

# **ELEVENTH ANNUAL ACTEC COMPARISON OF THE DOMESTIC ASSET PROTECTION TRUST STATUTES**

**UPDATED THROUGH AUGUST 2017**

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This August 2017 version of the chart updates the prior September 2016 chart and marks the twentieth anniversary of modern domestic asset protection trusts.

This chart includes both a new addition and a new omission from the DAPT community. Michigan enacted its DAPT statute which was effective March 8, 2017. Colorado has now been omitted as a DAPT state, based upon further analysis by commentators in that state.

This 2017 chart includes the new Michigan act, a new version of the New Hampshire act, clarifications and supporting cites for Alaska, Delaware, South Dakota, Tennessee, West Virginia, Wyoming, Utah, and Nevada's new DAPT cases. Also included below is a brief discussion of whether a resident of a non-DAPT state may successfully use a DAPT, and discussion of the proposed Uniform Voidable Transactions Act and its Comments relating to DAPTs. Included is a chart which provides the state law status of that Act.

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**John Roth** (Hawaii), **Evan Chambers** (Oklahoma), **Richard Franklin** (inter vivos QTIP trusts), and **George D. Karibjanian** (Uniform Voidable Transactions Act).

## INTRODUCTION

A domestic asset protection trust (hereinafter referred to as a “DAPT”) is generally an irrevocable trust with an independent trustee who has absolute discretion to make distributions to a class of beneficiaries which includes the settlor. The primary goals of DAPTs are asset protection and, if so designed, transfer tax minimization.

Prior to 1997, two states had statutory provisions which appeared to support the formation of DAPTs. In 1997, Alaska was the first state to enact a usable DAPT statute. In the twenty years since, fifteen other states have followed suit. Ohio’s 2013 statute, Mississippi’s 2014 statute, West Virginia’s 2016 statute, and Michigan’s 2017 statute are the most recently enacted additions to our chart. There are now seventeen states that allow for the formation of DAPTs.

Legislatures have taken different approaches. The original statutes are terse and only indicate a public policy (for example, Missouri). Some of the new statutes amend existing statutes, and others enact new “Acts”. Interest groups within the various states have influenced the extent of the asset protection provided by the statutes. Often a state’s enactments have followed a “camel’s nose in the tent” approach. The first statute may only provide minimal asset protection. Then, several years later the state legislature and interest groups become more comfortable with the DAPT approach, and more comprehensive provisions were enacted.

The DAPT chart includes three subjects which are designed to summarize developing case law dealing with DAPTs. At present, DAPT cases are few. However, it is inevitable that the courts will be asked to resolve controversies involving the interpretation and application of DAPT laws. So far, there are only five relevant DAPT cases, two involving Alaska’s statute, one involving Delaware’s statute, and two involving Nevada’s statute. The Alaska cases were mixed with fraudulent transfers, and the creditors prevailed. The Delaware case involved the application of a statute of limitations to bar the creditors, and the debtor prevailed. A Nevada case held that DAPT assets could not be reached for satisfaction of future spousal support claims and child support claims. A Utah case applied Utah law to a Nevada DAPT, rather than Nevada’s law, in a divorce action.

Planners will want to carefully review the DAPT cases as they are reported. These cases will provide guidance concerning how courts are interpreting a particular state’s DAPT law. In addition, often these cases will illustrate implementation errors which need to be avoided.

There are no known federal gift or estate tax cases involving DAPTs. However, the Service has issued two private letter rulings: PLR 9837007 (which held that contributions to an Alaska DAPT were completed gifts) and PLR 200944002 (which held that the assets of an Alaska DAPT would not be includible in the settlor’s gross estate). Revenue Ruling 2004-64, 2004-2 C.B. 7, held that a trustee’s discretion to reimburse the settlor for

income tax paid with respect to DAPT income would not alone cause inclusion of the trust assets in the settlor's estate. This revenue ruling is instructive of the Service's attitude with respect to DAPTs.<sup>1</sup>

If implemented correctly, the DAPT approach may be used successfully by residents of states with DAPT statutes. An interesting issue remains: whether nonresidents of DAPT states may form a DAPT under one of the DAPT state's laws and obtain the desired asset protection and tax benefits. The analysis of this issue involves the field of conflict of laws. The choice of law rules most frequently discussed in this area are two sections of the Restatement (Second) of the Law, Conflict of Laws. Section 273 discusses when the creditors of a beneficiary can reach the assets of a trust, and directs that this issue is governed by the law of the state chosen by the settlor in the trust instrument. However, cases in the foreign trust area, and the one DAPT case dealing with this subject, refer to section 270(a), which deals with the validity of an inter vivos trust. This section's test is whether the nonresident's state of residence has a "strong public policy" against DAPT asset protection. Since several cases have applied the section 270 rule, it will be important to explore just what is a "strong public policy." The fact that seventeen states now have DAPT statutes moves this approach from the eccentric anomaly category to an accepted asset protection and transfer tax minimization planning technique. DAPT states consist of thirty-nine percent of the geographical area of the United States and twenty percent of the population. As more and more states enact DAPT statutes, the conclusion that a non-DAPT state has a "strong public policy" against a DAPT trust seems less likely.

In non-DAPT states, statutory enactment of self-settled techniques which provide protection from creditors of the donor similarly detracts from the conclusion that the state has a "strong public policy" against a DAPT trust. For example, a new type of partial DAPT statute has emerged and has been referred to as the "Inter Vivos QTIP Trust." These are statutes which specifically abrogate the rule against self-settled spendthrift trusts for lifetime QTIP trusts. The non-DAPT states which have enacted these statutes include Arizona, Arkansas, Florida, Kentucky, Maryland, North Carolina, Oregon, South Carolina, and Texas.<sup>2</sup> In essence, these statutes provide that the assets of an inter vivos QTIP trust are not to be considered assets contributed by the settlor. As a result, the assets cannot be reached by creditors of the donor spouse after the death of the donee spouse.<sup>3</sup>

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<sup>1</sup> A thorough discussion of the tax consequences of DAPTs may be found in Shaftel, *IRS Letter Ruling Approves Estate Tax Planning Using Domestic Asset Protection Trust*, J. Taxation, Apr. 2010.

<sup>2</sup> Ariz. Rev. Stat. Ann. § 14-10505(E); Ark. Code Ann. § 28-73-505; Fla. Stat. § 736.0505(3); Ky. Rev. Stat. Ann. § 386B.5-020(8)(a); Md. Code Ann., Est. & Trusts § 14.5-1003; N.C. Gen. Stat. § 36C-5-505(c); Or. Rev. Stat. § 130.315(4); S.C. Code Ann. § 62-7-505(b)(2); Tex. Prop. Code Ann. § 112.035(g).

<sup>3</sup> Franklin, *Lifetime QTIPs—Why They Should be Ubiquitous in Estate Planning*, 50<sup>th</sup> Annual Heckerling Institute on Estate Planning; Nelson, *Seeking and Finding New Silver Patterns in a Changed Estate Planning Environment: Create Inter Vivos QTIP Planning*, ABA RPTE Section Spring Symposium (Chicago May 2014).

Another way in which some states have “placed their toe in the water” with respect to self-settled trust asset protection is to enact statutes which protect the assets in an irrevocable grantor trust from a creditor claim even though an independent trustee, in such trustee’s discretion, may reimburse the settlor for income tax resulting from assets in the trust. The non-DAPT states with these statutes include Arizona, Florida, Kentucky, Maryland, New Jersey, North Carolina, Oregon, New York, and Texas.<sup>4</sup> Similarly, Arizona protects the assets in a supplemental needs trust from the settlor’s creditors.

A section 529 plan is a statutory technique which allows a donor to place funds in a tax-free accumulation account for the educational purposes of the beneficiary. This is a self-settled technique because the donor may withdraw the funds (subject to a penalty). The following non-DAPT states provide asset protection for these accounts from the claims of a creditor of the donor: Colorado, Florida, Illinois, Louisiana, and New Jersey.<sup>5</sup>

Other types of self-settled techniques which provide protection against creditors of the donor exist in non-DAPT states. These techniques include the well-known homestead exemption in Florida, life insurance policies, annuity policies, and IRA accounts.

Enactment of asset protection for self-settled techniques such as the “Inter Vivos QTIP Trusts,” tax reimbursement provisions, supplemental needs trusts, 529 accounts, and other self-settled techniques, provide weight to the argument that those states do not have a “strong public policy” against self-settled trust asset protection, and therefore residents could form a DAPT under another state’s law. The same reasoning supports residents of DAPT states who use another DAPT state’s statute because of its superiority.

Reference to the map illustration on the last page of the chart illustrates the DAPT states, and the non-DAPT states that have enacted asset protection for self-settled techniques involving inter vivos QTIP trusts, tax reimbursement provisions, supplemental needs trusts, or section 529 accounts.

In addition to the two choice of law rules provided by the Restatement, a new choice of law rule has been inserted into the Uniform Fraudulent Transfer Act. In 2014, the Uniform Law Commission adopted amendments to the Uniform Fraudulent Transfer Act, including new Comments. The Act was renamed the Uniform Voidable Transactions Act.

New section 10 of the Uniform Voidable Transactions Act provides that the governing law for determining a voidable transaction is the state law of the debt’s principal residence. New Comment 8 to section 4 states that

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<sup>4</sup> Ariz. Rev. Stat. Ann. § 14-10505 (West 2017); Fla. Stat. Ann. § 736.0505(1)(c) (West 2017); Ky. Rev. Stat. Ann. § 386B.5-020 (Michie 2017); Md. Code Ann., Estates & Trusts § 14.5-1003 (2017); N.J. Stat. Ann. § NJSA3B:11-1b (West 2017); N.Y. Estates, Powers & Trusts Law § 7-3.1 (West 2017); N.C. Gen. Stat. § 36C-5-505 (2017); Or. Rev. Stat. § 130.315 (2017); Vernon’s Tex. Prop. Code Ann. § 112.035 (2017).

<sup>5</sup> C.R.S. 23-3.1-307.4; Fla. Stat. § 222.22; 15 ILCS 505/16.5, 735 ILCS 5/12-1001(j); La. R.S. 17:3096G; and N.J. Stat. § 18A:71B-41.1.

if a resident of a non-DAPT state which has enacted the Uniform Voidable Transactions Act creates a DAPT in a DAPT state, the transfer would be voidable.

Section 10 and the Comments of the Uniform Voidable Transactions Act have created considerable controversy.<sup>6</sup> The critics argue it is an inappropriate “back door” attempt to change well-established choice of law rules.<sup>7</sup>

As of the date of this publication, the Uniform Voidable Transactions Act has been enacted in fifteen states.<sup>8</sup> Two enacting states (Michigan and Utah) are also DAPT states. The Comments to the Uniform Voidable Transactions Act clarify that in such a situation the DAPT law prevails.<sup>9</sup> Two other states (Arkansas and Indiana) expressly rejected the Comments of the Uniform Voidable Transactions Act. Therefore, attorneys who represent clients in non-DAPT states will need to research whether their client’s state of residence is one of the presently eleven non-DAPT states that has adopted both section 10 and the Comments to the Uniform Voidable Transactions Act.

The DAPT chart below is designed to give the reader an easy and quick comparison of the various DAPT statutes. The intent of this chart is to provide an unbiased, objective, and non-marketing analysis. A “ranking” of the statutes is deliberately omitted in order to avoid any “marketing” taint.

A chart, by its very nature, is an oversimplification. The reader is urged to carefully analyze the provisions of a statute before implementing a DAPT.

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<sup>6</sup> For example, see the discussion in Karibjanian, Wehle, Jr., and Lancaster, *History Has Its Eyes on UVTA—A Response*; Steven Leimberg’s Asset Protection Planning E-mail Newsletter, dated April 18, 2016; Richard Nenko and Dan Rubin, *Uniform Voidable Transactions Act: Are Transfers to Self-Settled Spendthrift Trusts by Settlers in Non-APT States Voidable Transfers Per Se?*; Steven Leimberg’s Asset Protection Planning Newsletter, August 15, 2016; Kettering and Smith, *Comments to Uniform Voidable Transactions Act Should Not be Changed*, Steven Leimberg’s Asset Protection Planning Newsletter, August 25, 2016; George D. Karibjanian, *The Uniform Voidable Transactions Act Will Affect Your Practice*, 155 (5) *Trusts & Estates* 17 (May 2016); George D. Karibjanian, Richard W. Nenko & Daniel S. Rubin, *The Uniform Voidable Transactions Act: Why Transfers to Self-Settled Spendthrift Trusts by Settlers in Non-APT States Are Not Voidable Transfers Per Se*, *Bloomberg BNA Tax Management Estates, Gifts, and Trusts Journal*, Vol. 42, No. 4, July/Aug. 2017, p. 173.

<sup>7</sup> *Id.*

<sup>8</sup> See the chart provided by George D. Karibjanian titled *State Law Status of the Uniform Voidable Transactions Act*, as of June 1, 2017, and the illustration created by the National Conference of Commissioners on Uniform State Laws (both attached).

<sup>9</sup> Section 4, Comment 8, of the Uniform Voidable Transactions Act.

NO.	SUBJECT	ALASKA	MISSISSIPPI	OHIO	TENNESSEE
		DELAWARE	MISSOURI	OKLAHOMA	UTAH
		HAWAII	NEVADA	RHODE ISLAND	VIRGINIA
		MICHIGAN	NEW HAMPSHIRE	SOUTH DAKOTA	WEST VIRGINIA
					WYOMING
		Page No.	Page No.	Page No.	Page No.
1.	What requirements must trust meet to come within protection of statute?	1	12	23	34
2.	May a revocable trust be used for asset protection?	1	12	23	35
3.	Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	1	12	24	35
4.	What contacts with state are suggested or required to establish situs?	1	13	24	35
5.	What interests in principal and income may settlor retain?	2	13	25	36
6.	What is trustee's distribution authority?	3	14	25	36
7.	What powers may settlor retain?	3	14	26	37
8.	Who must serve as trustee to come within protection of statute?	3	14	26	37
9.	May non-qualified trustees serve?	3	15	26	38
10.	May trust have distribution advisor, investment advisor, or trust protector?	4	15	27	38
11.	Are fraudulent transfers excepted from coverage?	4	15	27	39
12.	Fraudulent transfer action: burden of proof and statute of limitations.	5	16	28	39
13.	Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?	5	16	28	39

NO.	SUBJECT	ALASKA	MISSISSIPPI	OHIO	TENNESSEE
		DELAWARE	MISSOURI	OKLAHOMA	UTAH
		HAWAII	NEVADA	RHODE ISLAND	VIRGINIA
		MICHIGAN	NEW HAMPSHIRE	SOUTH DAKOTA	WEST VIRGINIA
					WYOMING
		Page No.	Page No.	Page No.	Page No.
14.	Does statute provide an exception (no asset protection) for a child support claim?	5	17	28	40
15.	Does the statute provide an exception (no asset protection) for alimony?	6	17	29	40
16.	Does statute provide an exception (no asset protection) for property division upon divorce?	6	17	29	40
17.	Does statute provide an exception (no asset protection) for tort claims?	6	17	29	41
18.	Does statute provide other express exceptions (no asset protection)?	6	18	29	41
19.	Does statute prohibit any claim for forced heirship, legitime or elective share?	6	18	30	42
20.	Are there provisions for moving trust to state and making it subject to statute?	7	18	30	42
21.	Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	7	18	30	43
22.	Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?	7	18	30	43
23.	Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	7	18	30	43

	ALASKA DELAWARE HAWAII MICHIGAN	MISSISSIPPI MISSOURI NEVADA NEW HAMPSHIRE	OHIO OKLAHOMA RHODE ISLAND SOUTH DAKOTA	TENNESSEE UTAH VIRGINIA WEST VIRGINIA WYOMING	
NO.	SUBJECT	Page No.	Page No.	Page No.	Page No.
24.	Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	7	18	30	43
25.	Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?	7	19	31	43
26.	May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?	8	19	31	44
27.	Is a non-settlor beneficiary's interest protected from property division at divorce?	8	19	31	44
28.	Are due diligence procedures required by statute?	8	19	31	44
29.	Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?	8	19	31	45
30.	Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?	8	20	32	45
31.	Is the trustee given "decanting" authority to modify the trust?	9	20	32	45
32.	What is allowable duration of trusts?	9	20	32	46
33.	Does state assert income tax against DAPTs formed by non-resident settlors?	9	20	32	46
34.	Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	9	20	32	46

	ALASKA DELAWARE HAWAII MICHIGAN	MISSISSIPPI MISSOURI NEVADA NEW HAMPSHIRE	OHIO OKLAHOMA RHODE ISLAND SOUTH DAKOTA	TENNESSEE UTAH VIRGINIA WEST VIRGINIA WYOMING	
<b>NO.</b>	<b>SUBJECT</b>	<b>Page No.</b>	<b>Page No.</b>	<b>Page No.</b>	<b>Page No.</b>
35.	What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	10	21	32	47
36.	Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?	10	22	33	48
37.	Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?	11	22	33	48
38.	Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?	11	22	33	48
39.	Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?	11	22	33	48

SUBJECT	ALASKA	DELAWARE	HAWAII	MICHIGAN
	Citation: Alaska Stat. §§ 13.36.310, 34.40.110	Citation: Del. Code Ann. tit. 12, §§ 3570-3576	Citation: H.R.S. 554G	Citation: Mich. Comp. Laws 700.1041-.1050
	Effective Date: April 2, 1997	Effective Date: July 1, 1997	Effective Date: July 1, 2011	Effective Date: March 8, 2017
	URL: <a href="http://www.legis.state.ak.us">http://www.legis.state.ak.us</a>	URL: <a href="http://www.delcode.state.de.us">http://www.delcode.state.de.us</a>	URL: <a href="http://capitol.hawaii.gov/hrscurrent">http://capitol.hawaii.gov/hrscurrent</a>	URL: <a href="http://www.legislature.mi.gov">http://www.legislature.mi.gov</a>
<b>1. What requirements must trust meet to come within protection of statute?</b>	Trust instrument must: (1) be irrevocable; (2) expressly state AK law governs validity, construction, and administration of trust (unless trust is being transferred to AK trustee from non-AK trustee); (3) contain spendthrift clause. AS 34.40.110(a).	Trust instrument must: (1) be irrevocable; (2) expressly state that DE law governs validity, construction, and administration of trust (unless trust is being transferred to DE trustee from non-DE trustee); contain spendthrift clause. 12 Del. C. § 3570(11).	Trust must be irrevocable and expressly incorporate HI law covering the validity, construction, and administration of the trust.	Trust instrument must: (1) be irrevocable, (2) expressly state that MI law governs the validity, construction and administration of the trust, and (3) contain spendthrift clause. MCL 700.1042(aa).
<b>2. May a revocable trust be used for asset protection?</b>	No AS 13.36.368; AS 34.40.110(b)(2).	No 12 Del. C. § 3536(d)(3).	No	No
<b>3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?</b>	Yes, amendments enacted in: 2014, 2013, 2010, 2008, 2006, 2004, 2003, 2001, 2000, and 1998.	Yes, amendments enacted in: 2017, 2015, 2014, 2013, 2011, 2010, 2009, 2008, 2007, 2006, 2005, 2003, 2002, 2001, 2000, and 1998.	Statute did not provide an attractive option when first enacted in 2010. As of July 2011, however, the statute is much stronger, reflecting considerable legislative support for DAPTs.	This is the statute's first year. The legislature has generally been amenable to amendments to estate, trust and probate law promulgated by the Michigan State Bar's Probate and Estate Planning Section.
<b>4. What contacts with state are suggested or required to establish situs?</b>	Suggested: (1) some or all of trust assets deposited in state; (2) AK trustee whose powers include (a) maintaining records (can be non-exclusive), <i>(... cont'd)</i>	Required: (1) some or all of trust assets held in custody in state; (2) DE trustee whose powers include (a) maintaining records (can be nonexclusive), <i>(... cont'd)</i>	There must be at least one trustee who is a HI resident, or a bank or trust company that has HI as its principal place of business, and such trustee must materially <i>(... cont'd)</i>	Required: (1) at least one MI trustee (resident individual or corporation authorized to conduct trust business in MI), <i>(... cont'd)</i>
	ALASKA	DELAWARE	HAWAII	MICHIGAN

SUBJECT	ALASKA	DELAWARE	HAWAII	MICHIGAN
<i>(... cont'd)</i>	<i>(... cont'd)</i> (b) preparing or arranging for the preparation of income tax returns (can be non-exclusive); (3) part or all of the administration occurs in state, including maintenance of records. AS 13.36.035(c).	<i>(... cont'd)</i> (b) preparing or arranging for the preparation of income tax returns, (3) or, otherwise materially participates in the administration of the trust. 12 Del. C. § 3570(8).	<i>(... cont'd)</i> participate in administering the trust.	<i>(... cont'd)</i> (2) the MI trustee's usual place of business must be in MI (for a corporate trustee the primary trust officer's business location must be in MI), (3) some or all trust assets held in custody in MI, and (4) part of the trust administration must occur in MI. MCL 700.1042(r).
<b>5. What interests in principal and income may settlor retain?</b>	Settlor may retain interests in: (1) CRT; (2) total-return trust; (3) GRAT or GRUT; (4) QPRT; (5) IRA; and (6) ability to be reimbursed for income taxes attributable to trust; the distribution of income or principal in the discretion of another person; use or occupancy or real property or tangible personal property if in accordance with trustee's discretion. AS 34.40.110(b)(2) and (3), and (m).	Settlor may retain interests in: (1) current income; (2) principal, if paid pursuant to trustee's discretion, a standard or an advisor's direction; (3) CRT; (4) up to 5% interest in total return trust; (5) GRAT or GRUT; (6) QPRT; (7) qualified annuity interest; (8) ability to be reimbursed for income taxes attributable to trust; and (9) the ability to have debts, expenses and taxes of the settlor's estate paid from the trust. 12 Del. C. § 3570(11)(b).	Right to current income; up to 5% of principal annually; reimbursement for income taxes on trust income; ability to receive discretionary distributions in any amount. (Settlor may also serve as investment advisor.)	1) income, 2) CRT, 3) GRAT or GRUT, 4) principal if in the trustee's discretion or in accordance with a support provision, 5) QPRT, 6) ability to be reimbursed for income taxes, 7) ability to have debts, expenses and taxes of the settlor's estate paid from the trust, and 8) required minimum distributions from retirement accounts. MCL 700.1044(2).
	<b>ALASKA</b>	<b>DELAWARE</b>	<b>HAWAII</b>	<b>MICHIGAN</b>

SUBJECT	ALASKA	DELAWARE	HAWAII	MICHIGAN
<b>6. What is trustee's distribution authority?</b>	Discretion whether or not governed by a standard, which may be subject to a power to veto a distribution, a testamentary or lifetime nongeneral power of appointment or similar power. AS 34.40.110(b)(2),(m)(1).	(1) Discretion; (2) pursuant to a standard; or (3) pursuant to the direction of an advisor who in turn is acting pursuant to the advisor's discretion or a standard. 12 Del. C. § 3570(11)(b).	Discretion to distribute any amount of principal to settlor if trust agreement so authorizes	1) Discretion, 2) pursuant to a standard, or 3) pursuant to the direction of an advisor acting pursuant to the advisor's discretion or a standard. MCL 700.1044(2).
<b>7. What powers may settlor retain?</b>	Settlor may retain: (1) power to veto distributions; (2) non-general lifetime and testamentary powers of appointment; (3) right to appoint and remove trustees, trust protector, and advisors; and (4) right to serve as a co-trustee or advisor. AS 34.40.110(b)(2) and (f).	Settlor may retain: (1) power to veto distributions; (2) non-general lifetime and testamentary powers of appointment; (3) power to replace trustee/ advisor; and (4) power to reacquire trust assets in nonfiduciary capacity. 12 Del. C. § 3570(11)(b).	Veto power over distributions; non-general testamentary power of appointment; power to remove and replace trustees and advisors; testamentary power of appointment for debts, administration expenses, and estate/ inheritance taxes.	Settlor may retain: 1) Power to direct investment decisions, 2) power to veto distributions, 3) special power of appointment effective upon death, 4) remove and appoint trustees and advisors. MCL 700.1044(2).
<b>8. Who must serve as trustee to come within protection of statute?</b>	Alaska trustee not required, but suggested to establish situs. Resident individual or trust company or bank that possesses trust powers and has principal place of business in Alaska. AS 13.36.390(3).	Resident individual or a corporation whose activities are subject to supervision by Delaware Bank Commissioner, FDIC, or Comptroller of Currency. 12 Del. C. § 3570(8)(a).	Individual HI resident(s), other than the transferor, and/or a bank or trust company that has HI as its principal place of business.	1) Resident individual or 2) person authorized to conduct trust business in MI and subject to supervision by department of insurance and financial services, FDIC, Comptroller of the Currency, or OTS. MCL 700.1042(r).
<b>9. May non-qualified trustees serve?</b>	Yes AS 34.40.110(f),(g).	Yes, as a co-trustee. 12 Del. C. § 3570(8)(f).	Yes, as long as there is a permitted trustee.	Yes, as a co-trustee.
	<b>ALASKA</b>	<b>DELAWARE</b>	<b>HAWAII</b>	<b>MICHIGAN</b>

SUBJECT	ALASKA	DELAWARE	HAWAII	MICHIGAN
<p><b>10. May trust have distribution advisor, investment advisor, or trust protector?</b></p>	<p>Yes Trust instrument may provide for the appointment of a trust protector who has the powers, delegations, and functions conferred by the trust instrument. The trust instrument may provide for the appointment of an advisor to the trustee who: is only an advisor and not liable or considered to be a trustee or a fiduciary; or, is designated as a fiduciary and the trustee will be required to follow the directions of the advisor, and the trustee is not liable for the advisor's directions. Settlor may be advisor if does not have trustee power over discretionary distributions. AS 13.36.370, .375; AS 34.40.110(f),(g),(h).</p>	<p>Yes Trust may have one or more advisers (other than trustor) who may remove and appoint qualified trustees or trust advisers or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment adviser, including trustor. The term "adviser" includes a protector. 12 Del. C. § 3570(8)(c-d).</p>	<p>Yes Settlor may appoint one or more trust advisors or protectors, including advisors with power to (i) remove and appoint trustees, advisors, trust committee members, or protectors, (ii) direct, consent to, or disapprove of distributions from the trust, and (iii) serve as investment advisor.</p>	<p>Yes Advisor is a person who is given authority by the trust instrument to (i) remove, appoint (or both) trustees, (ii) direct, consent to, approve, or veto investment or distribution decisions. The term advisor includes trust protector. MCL 700.1042(a). The settlor may be an advisor as long as the advisor does not hold the power to direct distributions. MCL 700.1042(p)(iv).</p>
<p><b>11. Are fraudulent transfers excepted from coverage?</b></p>	<p>Yes Alaska has not adopted Uniform Fraudulent Transfer Act. Alaska statute only sets aside transfers made with intent to defraud. AS 34.40.110(b)(1).</p>	<p>As to creditors whose claims arise after the qualified disposition, only if an action is brought within four years of such qualified disposition and only if the qualified disposition was made with actual intent to defraud. UFTA applies to creditors whose claims exist at time of qualified disposition. 12 Del. C. § 3572(b).</p>	<p>Creditors can set aside only transfers made with actual intent to hinder, delay, or defraud.</p>	<p>For transfers made before the creditor's claim arose, only a transfer made with actual intent to defraud the creditor may be set aside. MCL 700.1045(2)(b). For other creditors, transfers made with constructive fraudulent intent may also be set aside.</p>
	ALASKA	DELAWARE	HAWAII	MICHIGAN

SUBJECT	ALASKA	DELAWARE	HAWAII	MICHIGAN
<p><b>12. Fraudulent transfer action: burden of proof and statute of limitations.</b></p>	<p>Clear and convincing evidence.  <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered. To qualify for the discovery exception, the existing creditor must: (i) demonstrate that the creditor asserted a specific claim against the settlor before the transfer; or (ii) within four years after the transfer file another action against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer.  <u>Future creditors:</u> Four years after transfer. AS 34.40.110(b)(1); AS 34.40.110(d).</p>	<p>Clear and convincing evidence.  <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.  <u>Future creditors:</u> Four years after transfer 12 Del. C. § 3572(b).</p>	<p>Claims must arise before the transfer is made and be brought within two years. See #16 regarding certain tort victims. Creditor has burden to show actual fraudulent intent by preponderance of evidence (or clear and convincing evidence in limited circumstances).</p>	<p>Clear and convincing evidence. MCL 700.1045(2)(c).  <u>Future Creditors:</u> Two years after transfers.  <u>Existing Creditors:</u> Two year after transfers or, if longer, one year after transfer was or could have been discovered if the existence of the claim or the identity of any person responsible was fraudulently concealed. MCL 700.1045(3).</p>
<p><b>13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?</b></p>	<p>No</p>	<p>No</p>	<p>No</p>	<p>Yes</p>
<p><b>14. Does statute provide an exception (no asset protection) for a child support claim?<sup>10</sup></b></p>	<p>Yes, if settlor was 30 days or more in default of making payment at time of transfer of assets to trust. AS 34.40.110(b)(4).</p>	<p>Yes 12 Del. C. § 3573(1).</p>	<p>Yes Protection is not available regarding family court-supervised agreement or order for child support.</p>	<p>Yes A transfer is not qualified if the transferor is more than 30 days behind on child support at the time of the transfers. MCL 700.1042(p)(iii).</p>
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<sup>10</sup> Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in the family law area.

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<b>15. Does the statute provide an exception (no asset protection) for alimony?</b>	No	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. 12 Del. C. § 3573(1).	Yes Protection is not available regarding family court-supervised agreement or order for support or alimony to the transferor's spouse or former spouse.	No
<b>16. Does statute provide an exception (no asset protection) for property division upon divorce?</b>	Yes, if assets were transferred to trust during or less than 30 days prior to marriage. Otherwise, assets are protected. AS 34.40.110(l).	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected. 12 Del. C. § 3573(1).	Yes Protection is not available regarding family court-supervised agreement or order for a division or distribution of property to the transferor's spouse or former spouse.	Yes, if assets were transferred to trust during or less than 31 days prior to the marriage unless the spouse consented to the transfer. MCL 700.1045(4)(b).
<b>17. Does statute provide an exception (no asset protection) for tort claims?</b>	No	Yes, but only for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer. 12 Del. C. § 3573(2).	No. But statute does not provide asset protection if the plaintiff suffered death, personal injury, or property damage on or before date of permitted transfer.	No
<b>18. Does statute provide other express exceptions (no asset protection)?</b>	No	No	Yes, secured loans to the transferor based on express or implied representations that trust assets would be available as security in the event of default; also, the transferor's tax liabilities to the State of Hawaii.	No
<b>19. Does statute prohibit any claim for forced heirship, legitime or elective share?</b>	Yes, assets excluded from augmented estate if transfer made more than 30 days before marriage or with spouse's consent. AS 13.12.205(b).	Yes 12 Del. C. § 3573.	Yes	No, but Michigan does not recognize forced heirship or legitime and the elective share does not apply to trust assets.
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<b>SUBJECT</b>	<b>ALASKA</b>	<b>DELAWARE</b>	<b>HAWAII</b>	<b>MICHIGAN</b>
<b>20. Are there provisions for moving trust to state and making it subject to statute?</b>	Yes AS 13.36.035; AS 13.36.043.	Yes 12 Del. C. § 3570(10), (11); 12 Del. C. § 3572(c); 12 Del. C. § 3575.	Yes	Yes MCL 700.1045(5).
<b>21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?</b>	Yes AS 34.40.110(a).	Yes 12 Del. C. § 3570(11)(c).	Yes	Yes MCL 700.1042(aa)(iii).
<b>22. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?</b>	No	Yes 12 Del. C. § 3572(g).	Yes	Yes MCL 700.1045(9).
<b>23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?</b>	Yes AS 34.40.110(i).	Yes 12 Del. C. § 3571.	Yes	Yes MCL 700.1044(1).
<b>24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?</b>	Yes, and also provides protection for funding limited partnerships and LLCs. AS 34.40.110(e).	Yes 12 Del. C. § 3572(d),(e).	Yes	Yes MCL 700.1045(7).
<b>25. Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?</b>	Yes AS 34.40.110(a).	Yes 12 Del. C. § 3570(11)(b)6).	Yes	Use of real property in a qualified personal residence trust is specifically authorized. MCL 700.1044(2)(i). Otherwise real or personal property not specifically authorized but the transferor's potential or actual use of principal is permitted if the use is the result of the exercise of the trustee's discretion. MCL 700.1044(2)(g).

<b>ALASKA</b>	<b>DELAWARE</b>	<b>HAWAII</b>	<b>MICHIGAN</b>
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SUBJECT	ALASKA	DELAWARE	HAWAII	MICHIGAN
<b>26. May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?</b>	Yes AS 34.40.113.	Yes 12 Del. C. § 3536(a); 12 Del. C. § 3570(11)(b)(9).	No	Yes MCL 700.1049.
<b>27. Is a non-settlor beneficiary's interest protected from property division at divorce?</b>	Yes, and may not be considered in property division. AS 34.40.110(1).	Yes, but may be considered in property division in certain instances. 12 Del. C. § 3536(a).	Yes, but may be considered in property settlement.	Yes MCL 700.1045(4)(a).
<b>28. Are due diligence procedures required by statute?</b>	Yes; affidavit required. AS 34.40.110(j).	No	No	Yes Absence of affidavit may be used as evidence but validity of transfer is not affected in any other way. MCL 700.1046.
<b>29. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?</b>	Yes AS 13.36.310(c).	Yes 12 Del. C. § 3574(b)(1)(a).	Yes, if the trustee has not acted with intent to defraud, hinder, or delay the creditor.	Yes MCL 700.1047(2)(a)(i).
<b>30. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?</b>	Yes AS 13.36.330.	Yes 12 Del. C. § 3329.	No	No A non-contestability clause is not enforced if the court finds that probable cause for institute the contest. MCL 700.7113.
	ALASKA	DELAWARE	HAWAII	MICHIGAN

<b>SUBJECT</b>	<b>ALASKA</b>	<b>DELAWARE</b>	<b>HAWAII</b>	<b>MICHIGAN</b>
<b>31. Is the trustee given “decanting” authority to modify the trust?</b>	Yes AS 13.36.157, .158, .159.	Yes 12 Del. C. § 3528.	No, but trustee of trust or holder of a non conforming power of appointment may conform to the statute.	Yes MCL 556.115a and 700.7820A.
<b>32. What is allowable duration of trusts?</b>	Up to 1,000 years. AS 34.27.051.	No limit for personal property, including LLC and LP interests, even if LLC or LP owns real property; otherwise, 110 years for real property. 25 Del. C. § 503.	No limitation. Rule against perpetuities does not apply to qualifying trusts.	No limit for personal property, including entity interests, even if entity owns real property, unless created pursuant to exercise of second power in which case a 360 year limit applies. Uniform Statutory Rule for directly held real estate.
<b>33. Does state assert income tax against DAPTs formed by non-resident settlors?</b>	No	No However, does impose its income tax upon trusts that accumulate income for Delaware residents. 30 Del. C. § 1631; 30 Del. C. § 1601(8); 30 Del. C. § 1636.	Trust is subject to HI income taxes generally, but not on income and capital gains accumulated for the benefit of non-residents.	No, except for income from real estate or business sources within MI.
<b>34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?</b>	Yes. Charging order is the exclusive remedy that a judgment creditor of a member or a member’s assignee. Other legal and equitable remedies are not available. Applies to single-member LLCs as well as to LLCs with more than one member. AS 10.50.380. Similarly, a charging order provides the exclusive remedy of a judgment creditor of a general or limited partner or assignee. Other legal and equitable remedies are not available. AS 32.11.340.	Yes, charging order is only remedy. 6 Del. C. § 17-703; 6 Del. C. § 18-703.	No	Yes MCL 449.1303(a) and 449.1703 (limited partnership) and MCL 450.4507 (LLC).
	<b>ALASKA</b>	<b>DELAWARE</b>	<b>HAWAII</b>	<b>MICHIGAN</b>

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<p><b>35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?</b></p>	<p>(1) Trustee petition and court discharge; or (2) six months after trustee provides report that adequately discloses claims. If the report fails to adequately disclose, then three years. If no report is provided, then no limitation period. AS 13.36.100.</p>	<p>Judicial accountings are not required unless the governing instrument so provides or are ordered by a court. Accountings are not res judicata except as to matters actually contested. A trustee will be discharged two years after a statement is sent to the beneficiary as to matters disclosed in the statement. A trustee that resigns, is removed, or otherwise ceases to act will be discharged 120 days after a statement is sent to the beneficiary. Otherwise, claims against the trustee are barred five years after i) the death, resignation or removal of the trustee, ii) the termination of the claimant beneficiary's interest or iii) the termination of the trust. Del. Ct. Ch. R. 129; 12 Del. C. § 3585.</p>	<p>Trustee filing and court discharge.</p>	<p>One year after trustee provides report that adequately disclosed the existence of potential claim. MCL 700.7905.</p>
<p><b>36. Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?</b></p>	<p>Yes. <i>Battley v. Mortensen</i>, 2011 WL 5025288 (Bankr. D.C. Alaska 2011), decided May 26, 2011, by the Alaska Bankr. Ct. This was the first reported case to deal with a DAPT. The court held that Mortensen's funding of the trust fell under Sec. 548(e) of the Bankruptcy Code as a fraudulent transfer to a self-settled trust made within 10 years prior to his bankruptcy filing.</p>	<p>Yes <i>TrustCo Bank v. Matthews</i>, 2015 WL 295373 (Del. Ch. Jan. 22, 2015). The Delaware Court of Chancery dismissed as time-barred most of the creditor plaintiffs' claims against three Delaware asset protection trusts. The court applied a conflict of laws analysis to determine the appropriate statute of limitations.</p>	<p>No</p>	<p>No</p>
	ALASKA	DELAWARE	HAWAII	MICHIGAN

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<p><b>37. Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?</b></p>	<p>Yes  <i>Waldron v. Huber (In re Huber)</i>, 493 B.R. 798, decided by the Bankr. Ct. for the W.D. Wash. on May 17, 2013. The court held the Alaska DAPT invalid under a conflict of laws analysis and concluded that Washington had a strong public policy against asset protection for self-settled trusts.</p>	<p>No</p>	<p>No</p>	<p>No</p>
<p><b>38. Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?</b></p>	<p>No</p>	<p>No</p>	<p>No</p>	<p>No</p>
<p><b>39. Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?</b></p>	<p>No</p>	<p>No</p>	<p>No</p>	<p>No</p>
	<p><b>ALASKA</b></p>	<p><b>DELAWARE</b></p>	<p><b>HAWAII</b></p>	<p><b>MICHIGAN</b></p>

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
	Citation: Miss. Code Ann. §§ 91-9-701—91-9-723	Citation: Mo. Rev. Stat. §§ 456.5-505	Citation: Nev. Rev. Stat. §§ 166.010-166.170	Citation: New Hampshire RSA 564-B:5-505A
	Effective Date: July 1, 2014	Effective Date: 1989	Effective Date: Oct. 1, 1999	Effective Date: Sept. 16, 2017  (RSA 564-D (the Qualified Dispositions in Trust Act), was effective Jan. 2, 2009, and was repealed as of Sept. 16, 2017)
	URL: <a href="http://www.lexisnexis.com/hottopics/mscode">http://www.lexisnexis.com/hottopics/mscode</a>	URL: <a href="http://www.moga.mo.gov">http://www.moga.mo.gov</a>	URL: <a href="http://www.leg.state.nv.us">http://www.leg.state.nv.us</a>	URL: <a href="http://www.gencourt.state.nh.us">http://www.gencourt.state.nh.us</a>
<b>1. What requirements must trust meet to come within protection of statute?</b>	Trust instrument must: (1) be irrevocable; (2) expressly state MS law governs validity, construction and administration of the trust; (3) contain a spendthrift clause	Trust instrument must: (1) be irrevocable; (2) contain a spendthrift clause; (3) have more than the settlor as a beneficiary; (4) settlor's interest must be discretionary.	Trust instrument must: (1) be irrevocable; (2) all or part of corpus of trust must be located in NV, domicile of settlor must be in NV, or trust instrument must appoint NV trustee; and (3) distributions to settlor must be approved by someone other than the settlor. NRS 166.040.	Trust instrument must: (1) be irrevocable; and (2) contain a spendthrift clause. RSA 564-B:5-505A(a).
<b>2. May a revocable trust be used for asset protection?</b>	No	No, except for a "qualified spousal trust" (QST), giving tenants by the entirety protection to certain trusts created by spouses. R.S.Mo. § 456.950. <i>In re Brewer</i> , 544 B.R. 177 (W.D. Mo. 2015), held that certain language disqualified a trust from QST status, which bar-sponsored legislation is expected to overturn at some point (presumably in 2017).	No NRS 166.040(1)(b).	No RSA 564-B:505(a).
<b>3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?</b>	No amendments.	Yes, amendments enacted in 2004, 2006, 2009, 2011, 2012, and 2014.	Yes. The Nevada Legislature approved amendments in 2007, 2009, 2011, and 2015.	Yes. Amendments enacted in 2011, 2014 and 2017 (complete restatement).
	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<p><b>4. What contacts with state are suggested or required to establish situs?</b></p>	<p>Required: (1) some or all of trust assets deposited in state; (2) MS trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.</p>	<p>Principal place of business or residence of trustee in designated jurisdiction, or presence of all or part of the administration in designated jurisdiction; statute includes procedure for transfer of principal place of business. RSMo § 456.1-108. Identifying a corporate trustee's branch in a particular state was sufficient to designate that state as the situs. <i>Hudson v. UMB Bank, N.A.</i>, 447 S.W.3d 714 (W.D. Mo. App. 2014).</p>	<p>Required: (1) all or part of assets are in state; (2) NV trustee whose powers include: (a) maintaining records, (b) preparing income tax returns; (3) all or part of administration in state. NRS 166.015. Identifying a corporate trustee's branch in a particular state was sufficient to designate that state as the situs. <i>Hudson v. UMB Bank, N.A.</i>, 447 S.W.3d 714 (W.D. Mo. App. 2014)</p>	<p>The NH Trust Code applies to a trust if the terms of the trust provide that NH's laws govern the trust's validity, interpretation or administration. RSA 564-B:1-102(b). NH law also applies to the administrative matters of a trust that has its principal place of administration in NH, unless the terms of the trust provide otherwise. RSA 564-B:1-102(c). A trust has its principal place of administration in NH if a trustee's principal place of business is in NH, the trustee is a NH resident, or all or part of the administration occurs in NH. RSA 564-B:1-108(a). <u>See also</u> RSA 564-B:1-107 (Governing Law).</p>
<p><b>5. What interests in principal and income may settlor retain?</b></p>	<p>Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT; (5) ability to be reimbursed for income taxes attributable to trust, and (6) ability to have debts, expenses and taxes of the settlor's estate paid from the trust.</p>	<p>Settlor may be one of a class of beneficiaries of a trust discretionary as to income or principal. RSMo § 456.5-505.3.</p>	<p>NV law allows the settlor to have a lead interest in a CRT, the right to minimum required distributions under a retirement or deferred- compensation plan, the lead interest in a GRAT, the lead interest in a QPRT, the right to receive distributions in the discretion of another person, and the right to use real or personal property owned by the trust [NRS 166.040(2)(c), (d), (e), (f), (g), and (h)].</p>	<p>Statute places no limitations on interest. RSA 564-B:5-505A applies to any type of irrevocable trust. Creditors cannot force the settlor to exercise any right that the settlor has (in a fiduciary or non-fiduciary capacity) under the terms of the trust. RSA 564-B:5-505A(l).</p>
	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<p><b>6. What is trustee's distribution authority?</b></p>	<p>(1) Absolute discretion; (2) pursuant to a standard.</p>	<p>(1) Discretion; or (2) pursuant to a standard. RSMo § 456.8-814. Creditor may not compel exercise of discretion. RSMo § 456.5-504. 1, relied upon by <i>In re Reuter</i>, 499 B.R. 655 (W.D. Mo. 2013).</p>	<p>As provided in the trust agreement, which may include absolute discretion or discretion limited by an ascertainable standard, and it may be subject to approval or veto powers retained by the settlor or given to the trust protector or other advisor. NRS 166.090 (support); 166.100 (income); 166.110 (discretionary).</p>	<p>Statute places no limitations on trustee's distribution authority. RSA 564-B:5-505A applies to any type of irrevocable trust.</p>
<p><b>7. What powers may settlor retain?</b></p>	<p>Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; (3) power to replace trustee/ advisor with non-related/nonsubordinate party; and (4) serve as an investment advisor.</p>	<p>Settlor may retain a testamentary limited power of appointment. RSMo § 456.5-505.4. Settlor may serve as trustee without negating spendthrift protection. RSMo § 456.5-504.1.</p>	<p>Nevada law allows the settlor to have a veto power over distributions, a limited lifetime or testamentary power of appointment [NRS 166.040(2)(a) and (b)]. In addition, the power to remove and replace a trustee, direct trust investments, and "other management powers" (except for the power to make distributions without the consent of another person). [NRS 166.040(3)].</p>	<p>Statute does not place any limitations on powers the settlor may retain. RSA 564-B:5-505A applies to any type of irrevocable trust.</p>
<p><b>8. Who must serve as trustee to come within protection of statute?</b></p>	<p>Resident individual, or is authorized by MS law to act as a trustee and whose activities are subject to supervision by the Mississippi Dept. of Banking and Consumer Finance, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision, or any successor thereto.</p>	<p>Not addressed by statute. RSMo § 456.1-107 describes when MO law controls.</p>	<p>Resident individual or trust company or bank that maintains office in Nevada. NRS 166.015(2).</p>	<p>Statute places no limitations on who must serve as trustee.</p>
	<p><b>MISSISSIPPI</b></p>	<p><b>MISSOURI</b></p>	<p><b>NEVADA</b></p>	<p><b>NEW HAMPSHIRE</b></p>

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<b>9. May non-qualified trustees serve?</b>	Yes	Not addressed by statute.	Only one trustee must meet the requirements of NRS 166.015(2). There are no restrictions on co-trustees.	Yes
<b>10. May trust have distribution advisor, investment advisor, or trust protector?</b>	Yes Trust may have: (1) advisors who have authority to remove and appoint qualified trustees or trust advisors; (2) advisors who have authority to direct, consent to or disapprove distributions from the trust; and (3) investment advisors. The term "advisor" includes a trust protector.	Yes RSMo § 456.8-808. A trust protector is a person other than the settlor, a trustee, or a beneficiary. The statute is flexible regarding powers.	Yes NRS 163.553 et seq. [directed trusts]; NRS 163.5553 [trust protectors].	Yes RSA 564-B:12-1201.
<b>11. Are fraudulent transfers excepted from coverage?</b>	Yes Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with actual intent to defraud the creditor.	Yes Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. RSMo § 456.5-505.3(1).	Yes Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. NRS 166.170(3). See also NRS Chapter 112 [Fraudulent Transfers Act] and NRS 163.5559(2).	Yes Uniform Fraudulent Transfer Act applies, and sets aside transfers with actual intent to hinder, delay or defraud, and constructively fraudulent transfers. RSA 564-B:5-505A(m)(3). <u>See also</u> RSA 545-A.
	<b>MISSISSIPPI</b>	<b>MISSOURI</b>	<b>NEVADA</b>	<b>NEW HAMPSHIRE</b>

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<p><b>12. Fraudulent transfer action: burden of proof and statute of limitations.</b></p>	<p>Clear and convincing evidence.  <u>Existing creditors:</u> Two years after transfer, or six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud with actual intent to defraud the creditor.  <u>Future creditors:</u> Two years after transfer if claim based upon intent to hinder, delay or defraud with actual intent to defraud the creditor.</p>	<p>Clear and convincing evidence.  <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.  RSMo § 428.049.</p>	<p>Clear and convincing evidence.  <u>Future creditors:</u> Two years after transfer.  <u>Existing creditors:</u> Two years after transfer, or, if longer, six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud (rather than constructive fraud). A transfer is deemed discovered when reflected in a public record.  NRS 166.170.</p>	<p>Statute is silent regarding burden of proof. Case law provides that actual fraud must be proved by clear and convincing evidence, and constructive fraud must be proved by a preponderance of the evidence.</p> <p>a. Creditor or assignee cannot commence a judicial proceeding with respect to transfer of property to the trust after the later of: (1) four years after the transfer is made; and (2) if the creditor or assignee is a creditor or assignee of the settlor when the transfer is made, one year after the creditor or assignee discovers or reasonably should have discovered the transfer.  RSA 564-B:5-505A(f).</p> <p>b. A creditor or assignee of a settlor must prove that, with respect to the creditor or assignee, the settlor's transfer to the trust was fraudulent.  RSA 564-B:5-505A(g).</p>
<p><b>13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?</b></p>	<p>No</p>	<p>No</p>	<p>No</p>	<p>No</p>
	<p><b>MISSISSIPPI</b></p>	<p><b>MISSOURI</b></p>	<p><b>NEVADA</b></p>	<p><b>NEW HAMPSHIRE</b></p>

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<b>14. Does statute provide an exception (no asset protection) for a child support claim?<sup>11</sup></b>	Yes	Yes, subject to equitable interests of other permissible distributees. RSMo § 456.5-503.2	No	Yes RSA 564-B:5-505A(q).
<b>15. Does the statute provide an exception (no asset protection) for alimony?</b>	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.	Yes, subject to equitable interests of other permissible distributees. RSMo § 456.5-503.2	No	Yes, but limits the amount reachable by the creditor to “basic alimony,” defined as the portion of alimony attributable to the most basic food, shelter, and medical needs of the spouse or former spouse if the judgment or court order expressly specifies that portion. RSA 564-B:5-505A(q)(1)(B).
<b>16. Does statute provide an exception (no asset protection) for property division upon divorce?</b>	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.	No	No	Yes, but only if: (1) settlor transfers assets to the trust fewer than 30 days before marriage; and (2) the future spouse did not consent to the transfer. RSA 564-B:5-505A(n)(1)
<b>17. Does statute provide an exception (no asset protection) for tort claims?</b>	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.	No	No	No
	<b>MISSISSIPPI</b>	<b>MISSOURI</b>	<b>NEVADA</b>	<b>NEW HAMPSHIRE</b>

<sup>11</sup> Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in the family law area.

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<b>18. Does statute provide other express exceptions (no asset protection)?</b>	Yes. Claim not extinguished (1) if creditor is state of Mississippi or any political subdivision thereof, (2) for any creditor in an amount not to exceed \$1,500,000 if the settlor failed to maintain a \$1,000,000 general liability policy.	Yes, regarding governmental claims, if another governing law supersedes. RSMo § 456.5-503.3	No	No
<b>19. Does statute prohibit any claim for forced heirship, legitime or elective share?</b>	Yes	No	No, but Nevada law does not recognize such claims.	Yes RSA 564-B:5-505A(n)(2).
<b>20. Are there provisions for moving trust to state and making it subject to statute?</b>	Yes	No	Yes NRS 166.180.	No
<b>21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?</b>	Yes	No	No	Yes RSA 564-B:5-505A(p).
<b>22. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?</b>	Yes	No	No	No
<b>23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?</b>	Yes	Irrelevant, if the trust complies with RSMo § 456.5-505.3	Yes NRS 166.045.	No
<b>24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?</b>	Yes	No	Yes. A trustee or an advisor of the settlor or trustee is liable only if it is established by clear and convincing evidence that damages directly resulted from the advisor's violation of the law knowingly and in bad faith. NRS 166.170(5) and (6).	Yes RSA 564-B:5-505A(h).
MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE	

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<p><b>25. Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?</b></p>	Yes	<p>No, but a creditor may not force a trustee to exercise discretion, and an interest in a trust does not constitute a property interest. RSMo § 456.5-504.1</p>	Yes NRS 166.040(2)(h).	Use or occupancy of real property or tangible personal property not addressed in the statute.
<p><b>26. May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?</b></p>	No	Yes RSMo § 456.5-504.1	Yes NRS 166.120(3).	Not addressed in statute, although the statute does state that a creditor may not reach a distribution from the trust before its receipt by the settlor. RSA 564-B:5-505A(d)
<p><b>27. Is a non-settlor beneficiary's interest protected from property division at divorce?</b></p>	<p>Yes The Act does not address, but if property is retained in a spendthrift trust for the beneficiary it is protected. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property; however, trust income and assets can be considered a resource for purposes of determining alimony and child support.</p>	Yes, but may be considered in property division.	<p>Yes, if property is retained in a spendthrift trust for the beneficiary [NRS 166.120]. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property [NRS 123.130]; however, trust income and assets can be considered a resource for purposes of determining alimony and child support [NRS 125.150(4) and (7); 125B.070(1)(a)].</p>	<p>Yes, if the beneficiary's interest is subject to a spendthrift provision. RSA 564-B:5-502(e). <u>See also</u> RSA 564-B:8-814(b) and <u>Goodlander v. Tamposi</u>, 161 N.H. 490 (2011).</p>
<p><b>28. Are due diligence procedures required by statute?</b></p>	Yes; affidavit required.	No	No	No
<p><b>29. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?</b></p>	Yes	Yes RSMo § 456.7-709.	No	Yes RSA 564-B:7-709.

MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
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SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<b>30. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?</b>	No	No RSMo § 456.4-420 provides, "an interested person may file a petition to the court for an interlocutory determination whether a particular motion, petition, or other claim for relief by the interested person would trigger application of the no-contest clause or would otherwise trigger a forfeiture that is enforceable under applicable law and public policy."	No NRS 163.00195.	Yes RSA 564-B:10-1014.
<b>31. Is the trustee given "decanting" authority to modify the trust?</b>	No	Yes RSMo § 456.4-419	Yes NRS163.556 and 166.170(a).	Yes RSA 564-B:4-418.
<b>32. What is allowable duration of trusts?</b>	Rule against perpetuities.	Abolished; generally applicable only after August 28, 2001. RSMo § 456.025.1	Up to 365 years. NRS 111.1031(2)(b).	Perpetual. New Hampshire abolished the rule against perpetuities in 2004. RSA 564:24 and RSA 564-B:4-402A(b).
<b>33. Does state assert income tax against DAPTs formed by non-resident settlors?</b>	No, if it is a grantor trust.	Yes, but only if from real estate, business, etc., sources within MO. RSMo §§ 143.181, 143.331, 143.371, 143.391, focusing on RSMo §§ 143.181.2.	No Nevada State Constitution, Article 10, Section 1, clause 9.	No. New Hampshire does not impose any income tax on trusts.
<b>34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?</b>	Charging order is only remedy.	No	Charging order is exclusive remedy for a creditor of an owner [NRS 86-401 as to LLCs, 87-4342 as to partnerships, and 87A.480 or 88.535 as to limited partnerships].	Yes. For LLCs, charging order is the only remedy, with limited exception for single member LLCs. RSA 304-C:126, IV. For limited partnerships, a judgment creditor has only the rights of an assignee. RSA 304-B:41.
<b>MISSISSIPPI</b>	<b>MISSOURI</b>	<b>NEVADA</b>	<b>NEW HAMPSHIRE</b>	

SUBJECT	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
<p><b>35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?</b></p>	<p>One year after trustee provides report that adequately discloses claims.</p>	<p>RSMo § 456.10-1005.1 provides either (1) a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the last to occur of the date the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and the date the trustee informed the beneficiary of the time allowed for commencing a proceeding, or (2) within five years after the first to occur of: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust. trust. See <i>Gould v. Gould</i>, 280 S.W.3d 137 (W.D. Mo. App. 2009) re pre-1/1/2005 claims.</p>	<p>NRS 165.139 mandates an annual trustee's account upon a beneficiary's request, but NRS 165.145 permits an account to be provided confidentially to a third-party "reviewer" where the trust directs or permits a trustee not to give an account to a beneficiary. Unless the trust instrument provides for a shorter period, a trustee's account is deemed approved if no written objection is given within 120 days or when a petition for approval is granted by court order after notice and hearing.</p>	<p>Either: (1) one year after trustee provides report that adequately discloses the existence of a potential claim and informs the beneficiary of the time allowed for commencing a proceeding, or (2) three years after trustee provides report that adequately discloses the existence of a potential claim. Limitations period cannot be tolled except by agreement of trustee and beneficiaries or by court order. RSA 564-B:10-1005.</p>
	MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE

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<p><b>36. Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?</b></p>	No	<p>See, <i>In re Reuter</i>, 499 B.R. 655, 678 (Bankr. W.D. Mo. 2013). This 2013 bankruptcy court opinion upheld the protection of the Mo. spendthrift statute with respect to a debtor who settled an irrevocable trust jointly with his wife and remained a beneficiary of the trust.</p>	<p>Yes, <i>Klabacka v. Nelson</i>, 133 Nev. Advance Opinion 24 (May 25, 2017), held that the assets in a husband's DAPT could not be reached for satisfaction of future child support and spousal support claims. The supreme court of NV relied heavily upon the legislative history of NV's DAPT statute. The court confirmed that NV does not have exception creditors (other than for fraudulent transfers), including spouses and dependent children in a domestic dispute, and expressly rejected the position given in section 59 of the Third Restatement of Trusts.</p>	No
<p><b>37. Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?</b></p>	No	No	No	No
<p><b>38. Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?</b></p>	No	No	No	No
<p><b>39. Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?</b></p>	No	No	No	No

MISSISSIPPI	MISSOURI	NEVADA	NEW HAMPSHIRE
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SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
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Citation: Ohio Legacy Trust Act, Chapter 5816 of the Ohio Revised Code	Citation: Family Wealth Preservation Act (the "Act"). Okla. Stat. tit. 31 § 10-18	Citation: R.I. Gen. Laws §§ 18-9.2-1 - 18-9.2-7	Citation: S.D. Cod. Laws §§ 55-16-1 - 55-16-16
Effective Date: March 27, 2013	Effective Date: June 9, 2004	Effective Date: July 1, 1999	Effective Date: March 2, 2005
URL: <a href="http://www.legislature.state.oh.us/laws.cfm">http://www.legislature.state.oh.us/laws.cfm</a>	URL: <a href="http://www.lsb.state.ok.us">http://www.lsb.state.ok.us</a> Statute at: <a href="http://www.oscn.net">//www.oscn.net</a>	URL: <a href="http://www.rilin.state.ri.us">http://www.rilin.state.ri.us</a>	URL: <a href="http://www.legis.state.sd.us">http://www.legis.state.sd.us</a>

<b>1. What requirements must trust meet to come within protection of statute?</b>	Trust instrument must: (1) be irrevocable; (2) expressly state that OH law wholly or partially governs validity, construction, and administration of trust; (3) contain spendthrift clause that includes the interest of the settlor; (4) appoint at least one qualified trustee. § 5816.02(K)	Trust instrument may be revocable or irrevocable. 31 O.S. § 13. Trust instrument must: (1) expressly state OK law governs; (2) have at all times as a trustee or co-trustee an OK-based bank that maintains a trust department or an OK-based trust company; (3) have only qualified beneficiaries [ancestors or lineal descendants of grantor (including adopted lineal descendants if they were under age 18 when adopted), spouse of the grantor, charities, or trusts for such beneficiaries]; (4) recite that income subject to income tax laws of OK. 31 O.S. § 11.	Trust instrument must: (1) be irrevocable; (2) expressly state RI law governs validity, construction, and administration of trust; (3) contain spendthrift clause.	Trust instrument must: (1) be irrevocable; (2) expressly state that SD law governs validity, construction, and administration of trust (unless trust is being transferred to SD trustee from non-SD trustee); (3) contain spendthrift clause; (4) must have a "qualified person" as a trustee. See SDCL §§ 55-16-1(6) (defining "qualified disposition"), 55-16-2 (defining "trust instrument"), 55-16-3 (defining "qualified person" by cross-reference to other statutes), and 55-16-4 (more regarding qualified persons).
<b>2. May a revocable trust be used for asset protection?</b>	No	Yes Settlor may revoke or amend trust and take back assets. No court or other judicial body may compel such revocation or amendment. 31 O.S. § 16.	No	No

OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
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SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<p><b>3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?</b></p>	<p>The vote on the Legacy Trust Act in the 129th Ohio General Assembly was unanimous in both houses, boding well for continued support.</p>	<p>Yes Most sections of the Act were last amended and superseded effective June 8, 2005. Substantial amendments were also made effective in 2015.</p>	<p>Yes, amendment enacted in 2007.</p>	<p>Yes Amendments enacted in 2011, 2010, 2009, 2008, 2007, 2006, 2012, 2014, 2015, 2016, and 2017.</p>
<p><b>4. What contacts with state are suggested or required to establish situs?</b></p>	<p>Required. OH qualified trustee who maintains or arranges for custody in OH of some or all of the trust estate and whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; or (c) otherwise materially participates in the administration of the trust. § 5816.02(S)</p>	<p>Required: (1) OK-based trustee; (2) majority of value of assets comprised of OK assets defined at 31 O.S. § 11 to include real or tangible personal property or any interest therein having situs in OK and stocks, bonds, debentures, and obligations of the State, OK-based companies, and accounts in OK-based banks. An OK asset includes an equity interest in an OK-based company regardless of whether the assets owned by the company are located in OK.</p>	<p>Required: (1) some or all of trust assets deposited in state; (2) RI trustee whose powers include: (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in administration of the trust.</p>	<p>Suggested: (1) some or all of trust assets deposited in state; (2) SD trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or otherwise materially participates in the administration of the trust. See also SDCL § 55-3-39 (dealing with minimum contacts needed to justify choice of law).</p>

OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
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SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<p><b>5. What interests in principal and income may settlor retain?</b></p>	<p>Settlor may retain any one or more of these beneficial interests:            (1) current income;            (2) CRAT or CRUT;            (3) beneficiary of distributions of income and principal in discretion of trustee or advisor or according to a standard;            (4) use of real or tangible personal property of trust, including QPRT;            (5) a qualified interest under I.R.C. § 2702(b), including GRAT, GRUT, CRAT, CRUT or back-end of CLAT OR CLUT;            (6) ability to be reimbursed for income tax attributable to trust;            (7) ability to have debts, expenses and taxes of settlor's estate paid from trust; and (8) pour-back to estate or trust.            § 5816.05.</p>	<p><u>Irrevocable trusts:</u> Not addressed by the Act.  <u>Revocable trusts:</u> see Item 7. If settlor revokes or partially revokes the trust, the exemptions provided do not extend to assets received by settlor.            31 O.S. § 13.</p>	<p>Settlor may retain interests in: (1) current income; (2) CRT; (3) up to five percent interest in total return trust; QPRT; ability to be reimbursed for income taxes attributable to trust.</p>	<p>Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest annually; (4) GRAT or GRUT; (5) QPRT; (6) pour back to estate or trust; and (7) principal, if distributions are made or directed by certain qualified third parties.</p>
<p><b>6. What is trustee's distribution authority?</b></p>	<p>Except as provided in trust instrument, trustee or advisor has greatest discretion permitted by law. § 5816.05(G): distributions to settlor may be purely discretionary or according to a standard in the trust instrument (not limited to an ascertainable standard). § 5816.12.</p>	<p><u>Irrevocable trusts:</u> Not addressed by the Act.  <u>Revocable trusts:</u> see Item 5, above</p>	<p>Discretion, or pursuant to a standard.</p>	<p>(1) Absolute discretion;            (2) pursuant to an ascertainable standard.</p>
	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<p><b>7. What powers may settlor retain?</b></p>	<p>Settlor may retain:            (1) power to veto distributions; (2) power to invade trust principal up to 5% annually; (3) non-general power of appointment (lifetime or testamentary); (4) power to remove and replace a trustee or advisor. § 5816.05</p>	<p><u>Irrevocable trusts:</u>            Not addressed by the Act.  <u>Revocable trusts:</u>            Settlor may revoke or amend, but otherwise powers not addressed by the Act.            The Oklahoma Trust Act addresses trustee and co-trustee powers and liabilities.            60 O.S. § 175.1, et seq.</p>	<p>Settlor may retain:            (1) power to veto distributions; and            (2) special testamentary power of appointment.</p>	<p>Settlor may retain:            (1) power to veto distributions; (2) lifetime non-general power of appointment            (3) testamentary power of appointment (general or non-general);            (4) power to remove and replace trustee/advisor with anybody, except that a trustee must not be related or subordinate within the meaning of I.R.C. § 672(c); and            (5) serve as investment trust advisor.</p>
<p><b>8. Who must serve as trustee to come within protection of statute?</b></p>	<p>Qualified Trustee: resident individual or corporation with trust powers under OH law and whose activities are subject to Ohio Superintendent of Banks, FDIC, Comptroller of Currency, or Office of Thrift Supervision. § 5816.02(S)</p>	<p>At all times, the trustee or co-trustee shall be an OK-based bank or an OK-based trust company chartered under OK law or nationally chartered), and having a place of business in OK.            31 O.S. § 11.</p>	<p>Resident individual (other than the transferor) or corporation whose activities are subject to supervision by RI Dept. of Business Regulation, FDIC, Comptroller of Currency, or Office of Thrift Supervision.</p>	<p>Resident individual (other than settlor) or entity authorized by state law to act as a trustee and whose activities are subject to supervision by SD Division of Banking, FDIC, Comptroller of Currency, or Office of Thrift Supervision. SD trustee automatically ceases to serve if it fails to meet these</p>
<p><b>9. May non-qualified trustees serve?</b></p>	<p>Yes, but must have at least one qualified trustee. § 5816.02(K)</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<p><b>10. May trust have distribution advisor, investment advisor, or trust protector?</b></p>	<p>Yes Trust may have one or more advisors who may remove and appoint trustees or who have authority to direct, consent to, or disapprove investments, distributions, or other decisions. The term “advisor” includes a protector. Settlor may be advisor in connection with investments only. §§ 5816.02(A) &amp; 5816.11</p>	<p>Not addressed by the Act. See Oklahoma Trust Act (60 O.S. § 175.1, et seq.) and Oklahoma Prudent Investor Act (60 O.S. § 175.60, et seq., esp. § 175.69, which specifically permits investment advisors. Distribution advisors and trust protectors are permitted.</p>	<p>Yes Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment advisor, including trustor. The term “advisor” includes a protector.</p>	<p>Yes Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment advisor, including trustor.</p>
<p><b>11. Are fraudulent transfers excepted from coverage?</b></p>	<p>Yes Creditor may avoid a transfer made with the specific intent to avoid the specific creditor. Only the portion of the qualified disposition necessary to satisfy the creditor’s claim is avoided, and the avoided portion is subject to the fees and costs incurred by a trustee in defending the claim (so long as the trustee has not acted in bad faith). §§ 5816.07(A) &amp; 5816.08</p>	<p>Yes Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. 31 O.S. § 17.</p>	<p>Yes Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.</p>	<p>Yes, Uniform Fraudulent Transfers Act applies and sets aside transfers with intent to defraud specific creditor.</p>
	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<p><b>12. Fraudulent transfer action: burden of proof and statute of limitations.</b></p>	<p>Clear and convincing evidence.</p> <p><u>Future creditors:</u> 18 months after qualified disposition.</p> <p><u>Existing creditors:</u> Later of 18 months after qualified disposition or 6 months after qualified disposition was or could have been discovered, with the limitation that the creditor must make demand on its claim within 3 years after the qualified disposition. The maximum combination of the 3-year demand limitation and the 6-month filing limitation provide an absolute 3.5 year bar. § 5816.07(B) &amp; (C). Furthermore, Ohio Rev. Code § 1301.401 contains a personal property recording mechanism that serves as notice to the world.</p>	<p>Clear and convincing evidence.</p> <p><u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. 24 O.S. § 121.</p>	<p>Clear and convincing evidence.</p> <p><u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.</p> <p><u>Future creditors:</u> Four years after transfer.</p>	<p>Clear and convincing evidence.</p> <p><u>Existing creditors:</u> Two years after transfer, or six months after transfer was or could reasonably have been discovered if creditor (1) asserted specific claim before transfer; or (2) if creditor files another action within two years that asserts claim before transfer.</p> <p><u>Future creditors:</u> Two years after transfer.</p>
<p><b>13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?</b></p>	<p>No</p>	<p>No</p>	<p>No</p>	<p>No</p>
<p><b>14. Does statute provide an exception (no asset protection) for a child support claim?<sup>12</sup></b></p>	<p>Yes § 5816.03(C)</p>	<p>Yes 31 O.S. § 12.</p>	<p>Yes, if at the time of transfer a court order for child support existed.</p>	<p>Yes, but only “to the extent of the debt” existing “at the time of transfer.” See SDCL § 55-16-15.</p>
	<p><b>OHIO</b></p>	<p><b>OKLAHOMA</b></p>	<p><b>RHODE ISLAND</b></p>	<p><b>SOUTH DAKOTA</b></p>

<sup>12</sup> Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in the family law area.

SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<b>15. Does the statute provide an exception (no asset protection) for alimony?</b>	Yes, if spouse was married to settlor on or before the date of the qualified disposition. §§ 5816.03(C) & 5816.02(U)	No	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust, but the exception applies only “to the extent of the debt” existing “at the time of transfer.” See SDCL § 55-16-15.
<b>16. Does statute provide an exception (no asset protection) for property division upon divorce?</b>	Yes, if spouse was married to settlor on or before the date of the qualified disposition. §§ 5816.03(C) & 5816.02(U)	No	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust, but the exception applies only “to the extent of the debt” existing “at the time of transfer.” Further: (i) a settlor’s separate property is protected in a divorce, regardless of the date of marriage; and (ii) any marital property transferred to a DAPT is also protected if the settlor’s spouse either receives a specified statutory notice, or provides written consent after having received the information required by the notice.
<b>17. Does statute provide an exception (no asset protection) for tort claims?</b>	No	No	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.	No
<b>18. Does statute provide other express exceptions (no asset protection)?</b>	No	No	No	No
<b>OHIO</b>	<b>OKLAHOMA</b>	<b>RHODE ISLAND</b>	<b>SOUTH DAKOTA</b>	

SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<b>19. Does statute prohibit any claim for forced heirship, legitime or elective share?</b>	Yes § 5816.03(D)	No	No	Yes, for forced heirship and legitime. Silent with respect to elective share.
<b>20. Are there provisions for moving trust to state and making it subject to statute?</b>	Yes § 5816.10(C)(D) & (E)	No	No	Yes
<b>21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?</b>	Yes § 5816.03(B)	Yes 31 O.S. § 16.	Yes	Yes SDCL § 55-16-2(3)
<b>22. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?</b>	Yes § 5816.09. Furthermore, to maximum constitutional extent, Ohio court shall exercise jurisdiction over case brought before it and shall not decline adjudication because a court of another state has acquired jurisdiction. § 5816.10(H)	No	Yes	DAPT statute does not have any such specific provision, but SDCL § 55-3-47 applies such a rule to all South Dakota trusts.
<b>23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?</b>	Yes § 5816.04	No	Yes	Yes SDCL § 55-16-7
<b>24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?</b>	Yes, and also provides protection relating to forming and funding entities that become part of the trust estate. § 5816.07(D),(E)&(G)	No	Yes	Yes SDCL § 55-16-12

OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
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SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<b>25. Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?</b>	Allowed as a reserved interest of the settlor (not in trustee's discretion. § 5816.05(J)	No Not addressed in the Act. Oklahoma Trust Act would allow trust agreements to authorize use and occupancy of property with trustee discretion. 60 O.S. § 175.1, et seq.	No, except for QPRT residence.	Yes SDCL § 55-16-2(2)(g)
<b>26. May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?</b>	Yes Ohio Rev. Code § 5815.24(D)	No	No	Yes But see SDCL § 55-1-42 and SDCL § 55-1-43 rather than SDCL Chapter 55-16
<b>27. Is a non-settlor beneficiary's interest protected from property division at divorce?</b>	Yes, a beneficiary does not have a property interest in the property of the trust. § 5816.13	Yes The Act does not address, but if property is retained in a spendthrift trust for the beneficiary it is protected. 31 O.S. § 12. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property. 43 O.S. § 121. However, trust income and assets can be considered a resource for purpose of determining alimony and child support.	Yes, but may be considered in property division.	Nothing in DAPT statute. But see SDCL §§ 55-1-43 (discretionary interests are not property), 55-1-26 (powers of appointment are not property), 55-1-27 (certain remainders not property), 55-1-30 (distribution and remainder interests irrelevant to divorce).
<b>28. Are due diligence procedures required by statute?</b>	Yes, affidavit required. § 5816.06	No	No	No
<b>29. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?</b>	Yes § 5816.08(A)(3)(a)	No	Yes	Yes SDCL § 55-16-16
<b>OHIO</b>	<b>OKLAHOMA</b>	<b>RHODE ISLAND</b>	<b>SOUTH DAKOTA</b>	

SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
<b>30. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?</b>	Case law, not statutory: <i>Bradford v. Bradford</i> , Ex'r, 19 Ohio St. 546 (1869); <i>Irwin v. Jacques</i> , 71 Ohio St. 395 (1905); <i>Kirkbride v. Hickok</i> (1951), 155 Ohio St. 293.	No	No	No, but see SDCL §§ 55-1-46, et seq.
<b>31. Is the trustee given "decanting" authority to modify the trust?</b>	Yes Ohio Rev. Code § 5808.18.	No While not addressed in the Act, the Oklahoma Trust Act permits courts to construe trusts. 60 O.S. § 175.23.	No	Yes SDCL § 55-2-15
<b>32. What is allowable duration of trusts?</b>	Allows opting out of the rule against perpetuities. Ohio Rev. Code § 2131.09	Rule against perpetuities. Abolished rule against perpetuities for trust property when the power of alienation is not suspended. 60 O.S. § 175.47.	Abolished rule against perpetuities.	Abolished rule against perpetuities.
<b>33. Does state assert income tax against DAPTs formed by non-resident settlors?</b>	No, unless the settlor later becomes resident in Ohio and the trust has at least one beneficiary resident in Ohio. Ohio Rev. Code § 5747.01(I)(3)(a)(ii).	Yes 31 O.S. § 11.	No	No
<b>34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?</b>	Yes, charging order is only remedy. Ohio Rev. Code § 1705.19	Yes, charging order is only remedy. 18 O.S. § 2034.	Yes, charging order is only remedy.	Yes; charging order is only remedy. Other legal and equitable remedies expressly barred.
<b>35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?</b>	Discharge occurs 2 years after delivery of statement that discloses the facts giving rise to the claim. Ohio Rev. Code § 5810.05	Two years after trustee provides report that adequately discloses claims. 60 O.S. § 175.57.	Trustee application and court discharge.	180 days after trustee provides accounting, or by order of court for supervised trusts. SDCL § 47-34A-504
	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA

SUBJECT	OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA
36. Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?	No	No	No	No
37. Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?	No	No	No	No
38. Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?	No	No	No	No
39. Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?	No	No	No	No
OHIO	OKLAHOMA	RHODE ISLAND	SOUTH DAKOTA	

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
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Citation: Tenn. Code Ann. § 35-16-101	Citation: Utah Code Ann. § 25-6-501, et seq.	Citation: Va. Code §§ 64.2-745.1 and 64.2-745.2 (amended 2012)	Citation: W.Va. Code Sections 44D-5-503a, 44D-5-503b, 44D-5-503c and 44D-5-505.	Citation: <u>Qualified Spendthrift Trust (OST)</u> : Wyo. Stat. §§ 4-10-501 and 4-10-510 – 523 <u>Discretionary Asset Protection Trust (Discretionary APT)</u> : Wyo. Stat. §§ 4-10-504 and 4-10-506(c)
Effective Date: July 1, 2007	Effective Date: December 31, 2003	Effective Date: July 1, 2012	Effective Date: June 8, 2016	Effective Date: <u>OST</u> : July 1, 2007 <u>Discretionary APT</u> : July 1, 2013
URL: <a href="http://www.legislature.state.tn.us">http://www.legislature.state.tn.us</a>	URL: <a href="http://www.le.utah.gov">http://www.le.utah.gov</a>	URL: <a href="http://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&amp;typ=bil&amp;val=SB11&amp;Sumbmit2=Go">http://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&amp;typ=bil&amp;val=SB11&amp;Sumbmit2=Go</a>	URL: <a href="http://www.legis.state.wv.us/WVCODE/Code.cfm">http://www.legis.state.wv.us/WVCODE/Code.cfm</a>	URL: <a href="http://legisweb.state.wy.us">http://legisweb.state.wy.us</a>

<b>1. What requirements must trust meet to come within protection of statute?</b>	Trust instrument must: (1) be irrevocable; (2) expressly state TN law governs validity, construction and administration of the trust; (3) contain a spendthrift clause; (4) must have at least one “qualified trustee”.	Trust instrument must: (1) be irrevocable; (2) contain spendthrift clause; (3) state that the trust is governed by UT law; and (4) must require that at least one trustee be resident of UT or UT trust company.	(1) The trust is irrevocable; (2) there must be, at all times when distributions could be made to the settlor pursuant to the settlor’s qualified interest, at least one beneficiary other than the settlor; (3) the trust must have at all times at least one qualified trustee, who may be, but need not be, an independent qualified trustee; (4) the trust instrument must expressly incorporate the laws of the Commonwealth to govern the validity, construction, and administration of the trust; (5) the trust instrument must include a spendthrift provision. Va. Code § 64.2-745.2.	(1) The trust is irrevocable; (2) the trust is created during the grantor’s lifetime; (3) the trust instrument expressly incorporates the laws of WV; (4) the trust instrument includes a spendthrift provision; (5) the grantor does not have the right to disapprove distributions from the trust; (6) the grantor executes a “qualified affidavit”, essentially certifying that the transfer of property to the trust will not make the grantor insolvent and the transfer is not defrauding any creditor; and (7) there is, at all times when distributions could be made to the grantor at least one beneficiary other than the grantor who can receive income, principal, or both income and principal. W.Va. Code §44D-5-503b(d).	<u>OST</u> : Trust instrument must: (1) state that trust is a “qualified spendthrift trust” under § 4-10-510 of WY statutes; (2) be irrevocable; (3) expressly state WY law governs validity, construction and administration of the trust; (4) contain a spendthrift clause; (5) settlor must have personal liability insurance equal to lesser of \$1,000,000 or value of trust assets. <u>Discretionary APT</u> : Trust instrument must: (1) provide for discretionary distributions of trust income and/or principal to the settlor; (2) trust must be governed by WY law.
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TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
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SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<p><b>2. May a revocable trust be used for asset protection?</b></p>	No	No	No Va. Code §§ 64.2-745.2(A) and 64.2-747(A)(1).	No	<p><u>QST and Discretionary APT</u>: No</p>
<p><b>3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?</b></p>	Yes Amendments enacted in 2008, 2010, and 2013.	Yes Repealed and re-enacted in 2013.	This statute is the first enactment for broad approval of self-settled spendthrift trusts.	2016 statute is the first enactment for broad approval of self-settled spendthrift trusts, and technical amendments were made in 2017.	<p><u>QST and Discretionary APT</u>: Yes. Amendments enacted in 2005, 2007, 2008, 2011, 2013, 2015, and 2017.</p>
<p><b>4. What contacts with state are suggested or required to establish situs?</b></p>	<p>Required: (1) some or all of trust assets deposited in state; (2) TN trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.</p>	<p>Required: UT resident or UT trust company as trustee or co-trustee.</p>	<p>Required: The VA qualified trustee must (1) maintain or arrange for custody within the Commonwealth of some or all of the property that has been transferred to the trust by the settlor, (2) maintain records within the Commonwealth for the trust on an exclusive or non-exclusive basis, (3) prepare or arrange for the preparation within the Commonwealth of fiduciary income tax returns for the trust, or (4) otherwise materially participate within the Commonwealth in the administration of the trust. Va. Code § 64.2-745.2(A).</p>	<p>WV qualified trustee must be (1) a natural person who is a resident of WV or an entity that can engage in trust business in WV and (2) must maintain custody within WV of property in the trust, maintain records in WV, prepare fiduciary income tax returns in WV, or materially participate in administration in WV. W.Va. Code §44D-5-503b(a).</p>	<p><u>QST</u>: Required: WY trustee who: (a) maintains custody of some or all of trust assets in state; (b) maintains records (can be non-exclusive); (c) prepares or arranges for the preparation of income tax returns; (d) or, otherwise materially participates in the administration of the trust. <u>Discretionary APT</u>: Required: At least one WY trustee who: (a) maintains custody of some or all of trust assets in state; (b) maintains records (can be non-exclusive); (c) prepares or arranges for the preparation of income tax returns; (d) or, otherwise materially participates in the administration of the trust.</p>
	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<p><b>5. What interests in principal and income may settlor retain?</b></p>	<p>Settlor may retain interests in:            (1) current income;            (2) CRT; (3) up to 5% interest in total-return trust;            (4) QPRT; (5) ability to be reimbursed for income taxes attributable to trust, and (6) ability to have debts, expenses and taxes of the settlor's estate paid from the trust.</p>	<p>Settlor may retain interest in CRT, GRAT, GRUT, QPRT and use of real or personal property of trust.</p>	<p>Settlor may retain any interests in: (1) CRT; (2) up to 5% interest in total-return trust; (3) QPRT; (4) GRAT; (5) ability to have debts, expenses and taxes of the settlor's estate paid from the trust; and (6) ability to be reimbursed for income taxes attributable to trust. Va. Code §§ 64.2-745.2(A) and 64.2-745.2(D).</p>	<p>In addition to the grantor's qualified interest in the trust, grantor may retain:            (1) the right to receive income or principal pursuant to an ascertainable standard;            (2) interest in CRUT or CRAT; (3) up to 5% interest in total-return trust; (4) interest in QPRT; (5) a qualified annuity interest under IRC § 2702; (6) ability to have debts, expenses, and taxes of the grantor's estate paid from the trust; and (7) ability to be reimbursed for income taxes attributable to trust. W.Va. Code §44D-5-503c(c).</p>	<p><u>QST</u>: Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT, (5) GRAT or GRUT; (6) principal distributions, (7) ability to be reimbursed for income taxes attributable to trust, (8) ability to have debts, expenses and taxes of the settlor's estate paid from the trust.</p> <p><u>Discretionary APT</u>: Settlor may retain ability to receive discretionary distributions of trust income and principal.</p>
<p><b>6. What is trustee's distribution authority?</b></p>	<p>(1) Absolute discretion;            (2) pursuant to a standard.</p>	<p>As provided in the trust agreement, which may include absolute discretion or discretion limited by an ascertainable standard, and it may be subject to approval or veto powers retained by the settlor or given to the trust protector or other advisor.</p>	<p>Absolute discretion. Va. Code § 64.2-745.2(A).</p>	<p>Sole discretion. W.Va. Code §44D-5-503b(c).</p>	<p><u>QST</u> and <u>Discretionary APT</u>:            (1) Absolute discretion;            (2) pursuant to a standard.</p>
	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<p><b>7. What powers may settlor retain?</b></p>	<p>Settlor may retain:            (1) power to veto distributions;            (2) non-general power of appointment (lifetime or testamentary);            (3) power to replace trustee/advisor with non-related/ nonsubordinate party; and            (4) serve as an investment advisor.</p>	<p>Settlor may retain:            (1) power to veto distributions; (2) testamentary special power of appointment; (3) power to appoint nonsubordinate advisors/ protectors; (4) right to serve as investment advisor; (5) right to receive principal of trust subject to ascertainable standard; and (6) use real or personal property of trust.</p>	<p>Settlor may retain:            (1) A testamentary special power of appointment;            (2) A right to remove a trustee and to appoint a new trustee.  <u>Note:</u> The settlor may NOT have the right to disapprove distributions from the trust.            Va. Code § 64.2-745.2(A), (D).</p>	<p>Settlor may retain: (1) a testamentary special power of appointment, exercisable by will or lifetime instrument;            (2) a right to remove a trustee and to appoint a new trustee; (3) a right to receive income or principal pursuant to an ascertainable standard; (4) A right to receive each year from the trust a percentage of principal, up to 5%, as specified in the trust instrument.  <u>Note:</u> The settlor may NOT have the right to disapprove distributions from the trust. W.Va. Code §44D-5-503c; W.Va. Code §44D-5-503b(d)(7).</p>	<p><u>QST:</u>            Settlor may retain:            (1) power to veto distributions; (2) inter vivos or testamentary general or limited power of appointment; (3) power to add or remove a trustee, trust protector, or trust advisor; (4) serve as an investment advisor.</p> <p><u>Discretionary APT:</u>            Settlor may retain same powers as for QST, except power to veto distributions.</p>
<p><b>8. Who must serve as trustee to come within protection of statute?</b></p>	<p>Resident individual, or is authorized by TN law to act as a trustee and whose activities are subject to supervision by the Tennessee Dept. of Financial Institutions, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision, or any successor thereto.</p>	<p>At least one trustee must be UT resident or UT trust company. Settlor can be co-trustee, but may not participate in distribution decisions.</p>	<p>There must always be at least one "qualified trustee," who must be a natural person residing within the Commonwealth or a legal entity authorized to engage in trust business within the Commonwealth. Va. Code § 64.2-745.2(A).</p>	<p>There must always be at least one "qualified trustee," who must be a natural person residing in WV or a legal entity authorized to engage in trust business in WV. For the grantor's interest to be a "Qualified interest", distributions of income, principal, or both to the grantor must be made in the sole discretion of an "independent qualified trustee". (. . . <i>cont'd</i>)</p>	<p><u>QST:</u> Resident individual or a person authorized by Wyoming law to act as trustee or a regulated financial institution.  <u>Discretionary APT:</u>            At least one trustee must be resident individual or a person authorized by WY law to act as trustee or a regulated financial institution. Trustee with authority to make distributions to settlor cannot be a trust beneficiary, related to settlor, or subordinate to settlor under I.R.C. § 672(c).</p>
	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
(. . . cont'd)				(. . . cont'd) “Independent” means that the trustee is not the grantor or the grantor's spouse, parent, descendant, or sibling. W.Va. Code §44d-5-503b(d)(4).	
<b>9. May non-qualified trustees serve?</b>	Yes	Yes	Yes See Va. Code § 64.2-745.2(A) (using nonexclusive terminology for the requirement of a qualified trustee).	Yes, but the trust must also have at all times at least one other “qualified trustee”. <i>Id.</i>	<u>OST</u> : Yes  <u>Discretionary APT</u> : Yes
<b>10. May trust have distribution advisor, investment advisor, or trust protector?</b>	Yes Trust may have: (1) advisors who have authority to remove and appoint qualified trustees or trust advisors; (2) advisors who have authority to direct, consent to or disapprove distributions from the trust; and (3) investment advisors. The term “advisor” includes a trust protector.	Yes Trust may have non-subordinate advisors/protectors who can remove or appoint trustees; direct, consent to, or disapprove distributions; or serve as investment directors. Settlor may be investment director.	Not addressed expressly, but it does state that the discretion of a qualified trustee cannot be subject to the direction of someone who, were that person a trustee, could not be a qualified trustee, and protects trust advisers and trust directors from liability. Va. Code § 64.2-745.2(A).	Not addressed expressly, but the discretion of a qualified trustee cannot be subject to the direction of someone who, were that person a trustee, could not be a qualified trustee. The statute protects trust adviser, trust director, or any person involved in the counseling, drafting, preparation or execution of, or transfers to, the trust. W.Va. Code §44D-5-503a(e).	<u>OST and Discretionary APT</u> : Yes. Trust may have trust protector who can remove or appoint trustees; direct, consent to, or disapprove distributions; change governing law; change beneficiary's interests; and grant or terminate powers of appointment. Trust may have advisors. Settlor may be an advisor.
	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<b>11. Are fraudulent transfers excepted from coverage?</b>	Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. [Statute needs clarification with respect to actual intent amendment in 2013.]	Yes Uniform Voidable Transactions Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes Va. Code § 64.2-745.1(C).	Yes W.Va. Code §44D-5-503a(c).	<u>QST and Discretionary APT:</u> Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.
<b>12. Fraudulent transfer action: burden of proof and statute of limitations.</b>	Clear and convincing evidence. <u>Existing creditors:</u> Two years after transfer, or six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Two years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Two years after transfer. [See Item 11]	Burden not addressed by statute. <u>Existing creditors:</u> (a) 120 days after notice to known or unknown creditors of settlor of transfer to trust; or (b) without notice then two years after transfer, or one year after transfer was or could reasonably have been discovered.	Clear and convincing evidence. <i>Bruce v. Dean</i> , 140 S.E. 277, 149 Va. 39 (1927); <i>Mills v. Miller Harness Co., Inc.</i> , 326 S.E.2d 665, 229 Va. 155 (1985); <i>In re Coleman</i> , 285 B.R. 892 (2002). Suit must be brought within five years from recordation of transfer or, if not recorded, within five years from the time the same was or should have been discovered. Va. Code § 64.2-745.1(D).	Clear and convincing evidence. <i>Board of Trustees v. Blair</i> , 45 W. Va. 812 (1899)(“strictly and clearly proved”); <i>Kesling v. Mick</i> , 103 W. Va. 485, 138 S.E. 386 (1927). Suit must be brought within four (4) years after the date of the transfer to the trust. W.Va. Code §44D-5-503a(d).  The State Editors’ analysis is that the WV DAPT statute provides a statute of repose and not a statute of limitations. Therefore, actions are barred four years after the transfer, regardless of discovery of the transfer or accrual of a cause of action.	<u>QST:</u> Clear and convincing evidence. <u>Discretionary APT:</u> Clear and convincing evidence.  Four years after the transfer was made or the obligation was incurred.  If the transfer was made with actual intent to hinder, delay, or defraud any creditor, then, if later, one year after the transfer could reasonably have been discovered. W.S. § 34-14-210(a).
<b>13. Has this state adopted the 2014 amendments and comments of the Uniform Fraudulent Transfers Act (now the Uniform Voidable Transactions Act)?</b>	No	Yes	No	No	No
	<b>TENNESSEE</b>	<b>UTAH</b>	<b>VIRGINIA</b>	<b>WEST VIRGINIA</b>	

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING					
<p><b>14. Does statute provide an exception (no asset protection) for a child support claim?<sup>13</sup></b></p>	<p>Yes</p>	<p>No, but before distribution to settlor, trustee must give 30 days advance notice to child support creditor. However, even if notice not given, child support creditor cannot force distribution from trust or attach trust assets</p>	<p>Yes Va. Code § 64.2-744(A) protecting rights of a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance).</p>	<p>Yes The spendthrift provision is unenforceable against a beneficiary's child who has a judgment or court order against the beneficiary for child support. Also, grantor's "qualified affidavit" must identify any agreement or order of court for support in favor of the transferor's children. W.Va. Code §44D-5-503b(e)(7).</p>	<p><u>QST:</u> Yes  <u>Discretionary APT:</u> No</p>					
<p><b>15. Does the statute provide an exception (no asset protection) for alimony?</b></p>	<p>Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.</p>	<p>No</p>	<p>No</p>	<p>No, but grantor's "qualified affidavit" must identify any agreement or order of court for support or alimony in favor of the transferor's spouse or former spouse. <i>Id.</i></p>	<p><u>QST and Discretionary APT:</u> No</p>					
<p><b>16. Does statute provide an exception (no asset protection) for property division upon divorce?</b></p>	<p>Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.</p>	<p>No</p>	<p>No</p>	<p>No, but grantor's "qualified affidavit" must identify any agreement or order of court for a division or distribution of property incident to a judicial proceeding with respect to a divorce or annulment in favor of the transferor's spouse or former spouse. <i>Id.</i></p>	<p><u>QST and Discretionary APT:</u> No</p>					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;"><b>TENNESSEE</b></td> <td style="width: 25%; text-align: center;"><b>UTAH</b></td> <td style="width: 25%; text-align: center;"><b>VIRGINIA</b></td> <td style="width: 25%; text-align: center;"><b>WEST VIRGINIA</b></td> <td style="width: 25%; text-align: center;"><b>WYOMING</b></td> </tr> </table>						<b>TENNESSEE</b>	<b>UTAH</b>	<b>VIRGINIA</b>	<b>WEST VIRGINIA</b>	<b>WYOMING</b>
<b>TENNESSEE</b>	<b>UTAH</b>	<b>VIRGINIA</b>	<b>WEST VIRGINIA</b>	<b>WYOMING</b>						

<sup>13</sup> Readers are cautioned that case law in a jurisdiction may create exceptions to asset protection, especially in the family law area.

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
17. Does statute provide an exception (no asset protection) for tort claims?	No	No	No	No	<u>QST and Discretionary</u> <u>APT</u> : No
18. Does statute provide other express exceptions (no asset protection)?	No	No	Yes No spendthrift protection against: (A) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust. Va. Code § 64.2-744(B). (B) the United States, the Commonwealth, any city, county, or town. Va. Code § 64.2-744(C). (C) claims under a statute or regulation of the United States or the Commonwealth that requires a beneficiary to reimburse the Commonwealth or any agency or instrumentality thereof, for public assistance. Va. Code § 64.2-745(A).	Yes The spendthrift provision is unenforceable against (1) judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; (2) claim of State of WV to the extent a statute so provides; and (3) claim of the United States to the extent federal law so provides. W. Va. Code 44D-5-503(b).	<u>QST</u> : Yes (1) Financial institution with which the settlor has listed qualified trust property on the financial institution's application or financial statement used to obtain or maintain credit from the financial institution other than for the benefit of the qualified spendthrift trust; (2) property of a qualified spendthrift trust that was transferred to the trust by a settlor who received the property by a fraudulent transfer. <u>Discretionary APT</u> : No
	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<p><b>19. Does statute prohibit any claim for forced heirship, legitime or elective share?</b></p>	Yes	No	No	No Forced heirship or legitime does not exist under WV law. Spousal elective share may apply against the self-settled spendthrift trust, depending on how established.	<p><u>QST and Discretionary APT</u>: No, but in 2011 the WY Supreme Court held that assets transferred to a trust are not subject to the elective share of a surviving spouse under the WY Uniform Trust Code and WY law does not provide for a forced heirship or legitime. (<i>In re The Estate of Deanna Bess George</i>, 2011 WY 157, 265 P.3d 222.)</p>
<p><b>20. Are there provisions for moving trust to state and making it subject to statute?</b></p>	Yes	Yes, under provisions of the Utah Uniform Trust Code.	Yes Va. Code § 64.2-745.1(G) states that “The movement to the Commonwealth of the administration of an existing trust, which, after such movement to the Commonwealth, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by the settlor on the date of such movement of all of the assets previously transferred to the trust by the settlor.”	Yes The movement to WV of the administration of an existing trust, which, after such movement to the state, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated as a transfer to this trust by the grantor on the date of such movement of all of the assets previously transferred to the trust by the grantor. W.Va. Code §44D-5-503a(g).	<p><u>QST</u>: Yes, permits transfer of trust property from trust created in another jurisdiction with similar creditor protection for settlor with creditor protection relating back to date of funding of trust created in other jurisdiction. Irrevocable trusts from other states may also elect to become qualified spendthrift trusts if they incorporate law of WY, obtain qualified trustee, and have spendthrift clause.</p> <p><u>Discretionary APT</u>: Yes, if trust meets discretionary distributions standard and acquires at least one WY qualified trustee.</p>
	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
21. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes	Yes	No	No	<u>QST</u> : Yes  <u>Discretionary APT</u> : No. Spendthrift clause is not required.
22. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?	Yes	No	No	No	<u>QST</u> : Yes <u>Discretionary APT</u> : No
23. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	Yes	Yes	No	No	<u>QST and Discretionary APT</u> : No
24. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	Yes	Yes	Yes Va. Code § 64.2-745.1(E).	Yes The statute protects trust adviser, trust director, or any person involved in the counseling, drafting, preparation or execution of, or transfers to, the trust. W.Va. Code §44D-5-503a(e).	<u>QST</u> : Yes <u>Discretionary APT</u> : Yes
25. Does statute authorize a beneficiary to use or occupy real property or tangible personal property owned by trust, if in accordance with trustee's discretion?	Yes	Yes	No	Not specifically addressed, but the trust instrument shall not be deemed to be revocable on account of the inclusion of a provision allowing the grantor's potential or actual use of real property held under a personal residence trust (within the meaning of Section 2702(c) of the Internal Revenue Code). W.Va. Code §44-5-503c(c)(7).	<u>QST and Discretionary APT</u> : No, except for QPRT residence.
TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING	

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<p><b>26. May a trustee pay income or principal directly to a third party, for the benefit of a beneficiary, even if the beneficiary has an outstanding creditor?</b></p>	<p>Yes § 35-15-504</p>	<p>No</p>	<p>No</p>	<p>Yes because not expressly prohibited in statute.</p>	<p><u>QST</u> and <u>Discretionary APT</u>: Yes Wyo. Stat. § 4-10-504(b)</p>
<p><b>27. Is a non-settlor beneficiary's interest protected from property division at divorce?</b></p>	<p>Yes</p>	<p>Yes, UCA § 75-7-502.</p>	<p>Yes Va. Code §§ 64.2-743 – 64.2-744.</p>	<p>Yes; if settlor's assets are transferred into trust, the non-settlor beneficiary's interest in the trust should be treated as separate property of the non-settlor beneficiary. W. Va. Code §48-1-237(4).</p>	<p><u>QST</u> and <u>Discretionary APT</u>: Yes, but may be considered in property division.</p>
<p><b>28. Are due diligence procedures required by statute?</b></p>	<p>Yes; affidavit required.</p>	<p>Yes, affidavit required.</p>	<p>No</p>	<p>Yes The grantor must execute a "qualified affidavit", essentially certifying that the transfer of property to the trust will not make the grantor insolvent and the transfer is not defrauding any creditor. W.Va. Code §44D-5-503b(e).</p>	<p><u>QST</u>: Yes; affidavit required. <u>Discretionary APT</u>: No</p>
	<p>TENNESSEE</p>	<p>UTAH</p>	<p>VIRGINIA</p>	<p>WEST VIRGINIA</p>	<p>WYOMING</p>

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<b>29. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?</b>	Yes	No direct lien, but cost and fees may be paid from trust. See UCA §75-7-1004.	No	Partially. Any transfer made to the qualified self settled spendthrift trust which may be set aside as a fraudulent conveyance shall be chargeable first with the entire costs and expenses, including attorney's fees, properly incurred by the trustee in the defense of the action or proceeding to set aside the transfer. W.Va. Code §44D-5-503a(c).	<u>OST</u> and <u>Discretionary APT</u> : Yes
<b>30. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?</b>	No	No	No	No	<u>OST</u> and <u>Discretionary APT</u> : No
<b>31. Is the trustee given "decanting" authority to modify the trust?</b>	Yes	No, but procedure for modifying trust available under UT Uniform Trust Code and relatively easy to do if settlor is living.	Yes See Va. Code § 64.2-778.1 (effec. July 1, 2012).	There is no West Virginia statutory authority to decant. It is unclear whether trustee may have common-law authority to decant if the trust instrument contains appropriate language.	<u>OST</u> and <u>Discretionary APT</u> : Yes, if trustee has authority to make mandatory or discretionary distributions of trust income and principal, trustee may distribute in further trust. Trust protector may also have power to decant or modify trust.
	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING

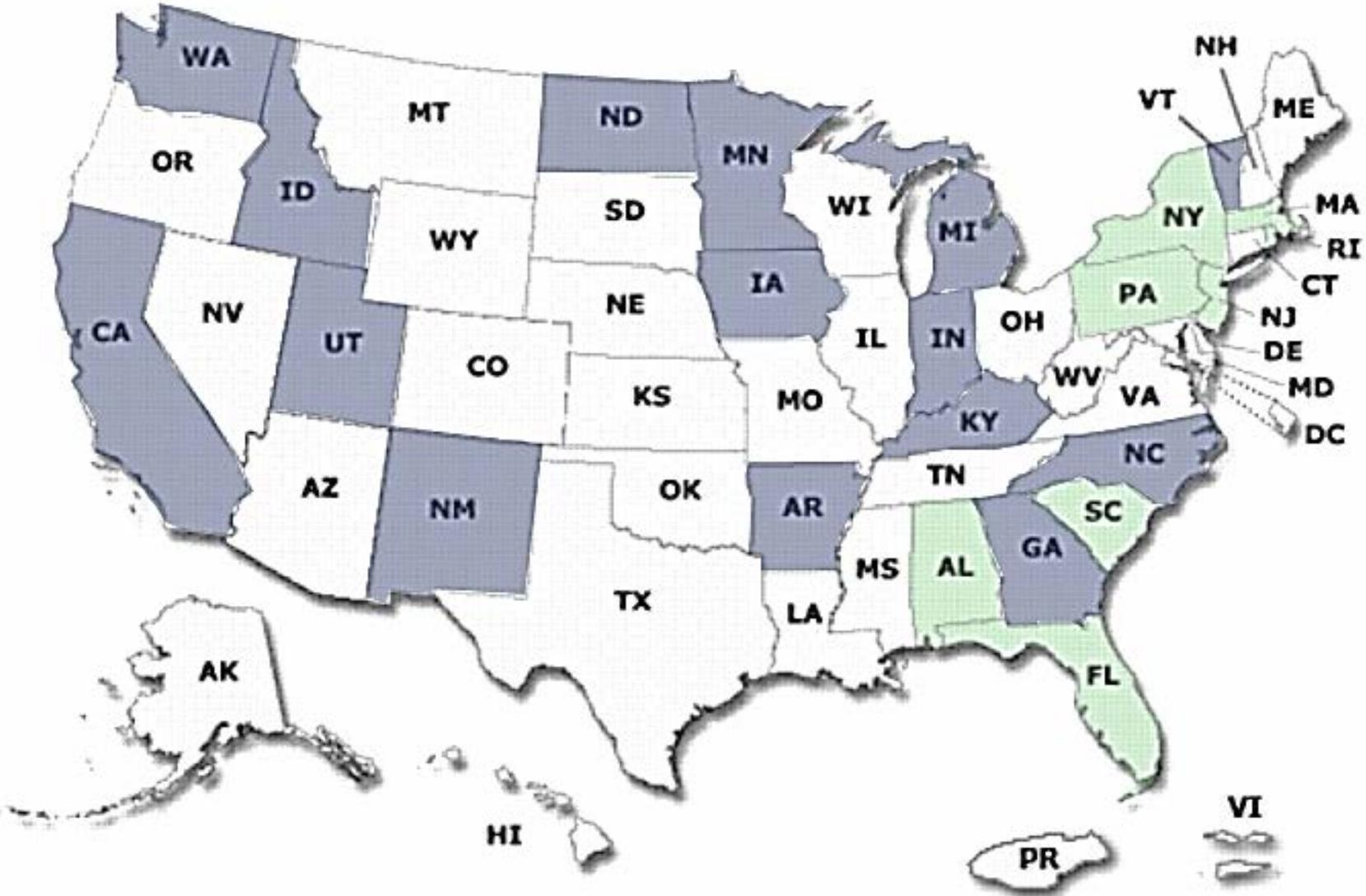
SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<b>32. What is allowable duration of trusts?</b>	Up to 360 years.	Up to 1,000 years.	USRAP adopted. Va. Code §§ 55-12.1 to 55-12.6. Rule does not apply to personal property held in trust if the trust instrument, by its terms, provides that the rule shall not apply to such trust. Va. Code § 55-13.3(C).	USRAP adopted.	<u>QST and Discretionary APT</u> : Up to 1,000 years, except for real property.
<b>33. Does state assert income tax against DAPTs formed by non-resident settlors?</b>	No, if the beneficiaries are non-residents. If the beneficiaries are residents, a tax is levied on dividends and interest.	No, except for UT source income, such as rental income from UT real property.	Yes See VA Code Ann. § 58.1-302.	Yes W.Va. Code §11-21-7(c).	<u>QST and Discretionary APT</u> : No
<b>34. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?</b>	Yes for LLCs; charging order is only remedy.  No for LPs.	Yes, charging order is only remedy.	Yes On LLC, see Va. Code § 13.1-1041.1(D). On Limited Partnership, see Va. Code § 50-73.46.1(D).	Yes For LP, court may charge the debtor's partnership interest with the judgment but judgment creditor only has the rights of an assignee which include the entitlement only to the debtor partner's distribution. W. Va. Code § 47-9-41. For an LLC, charging order only constitutes a lien on the debtor's distributional interest. W. Va. Code § 31B-5-504.	<u>QST and Discretionary APT</u> : Yes; charging order is exclusive remedy for all LPs and LLCs, including single member LLCs.
	<b>TENNESSEE</b>	<b>UTAH</b>	<b>VIRGINIA</b>	<b>WEST VIRGINIA</b>	<b>WYOMING</b>

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<p><b>35. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?</b></p>	<p>One year after the earlier of: (1) the date the beneficiary was sent information (previously it was a report) that disclosed facts indicating the existence of a potential claim against the trustee; or (2) the date the beneficiary possessed actual knowledge of facts indicating the existence of a potential claim against the trustee.</p>	<p>Six months after trustee provides report that adequately discloses claims.</p>	<p>Rules similar to Sections 411 to 414 of the Uniform Trust Code for termination of trust. See Va. Code §§ 64.2-729 to 64.2-733. No specific procedure for being discharged from liability on a trust.</p>	<p>Statute of limitations is one (1) year if the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and was informed of the time allowed for commencing a proceeding. W. Va. Code § 44D-10-1005(a). Otherwise, statute of limitations is five (5) years after the first to occur of (1) the removal, resignation or death of the trustee; (2) the termination of the beneficiary's interest in the trust; (3) the termination of the trust; or (4) the time when the beneficiary knew or should have known of the breach of trust. W. Va. Code § 44D-10-1005(b).</p>	<p><u>QST and Discretionary APT</u>: Two years after trustee provides report that adequately discloses claims.</p>
TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING	

SUBJECT	TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING
<b>36. Are there cases that have occurred in this state's courts which involve DAPT statutes (regardless of the DAPT state law involved)?</b>	No	<i>Dahl v. Dahl</i> , 215 Utah 79 (2015) involved a divorce action where the wife challenged the husband's prior transfer of marital assets into a NV DAPT. However, the UT supreme court found the trust was revocable. The UT court applied UT law, rather than NV law chosen in the trust instrument, based upon UT's strong public policy of equitable distribution of marital assets.	No	No	No
<b>37. Are there cases involving this state's DAPT law (regardless of the state court where the case was heard)?</b>	No	No	No	No	No
<b>38. Are there cases that involve this state's asset protection laws which may affect the implementation of a DAPT?</b>	No	No	No	No	No
<b>39. Has the IRS challenged the transfer tax effects of a DAPT created under this state's law?</b>	No	No	No	No	No
TENNESSEE	UTAH	VIRGINIA	WEST VIRGINIA	WYOMING	



STATES WHICH HAVE ENACTED THE  
UNIFORM VOIDABLE TRANSACTIONS ACT  
AS OF JULY 2017



■ = Enacted    ■ = Introduced

**American College of Trust and Estate Council  
State Law Status of the Uniform Voidable Transactions Act  
As of September 1, 2017**

		<b>State</b>	<b>Adopted</b>	<b>If Not Adopted, Date Introd. In Legis.</b>	<b>Statutes</b>	<b>Effective Date/Legislative Status</b>
1		Alabama	Yes		Ala. Code §§ 8-9B-1 through 17	Effective 1/1/18
2		Arkansas	Yes		Ark. Code §§ 4-59-201 through 215	Effective 4/7/17
3		California	Yes		Cal. Civil Code §§ 3439.01 through .14	Effective 1/1/16
	1	Florida	No	3/2/17	HB 1159; SB 1566: Prop. Fla. Stat. §§ 726.101 through 115	Died in Judiciary Committee – 5/5/17
4		Georgia	Yes		Ga. Code Ann. §§ 18-2-70 through 85	Effective 7/1/15
5		Idaho	Yes		Idaho Code Ann. §§ 55-910 through 922	Effective 7/1/15
6		Indiana	Yes		Ind. Code §§ 32-18-2-2 through 23	Effective 7/1/17
7		Iowa	Yes		Iowa Code §§ 684.1 through 26	Effective 7/1/16
8		Kentucky	Yes		Ky. Rev. Stat. Ann. §§ 378A.005 through 140	Effective 1/1/16
	2	Massachusetts	No	1/23/17	HB 46: Prop. Mass. Gen. Laws Ch. 109A, §§ 1– 15	Introduced; pending in judiciary – 1/23/17
9		Michigan	Yes		Mich. Comp. Laws §§ 566.31 through 43	Effective 4/10/17
10		Minnesota	Yes		Minn. Stat. §§ 513.41 through 51	Effective 8/1/15
	3	New Jersey	No	5/19/16	AB 3742: Prop. N.J. Rev. Stat. §§ 25:2-20 through 33	Out of Assembly Judiciary Committee – 6/6/16
11		New Mexico	Yes		N.M. Stat. §§ 56-10-14 through 29	Effective 1/1/16

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		<b>State</b>	<b>Adopted</b>	<b>If Not Adopted, Date Introd. In Legis.</b>	<b>Statutes</b>	<b>Effective Date/Legislative Status</b>
	4	New York	No	Assembly: 1/13/17 Senate: 5/11/17	AB 1853; SB 6180 Prop. N.Y. D.C.D.L. §§ 10-270 through 281-a	Assembly: Referred to Judiciary – 1/13/17 Senate: 2 <sup>nd</sup> report calendar – 5/24/17
12		North Carolina	Yes		N.C. Gen. Stat. §§ 39-23.1 through 12	Effective 10/1/15
13		North Dakota	Yes		N.D. Cent. Code §§ 13-02.1-01 through 13-02.1-13	Effective 8/1/15
	5	Pennsylvania	No	4/18/17	SB 629: Prop. 12 Pa. Cons. Stat. §§ 5101 through 5113	Referred to Banking and Insurance – 4/18/17
	6	Rhode Island	No	House: 4/14/17 Senate: 4/27/17	HB 6123; SB 838: Prop. R.I. Gen. Laws §§ 6-16-1 through 17	Committee recommended measure be held for further study – House 4/25/17 and Senate 5/25/17
	7	South Carolina	No	House: 12/15/16 Senate: 12/13/16	HB 3167; SB 136: Prop. S.C. Code §§ 27-24-10 through 150	Referred to Committee on Labor, Commerce & Industry; scrivener’s error corrected – both House and Senate 1/10/17
14		Utah	Yes		Utah Code §§ 25-6-101 through 405	Effective 5/9/17
15		Vermont	Yes		Vt. Stat. Ann. tit. 9, §§ 57-2285 through 2299	Effective 7/1/17
16		Washington	Yes		Wash. Rev. Code §§ 19.40.011 through 900	Effective 7/23/17

**American College of Trust and Estate Council  
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As of September 1, 2017**

	<u>State</u>	<u>URL Link</u>	<u>Adopt §10 and Comments?</u>	<u>DAPT State?</u>
1	Alabama	<a href="http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/coatoc.htm">http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/coatoc.htm</a>	Yes	No
2	Arkansas	<a href="http://www.lexisnexis.com/hottopics/arcode/Default.asp">http://www.lexisnexis.com/hottopics/arcode/Default.asp</a>	Yes for §10; no as to Comments	No
3	California	<a href="https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&amp;division=4.&amp;title=2.&amp;part=2.&amp;chapter=1.&amp;article=">https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&amp;division=4.&amp;title=2.&amp;part=2.&amp;chapter=1.&amp;article=</a>	Yes	No
	1 Florida		N/A	No
4	Georgia	<a href="http://www.lexisnexis.com/hottopics/gacode/Default.asp">http://www.lexisnexis.com/hottopics/gacode/Default.asp</a>	Yes	No
5	Idaho	<a href="https://legislature.idaho.gov/statutesrules/idstat/title55/t55ch9/">https://legislature.idaho.gov/statutesrules/idstat/title55/t55ch9/</a>	Yes	No
6	Indiana	<a href="http://iga.in.gov/legislative/laws/2016/ic/titles/032/articles/018/">http://iga.in.gov/legislative/laws/2016/ic/titles/032/articles/018/</a>	Yes as to §10; No as to Comments	No
7	Iowa	<a href="https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=684&amp;year=2017">https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=684&amp;year=2017</a>	Yes	No
8	Kentucky	<a href="http://www.lrc.ky.gov/statutes/chapter.aspx?id=43993">http://www.lrc.ky.gov/statutes/chapter.aspx?id=43993</a>	Yes	No
	2 Massachusetts		N/A	No
9	Michigan	<a href="http://www.legislature.mi.gov/(S(hv4yyksxadofitp4pcsw2h1y))/mileg.aspx?page=getObject&amp;objectName=mcl-Act-434-of-1998">http://www.legislature.mi.gov/(S(hv4yyksxadofitp4pcsw2h1y))/mileg.aspx?page=getObject&amp;objectName=mcl-Act-434-of-1998</a>	Yes	Yes
10	Minnesota	<a href="https://www.revisor.mn.gov/statutes/?id=513.41">https://www.revisor.mn.gov/statutes/?id=513.41</a>	Yes	No

**American College of Trust and Estate Council  
State Law Status of the Uniform Voidable Transactions Act  
As of September 1, 2017**

	<u>State</u>	<u>URL Link</u>	<u>Adopt §10 and Comments?</u>	<u>DAPT State?</u>	
	3	New Jersey		N/A	No
11		New Mexico	<a href="http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&amp;fn=default.htm">http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&amp;fn=default.htm</a>	Yes	No
	4	New York		N/A	No
12		North Carolina	<a href="http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0039">http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0039</a>	Yes	No
13		North Dakota	<a href="http://www.legis.nd.gov/cencode/t13c02-1.pdf#nameddest=13-02p1-01">http://www.legis.nd.gov/cencode/t13c02-1.pdf#nameddest=13-02p1-01</a>	Yes	No
	5	Pennsylvania		N/A	No
	6	Rhode Island		N/A	Yes
	7	South Carolina		N/A	No
14		Utah	<a href="https://le.utah.gov/xcode/Title25/Chapter6/25-6.html?v=C25-6_2017050920170509">https://le.utah.gov/xcode/Title25/Chapter6/25-6.html?v=C25-6_2017050920170509</a>	Yes	Yes
15		Vermont	<a href="http://legislature.vermont.gov/statutes/chapter/09/057">http://legislature.vermont.gov/statutes/chapter/09/057</a>	Yes	No
16		Washington	<a href="http://app.leg.wa.gov/RCW/default.aspx?cite=19.40">http://app.leg.wa.gov/RCW/default.aspx?cite=19.40</a>	Yes	No