev. 1303 (2003)] Idaho later reinstated a form of the rule for some purposes, but South Dakota's repeal has remained unconditional since 1983. The timing may prove significant in the event lawmakers or the IRS ever argue that dynasty trusts amount to a circumvention of federal transfer taxes.

Today, many states permit dynastic trust structures, but not without objection. Opposition to dynasty trusts continues to grow as lawmakers look to increase taxation on the wealthiest Americans, at both the state and federal level. Opponents argue that the use of dynasty trusts shifts the burden of funding public investment onto lower- and middle-income households, and there is an increasing level of scrutiny on the finances of the world's wealthiest individuals and families, with calls for greater transparency in the name of tax equity.

It is worth noting that the value of this planning has only grown: the federal reconciliation legislation signed in 2025 (the One Big Beautiful Bill Act) permanently set the unified federal estate, gift, and generation-skipping transfer tax exemption at $15 million per person ($30 million per married couple) effective January 1, 2026, indexed for inflation thereafter, with no scheduled sunset. That permanence makes a properly structured perpetual trust more valuable than ever, since assets placed in trust today can compound for generations entirely outside the GSTT and estate tax systems.

How do these factors affect the safety and long-term security of dynasty trust structures in South Dakota and New Hampshire? As calls to pass a federal RAP or invalidate state perpetual trust laws intensify, the rationale often relies on the theory that states are permitting or promoting tax avoidance–the legal practice of using tax provisions to reduce or avoid taxes that are not otherwise required. Repealing the RAP could be framed by critics as a form of tax-avoidance legislation, but that rationale is weaker in South Dakota's case, since the state's RAP was repealed three years before the GSTT was enacted. It cannot fairly be argued that South Dakota repealed the RAP as a response to a tax that did not yet exist–the same cannot be said of New Hampshire's 2004 repeal, which came nearly two decades after the GSTT was already in force. Dynasty trust structures are, on this basis, somewhat safer from future legal challenge in South Dakota than in New Hampshire.

Whether this timing ever becomes material to a legal challenge remains to be seen, but South Dakota's and New Hampshire's differing histories with the RAP are just one of the subtle contrasts that make up the larger trust services landscape. On dynasty trusts specifically, South Dakota's longer, unbroken history lends itself to greater confidence in the commitment, stability, and reliability of trusts sitused there.

RACE TO THE BANK

South Dakota began to position itself as a preeminent trust jurisdiction in the late 1990s, when then-Governor Bill Janklow issued a series of executive orders creating a state trust task force made up of trust and estate attorneys and trust industry executives. South Dakota already had the makings of an attractive trust jurisdiction–the ability to create a dynasty trust and no state income tax–representing significant

advantages over most states at the time. Once South Dakota became intentional about attracting trust business, the industry grew quickly. In 1996 there were just three trust companies chartered in South Dakota; today there are 114, holding combined trust assets under administration of approximately $906 billion as of year-end 2025. [South Dakota Division of Banking; South Dakota Trust Association, 2025] The industry supports several hundred South Dakotans employed directly by state-chartered trust companies, in addition to the broader ecosystem of accountants, attorneys, and financial advisors that has grown alongside it.

New Hampshire's trust industry evolved differently. Reforms began in 2003 and took a significant step forward with the Trust Modernization and Competitiveness Act of 2006. Proponents cited job creation and increased state tax revenue as rationale for swift, substantive changes to New Hampshire trust law, and the result was a fiduciary services industry that held over $500 billion in trust assets as of the most recently published figures (2017) –a number New Hampshire, unlike South Dakota, does not appear to update or publish on a routine basis. 2019 is where the New Hampshire trust story takes a twist.

When Senate Bill 98 was introduced in 2019, its path to passage was not smooth, and by the time lawmakers finished drafting it, the once-bipartisan enthusiasm for transforming the state into a trust haven had cooled. Rather than a straightforward expansion of trust law, the bill created a study committee to determine whether New Hampshire's trust legislation was having its intended effect and to identify any unintended consequences. The committee's findings do not appear to have been made public, and there is no clear evidence its work produced further legislative reform in the years since–a contrast with South Dakota's task force, which reliably produces new statutory refinements every year.

One structural difference between the two states is that South Dakota requires state-chartered trust companies to maintain a physical presence in the state, while New Hampshire trust companies may be located anywhere. In fact, New Hampshire's own banking commissioner has estimated that roughly three-quarters of New Hampshire trust companies are actually based out of state, with a number of the largest headquartered in Massachusetts rather than New Hampshire, and others based in New York, Washington,

D.C., Kansas, and even the United Kingdom. That dynamic creates competing priorities for New Hampshire: a strong desire to maintain a high volume of fiduciary services business, alongside a comparatively modest return in state revenue and in-state job creation.

While the fluctuating level of legislative support in New Hampshire may be understandable given these competing priorities, it stands in contrast to the consistent support the trust industry enjoys in South Dakota. The steady, well-considered evolution of South Dakota's trust laws is a significant factor in its success and a natural draw for high-net-worth and ultra-high-net-worth individuals and families around the world. New Hampshire has likewise shown a willingness to adjust and respond to industry trends, but will need to work through some growing pains along the way.

GETTING YOUR DAY IN COURT

New Hampshire has a dedicated trust docket that oversees complex trust litigation and reformation cases, established by the state's judicial branch in late 2013 and operative since 2014. It has since handled a number of complex cases for individuals and families needing judicial intervention in their trust matters. Other states, including Massachusetts, have moved to follow New Hampshire's lead, but New Hampshire still stands out for having a docket dedicated specifically to complex trust issues.

South Dakota has no court created specifically to handle trust litigation, but is nonetheless known for expeditious, well-respected opinions. Most notably, the South Dakota Supreme Court's ruling in In re Cleopatra Cameron Gift Trust dtd May 26, 1998, 931 N.W.2d 244 (S.D. 2019), is widely viewed as a persuasive authority on a state's ability to limit enforcement of a sister state's judgment against trust assets. In that case, a California family court had entered a valid order requiring both child support and spousal support payments from the trust; the question before the South Dakota Supreme Court was not whether the California order was valid, but whether it could be enforced directly against trust assets administered in South Dakota. The obligee was the beneficiary's ex-husband, enforcing a family-support judgment rather than an ordinary commercial debt, and South Dakota law does not allow a judgment of that kind to be enforced directly against a trust's assets. The decision was a

significant one for asset protection trust law, and makes clear that creditors–including former spouses holding family-support judgments–asserting claims against trusts administered in South Dakota are subject to South Dakota's own creditor protection and enforcement laws.

STRENGTH OF STATE

Similarities abound between South Dakota and New Hampshire trust law–from modern decanting and modification statutes to quiet trusts, no state income tax, and dynasty trusts–and both are excellent destinations for HNW and UHNW clients. The two states diverge more noticeably, however, in the fiscal health and economic strength each brings to the table.

On the basis of its solvency in five separate categories, the Mercatus Center's last published fiscal-condition ranking (its 2018 Edition, based on FY2016 data) 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. [Mercatus Center, Ranking the States by Fiscal Condition, 2018 Edition] That strength has held up since: South Dakota carries a Aaa/AAA credit rating from Moody's and S&P, reaffirmed as recently as 2025, and the South Dakota Retirement System was reported as essentially 100% funded in its June 2024 valuation.

The same 2018 Mercatus edition ranked New Hampshire 12th among U.S. states for fiscal health, with between 0.75 and 2.82 times the cash needed to cover short-term obligations, revenues exceeding expenses by 4 percent, and an improving net position of $413 per capita. Its net asset ratio of –0.02 indicated that New Hampshire had essentially no assets remaining after debts were paid. Long-term liabilities stood at 50 percent of total assets, or $2,555 per capita, with unfunded pension liabilities of $20.85 billion (27 percent of state personal income) and other post-employment benefit (OPEB) obligations of $2.14 billion (3 percent of state personal income). [Mercatus Center, Ranking the States by Fiscal Condition, 2018 Edition] New Hampshire's credit position remains solid today–current ratings stand at Aa1/AA+/

AA+ –but that still sits a tier below South Dakota's Aaa/AAA, and unlike South Dakota's fully funded pension system, New Hampshire's pension and OPEB obligations remain a real, if manageable, long-term liability.

New Hampshire and South Dakota both represent favorable jurisdictions for establishing and administering trusts to preserve and protect wealth across generations. When a side-by-side comparison of the two states' trust laws reveals so few differences, it is worth looking further into the history of trusts in each jurisdiction while weighing the current political and economic landscape. On stability and predictability, South Dakota maintains a modest edge over its Granite State counterpart.

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