

IN TEXAS WE TRUST: THE NEED TO BRING DOMESTIC ASSET PROTECTION TRUSTS TO TEXAS

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I. INTRODUCTION: AMERICAN MONEY ABROAD

Billions in American-made money is currently being held in foreign jurisdictions.¹ Just southeast of the United States in the Caribbean Sea, the number of financial institutions in the Cayman Islands is astonishing.² The Cayman Islands are a small tourist destination in the middle of the Caribbean with many of the major investment centers found in a metropolitan area.³ The three Cayman Islands serve as a home to more than 212 different banks, holding over \$1.5 trillion in international assets.⁴ The Cayman Islands are one of the most highly sought after foreign destinations for Americans to store their money.⁵ The question is, why does America not get to keep all of that American money in our nation?⁶ The answer is, the United States can,

1. See Alanna Petroff, *U.S. Companies Will Pay Billions in Tax on Offshore Cash Piles*, CNN (Jan. 2, 2018), <https://money.cnn.com/2018/01/02/investing/us-tax-companies-overseas-cash/index.html> [perma.cc/6A4Q-KAN3].

2. See *Cayman Islands Ranked as World's 5th Largest Financial Centre*, ELTOMA (Jan. 13, 2017), <http://eltoma-global.com/news/cayman-islands-ranked-as-world-5th-largest-financial-centre.html> [perma.cc/7PCD-5WJQ].

3. See *id.*

4. See *id.*

5. See *id.*

6. See *id.*

if more states adopt domestic asset protection trusts into law, a reverse effect can and will happen.⁷

Seventeen states have adopted domestic asset protection trusts into law and are experiencing widespread success.⁸ In order to continue this trend of bringing assets back into the U.S., more than seventeen states must follow suit.⁹ Texas, being a large and prosperous state with a booming economy, can benefit itself and the nation by choosing to legalize domestic asset protection trusts.¹⁰

This comment will address the various issues and successes of domestic asset protection trusts.¹¹ First, this comment will analyze the history of asset protection trusts to understand the origins and purposes of this unique form of trust.¹² Next, this comment will explore different domestic asset protection trusts adopted by various states and the reasons why some states are more effective than others.¹³ Finally, this comment will discuss the need for Texas to join the trend of adopting asset protection trusts.¹⁴ In doing so, this comment will provide a set of criteria and a path for lawmakers to follow when Texas decides to adopt domestic asset protection trusts into law.¹⁵

II. ASSET PROTECTION

Asset protection trusts are not a new trend among Americans.¹⁶ In fact, the first application of asset protection measures began in Europe during the early 1800s.¹⁷ With the fall of Europe's Napoleonic Era came a period of political and financial turmoil, and wealthy individuals sought safe places to keep their assets.¹⁸ The Channel Islands, off the northern coast of France, provided a safe location for such protection due to their isolated geographical location.¹⁹ The offshore location of these islands inspired the familiar term "offshore banking."²⁰ As increasing numbers of wealthy individuals discovered this new safe method of protecting assets, the popularity of offshore accounts soared and billions of dollars were being deposited into the

7. See Ritchie W. Taylor, *Domestic Asset Protection Trusts: The "Estate Planning Tool of the Decade" or a Charlatan?*, 13 BYU J. PUB. L. 163, 167 (1998).

8. See *id.* at 182.

9. See *id.*

10. See *id.*

11. See *id.*

12. See Steve Oshins, *9th Annual Domestic Asset Protection Trust State Rankings Chart*, OSHINS (Apr. 2018), https://docs.wixstatic.com/ugd/b211fb_fc5bce98b8d84985900295a749574ed4.pdf [perma.cc/F36E-6BEV]; see *infra* Section II.A.

13. Oshins, *supra* note 12; see also *infra* Sections II.B, II.C, II.D, II.E, II.F.

14. See Taylor, *supra* note 7; see also *infra* Part III.

15. See Oshins, *supra* note 12.

16. See Santana Nyekano, *History of Offshore Banking. Does It Really Have a Future?*, WOB, <http://www.worldoffshorebanks.com/history-of-offshore-banking-does-it-really-have-a-future.php> [perma.cc/B6D9-XHBD] (last visited Sept. 18, 2019).

17. See *id.*

18. See *id.*

19. See *id.*

20. See *id.*

accounts.²¹ Although located solely in Europe for nearly a century, offshore accounts established a new haven closer to the U.S. at the end of World War I.²²

The Caribbean Islands, due to their close proximity to the U.S., became the preferred location for Americans seeking to protect their assets.²³ Wealthy Americans could now vacation in the blue waters of the Caribbean knowing that their assets are being protected in the same location.²⁴ Offshore accounts have become incredibly popular today, with an estimated 30% of the world's two hundred richest individuals holding their assets in offshore accounts.²⁵ Additionally, individuals are not the only parties keeping assets in offshore accounts; reports show that U.S. companies hold an estimated \$1.4 trillion in foreign banks.²⁶

A. Foreign Protection

The popularity of offshore accounts is due to the settlor's ability to place his or her assets in the offshore trusts while simultaneously retaining significant enjoyment of those funds.²⁷ The most appealing benefit of foreign trust law is that the settlor of the trust is also permitted to be a "creditor-protected" beneficiary of the trust.²⁸ This forbids the settlor's creditors from attaching the foreign trust or compelling the distribution of the trust to satisfy the settlor's debt.²⁹ Also, creditors face more difficulty in proving a fraudulent transfer of funds when a foreign jurisdiction is being used in the transfer.³⁰ While a last minute transfer of assets to a trust may clearly be considered fraudulent in the U.S., the same manner of transfer into a foreign jurisdiction is more difficult for creditors to prove.³¹ Once assets are placed into an offshore trust, creditors will likely not even consider seeking the offshore funds to satisfy the debt due solely to the fact that the assets are in a foreign jurisdiction.³² Seeking a judgment or seeking to enforce a judgment in a foreign jurisdiction is not something most creditors are willing to attempt.³³

Despite the various benefits, offshore accounts carry a negative connotation.³⁴ Discussion of offshore accounts is often accompanied by talk

21. *See id.*

22. *See id.*

23. *See id.*

24. *See id.*

25. *See id.*

26. *See* Petroff, *supra* note 1.

27. *See* John K. Eason, *Home From the Islands: Domestic Asset Protection Trust Alternatives Impact Traditional Estate and Gift Tax Planning Considerations*, 52 FLA. L. REV. 41, 44 (1999).

28. *See id.* at 50.

29. *See id.*

30. *See id.*

31. *See id.*

32. *See id.* at 50–51.

33. *See id.*

34. *See* Itai Grinberg, *The Battle Over Taxing Offshore Accounts*, 60 UCLA L. REV. 304, 306 (2012).

of tax evasion and fraud.³⁵ The American skepticism toward offshore accounts has resulted in the launch of a global initiative to crack down on fraudulent offshore accounts.³⁶ In 2012, the U.S., along with several European nations, announced a common plan to increase the automatic exchange of tax information in an attempt to eliminate tax evasion.³⁷ While this may be cause for concern for many Americans who hold assets offshore, many have no fear because the Cayman Islands did not join this effort.³⁸

Without the exchange of tax information from foreign banks, the principal in the offshore accounts will remain untaxed by the U.S. government.³⁹ Even with the global information sharing plan, foreign jurisdictions are tasked with forcing the banks of their nation to comply with the sharing of their clients' financial information.⁴⁰ Banks will likely be unwilling to share their clients' data, which would cause a breach of the confidentiality agreement signed by the client and the bank.⁴¹ Wealthy individuals pay these banks large sums of money to keep their transactions confidential, incentivizing banks to avoid complying with the new regulations of their respective governments.⁴²

Before the 2017 Tax Code changes, foreign-held assets were all but permanently held overseas.⁴³ Bringing foreign-held assets back into the States also meant a 40% tax consequence.⁴⁴ With a rate so high, few businesses or wealthy individuals would endure such a harsh burden.⁴⁵ For example, Apple CEO Tim Cook stated that he would "love to" bring Apple's foreign-held profits back into the U.S., but he could not justify paying such a large tax.⁴⁶

President Donald Trump, more experienced in business than politics, realized the effects of offshore accounts on the U.S. government and made a small change in an attempt to bring some foreign-held assets back to the United States.⁴⁷ With the changes to the tax code in 2017, individuals and businesses may now bring foreign-held assets back into the U.S. at a lower tax rate between 8% and 15.5%.⁴⁸ This was one attempt to limit the threat of offshore accounts.⁴⁹

With billions (and possibly trillions) of dollars leaving the U.S. economy and jurisdiction in favor of offshore accounts, something must be

35. *See id.*

36. *See id.*

37. *See id.*

38. *See id.* at 330.

39. *See id.* at 308.

40. *See id.* at 336.

41. *See id.*

42. *See id.* at 319.

43. *See Petroff, supra* note 1.

44. *See id.*

45. *See id.*

46. *See id.*

47. *See id.*

48. *See id.*

49. *See id.*

done to keep taxable funds within the States.⁵⁰ While it is unlikely that foreign-held funds will make their way back into the U.S., the only remaining solution is to keep these assets in the U.S. to begin with.⁵¹ However, in order to keep assets in the U.S., domestic asset protection must be allowed.⁵²

A domestic asset protection trust, or “DAPT,” is the (fairly) recent solution for keeping assets in the U.S. and allowing for their protection from creditors.⁵³ Similar to an offshore account, a DAPT is a self-settled trust in which the settlor is the beneficiary of the trust and may access the funds placed into the trust as he or she pleases.⁵⁴ DAPTs are created with protection in mind.⁵⁵ When structured properly, and in the proper jurisdiction, a DAPT offers protection similar to that of offshore accounts.⁵⁶ After a DAPT is created in the settlor’s desired jurisdiction, the settlor may then decide what assets he or she wants to place in the trust.⁵⁷

A DAPT can consist of a variety of different assets, including cash, securities, real estate, and limited liability companies.⁵⁸ Of course, before transferring the assets into a trust, a client must first consult with his or her lawyer and financial advisor to learn about the benefits and burdens that may be placed on the trust-bound assets.⁵⁹ Certain assets would be well served by the protection of a DAPT, but assets such as real estate or stocks may present a taxation problem.⁶⁰ When DAPTs are created, the estate tax, gift tax, and income tax are the main concerns of the IRS.⁶¹ The IRS is likely to be a proponent of DAPTs as they now have the ability to tax protected funds, unlike in previous years when wealthy individuals used foreign-jurisdictions to shield their assets from the IRS’s sword.⁶² A DAPT is the first self-settled trust allowed under U.S. law; the government has generally been skeptical of allowing individuals to create trusts in which they remain the beneficiary.⁶³

Unfortunately, settlors of DAPTs do not enjoy all of the benefits of offshore accounts.⁶⁴ The privacy of foreign-held assets is oftentimes governed by statutory privacy banking laws, shielding that information from anyone that comes looking.⁶⁵ However, U.S. laws do not provide that level

50. *See id.*

51. *See id.*

52. *See* Thomas E. Greene, *Domestic Asset-Protection Trusts Explained*, WEALTHMANAGEMENT.COM (Aug. 23, 2017), <https://www.wealthmanagement.com/estate-planning/domestic-asset-protection-trusts-explained> [perma.cc/M5V3-B6EY].

53. *See id.*

54. *See id.*

55. *See id.*

56. *See id.*

57. *See id.*

58. *See id.*

59. *See id.*

60. *See* Ric Gregoria, *Advantages and Disadvantages of Living Trusts*, The Florida Bar, BEP FL-CLE 8-1 (2018).

61. *See id.*

62. *See* Petroff, *supra* note 1.

63. *See* Taylor, *supra* note 7.

64. *See id.*

65. *See id.*

of security for DAPTs.⁶⁶ The IRS will likely know the amount and nature of assets being placed into the trusts.⁶⁷ The largest obstacle DAPTs must consider are fraudulent conveyances.⁶⁸ Courts are not hesitant to rule that a transfer of assets is fraudulent when all facts are considered.⁶⁹ The main circumstances in which fraudulent conveyances are found is in bankruptcy proceedings.⁷⁰ The leading factor for determining whether a transfer of assets is fraudulent is the timing of the transfer.⁷¹ If a settlor of a DAPT is on the brink of litigation or if a creditor will seek relief in the near future, a court may rule the transfer of funds fraudulent and the creditors would then be allowed access to the otherwise protected funds.⁷²

B. Coming to America

Asset protection trusts debuted in the U.S. in July 1997.⁷³ Alaska, seeking economic stimulation, was the first state to statutorily authorize the creation of DAPTs.⁷⁴ With over one trillion dollars being held in offshore jurisdictions, Alaska contemplated the effect that a piece of that pie might have on a state lacking the industry and financial centers enjoyed by many others.⁷⁵ Alaska officials believed that, by offering a safe haven for asset protection trusts, the state's economy would boom and one day become a financial hub for the country—or even the world.⁷⁶ In reality, however, Alaska's isolated geographic location and relatively small economy serve as barriers for the success of the state's DAPTs.⁷⁷ Because wealthy individuals likely will not choose Alaska as a safe haven for their assets over highly protected and established jurisdictions such as the Cayman or Cook Islands, the chances of Alaska experiencing more than a slight economic boom were very slim.⁷⁸ Alaska faced other uncertainties before implementing DAPTs, including how to ensure that the transfers to the trusts would not be fraudulent, and what the tax effect of transferring certain assets would be.⁷⁹

The Alaskan statute was groundbreaking in many aspects of wills and trusts laws in the U.S.⁸⁰ For example, the statute was the first of its kind to

66. *See id.*

67. *See id.*

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.*

73. *See id.*

74. *See* Timothy Lee, *Alaska on the Asset Protection Trust Map: Not Far Enough for a Regulatory Advantage, But Too Far for Convenience?*, ALA. L. REV. Vol. 29:149, 159 (2012).

75. *See id.*

76. *See id.*

77. *See id.*

78. *See id.*

79. *See id.* at 160.

80. *See id.* at 150.

allow the creation of self-settled spendthrift trusts.⁸¹ The statute as originally enacted in 1997 was more protective than the amended version currently in effect.⁸² Initially, the Alaskan statute provided that no creditor could reach the assets contained in the trust.⁸³ While ideal for the settlors of DAPTs, this provision was not popular among most other parties.⁸⁴ The most concerning aspect was the inability of mothers and fathers to receive child support payments because an ex-spouse's assets were protected by a DAPT.⁸⁵ Alaskan lawmakers eventually realized that the 1997 statute as written was not as effective and beneficial as originally intended.⁸⁶ In an attempt to revitalize the statute, Alaska adopted an amendment for the first time in 2003.⁸⁷ Alaska recognized that the statute of limitations as worded in the original statute was not a clear and effective measure for the settlor or creditor.⁸⁸ The 2003 amendment introduced a four-year statute of limitations and provided a clear line for determining when a creditor must bring a claim.⁸⁹

C. Statutory Ups and Downs

Shortly after Alaska's statutory authorization of DAPTs, several other states followed suit.⁹⁰ The legalization of DAPTs, while favored by adopting states and others across the country, is not viewed with the same level of optimism by other states and the federal government.⁹¹ Tax and trust law academics opposed the enactment of DAPTs across the country.⁹² Congress mirrored this opposition by enacting legislation to combat some of the benefits of DAPTs.⁹³ In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act, which extended the statute of limitations available to bankruptcy creditors, making it difficult for assets in DAPTs to be shielded against creditors once bankruptcy proceedings begin.⁹⁴

However, Congress sparked interest in DAPTs in 2010 by passing the Foreign Account Tax Compliance Act.⁹⁵ This law attacked the use of offshore accounts for tax evasion purposes, sparking more interest in

81. *See id.* at 154.

82. *See id.* at 157.

83. *See id.*

84. *See id.* at 158.

85. *See id.* at 159.

86. *See id.*

87. *See id.*

88. *See id.*

89. *See id.*

90. *See* Don Sparks, *Twenty Years of Domestic Asset Protection Trusts (APT) in the United States*, ACTEC Foundation, ACTEC FOUNDATION (Mar. 19, 2018), <https://actecfoundation.org/podcasts/domestic-asset-protection-trusts/> [perma.cc/Q96H-4N5L].

91. *See id.*

92. *See id.*

93. *See id.*

94. *See id.*

95. *See id.*

bringing assets back into the U.S. and utilizing the protections of U.S. DAPTs.⁹⁶ Under the Tax Compliance Act, taxpayers must disclose foreign held assets in excess of \$50,000 by attaching a disclosure statement to their tax return.⁹⁷ Taxpayers who fail to include this information and are discovered through an auditing process will face a \$10,000 penalty.⁹⁸ If the taxpayer can prove that the failure to attach the disclosure was with reasonable cause and not willful neglect, a penalty may not be assessed; however, the taxpayer will face a larger penalty if he or she fails to respond to a request from the IRS.⁹⁹

With every advancement in DAPT law, some states always seem to move toward limiting the protections offered by DAPTs with the enactment of Uniform Voidable Transactions Acts.¹⁰⁰ Uniform Voidable Transactions Acts have now been adopted in several states who have enacted DAPTs.¹⁰¹ This enactment broadens the definition of insolvency and allows creditors easier access to assets held in the trusts.¹⁰² While it is important to have statutory limitations in place to avoid fraudulent transfers, this statute burdens one's chances of protecting his or her assets to the greatest extent possible.¹⁰³ With only a limited number of states enacting voidable transactions acts, the selection of the proper asset protection jurisdiction is a game that is played by asset protection planners and lawyers alike.¹⁰⁴ The numerous factors to be considered in determining where a domestic asset protection trust should be established is a crucial factor in the establishment of these trusts, as is discussed in the following section.¹⁰⁵

D. DAPT Ranking Factors

World renowned estates attorney Steven Oshins of the Oshins & Associates law firm in Las Vegas is the leading scholar in the field of DAPTs.¹⁰⁶ By studying the field of DAPTs, Mr. Oshins has compiled a list of nine weighted factors for determining the effectiveness of a DAPT.¹⁰⁷ Choosing the proper jurisdiction to establish a DAPT is a crucial element for

96. *See id.*

97. *See Technical Explanation of H.R. 4213, The "Tax Extenders Act of 2009,"* JCX-60-09 J. COMM. ON TAX'N (Dec. 8, 2009).

98. *See id.*

99. *See id.*

100. *See Sparks, supra* note 90.

101. *See id.*

102. *See id.*

103. *See id.*

104. *See id.*

105. *See Oshins, supra* note 12.

106. *See id.*

107. *See id.*

the settlor of the trust.¹⁰⁸ To receive the strongest protection allowed, all nine of the Oshin factors must be taken into consideration.¹⁰⁹

The nine weighted factors are applied to the seventeen states that have statutorily adopted DAPTs.¹¹⁰ The ranking chart has the seventeen states listed in order based on the effectiveness and strength of the statutes, while the least effective states receive the title of “NR,” for not ranked.¹¹¹ The factor afforded the most weight on the chart is the state statute as a whole, with a weight of 50%.¹¹² Other factors on the chart include whether or not the state has a voidable transactions act (12.5%), a state income tax (5%), the length of the statute of limitations for pre-existing creditors (5%), exception creditors (5%), as well as a few others totaling 100%.¹¹³

When all factors are considered, Nevada ranks number one on the Oshins Chart.¹¹⁴ By taking a closer look at section 166.010 of the Nevada Revised Statutes, it is clear why Nevada is the premier state for DAPTs.¹¹⁵ The Spendthrift Trust Act of Nevada, as it is commonly referred, is widely used by estate planners due to the short statute of limitations for current and future creditors.¹¹⁶ Section 166.170 states that current creditors must commence action against the settlor of a DAPT within: “(1) two years after the transfer is made; or (2) six months after the person discovers or reasonably should have discovered the transfer, whichever is later.”¹¹⁷ Creditors are deemed to have been put on notice as soon as a conveyance of property is filed with the county recorder in the proper county in Nevada.¹¹⁸ This filing often occurs before the DAPT is finalized.¹¹⁹ The statute of limitations begins tolling before the creation of the DAPT, allowing creditors less than two full years after a DAPT is finalized to commence action.¹²⁰ Further, future creditors must commence action within two years after the transfer is made.¹²¹

Section 166.170(b)(3) provides additional protection to a DAPT if creditors do commence suit within the limitations period.¹²² A creditor may not successfully bring suit regarding the transfer of property into a spendthrift trust unless he can “prove by clear and convincing evidence that the transfer of property was a fraudulent transfer pursuant to Chapter 112 of the Nevada

108. See Ashlea Ebeling, *Comparing Domestic Asset Protection States*, FORBES (July 6, 2016), <https://www.forbes.com/sites/ashleaebeling/2016/07/06/comparing-domestic-asset-protection-trust-states/#144ca7f459fd> [perma.cc/98YN-K68G].

109. See *id.*

110. See Oshins, *supra* note 12.

111. See *id.*

112. See *id.*

113. See *id.*

114. See *id.*

115. See NEV. REV. STAT. ANN. § 166.010 (West 2017).

116. See *id.*

117. *Id.* at § 166.170(1)(a)(1)–(2).

118. See *id.*

119. See *id.*

120. See *id.*

121. See *id.*

122. NEV. REV. STAT. ANN. § 166.170(3) (West 2017).

Revised Statutes.”¹²³ The burden is on the creditor or anyone else seeking judgment from the DAPT to show by clear and convincing evidence that the transfer was either fraudulent, in bad faith, or a violation of state law.¹²⁴ Based on the criteria in section 166.170, once a Nevada DAPT reaches the two-year mark, the trust receives near unfettered protection from creditors.¹²⁵

Nevada’s number one ranking on the Oshins Chart is further supported by the fact that Nevada has no exception creditors listed in the Spendthrift Trust Act.¹²⁶ While many states allow exceptions for familial reasons such as child support and alimony, Nevada disallows claims for any and all such purposes.¹²⁷ Accounting for 7.5% of the weight on the Oshins Chart is the fact that Nevada does not require an affidavit of solvency for every new transfer of property into a DAPT.¹²⁸ Based on all of the protections against creditors previously mentioned, it should seem clear that Nevada does not have a Uniform Voidable Transactions Act in place.¹²⁹ By applying the nine weighted factors to section 166.010 of the Nevada Revised Statutes, Mr. Oshins ranks Nevada at the top of the Oshins Chart with a near perfect score of 99.¹³⁰

Now that a model is available for what to seek when adopting a DAPT in a new state, it is relevant also to consider what not to do when statutorily adopting DAPTs.¹³¹ With Nevada being number one on the Oshins Chart, it is interesting to consider which of the seventeen states ranks last on the list.¹³² However, three states make up the bottom of the list, with the ranking of “NR” for not ranked.¹³³ Oklahoma, Virginia, and West Virginia hold the spots as being the least effective jurisdictions for the formation of DAPTs.¹³⁴

After considering the Nevada statute above, the protection provided to settlors in West Virginia by section 44D-5-503a of the West Virginia Code is near the opposite end of the spectrum.¹³⁵ The statute of limitations for preexisting creditors in West Virginia is four years after the date of transfer.¹³⁶ While four years is better than no statute of limitations for preexisting creditors, future creditors are given no restrictions as to when they must commence suit.¹³⁷ If a preexisting creditor does commence suit within the four-year statute of limitations, section 44D-5-503a of the West Virginia Code does not provide a standard of persuasion to prove a fraudulent transfer,

123. *See id.*

124. *See id.*

125. *See id.*

126. *See Oshins, supra* note 12.

127. *See id.*

128. *See id.*

129. *See id.*

130. *See id.*

131. *See id.*

132. *See id.*

133. *See id.*

134. *See id.*

135. *See* W. VA. CODE ANN. § 44D-5-503a (West 2016).

136. *Id.*

137. *See id.*

such as the clear and convincing standard in section 166.170 of the Nevada Revised Statutes.¹³⁸ In the absence of a clear and convincing standard, creditors are faced with a rather low burden to prove that a settlor's transfer of property into a DAPT was fraudulently made to avoid payment of debt or various other reasons.¹³⁹ When transferring property into a DAPT in West Virginia, a settlor must provide a "qualified affidavit."¹⁴⁰ A qualified affidavit is a "...duly executed affidavit of the grantor which contains under oath all of the following statements. . . ."¹⁴¹ The statute proceeds to list eight different factors swearing to the legality of the transfer being made.¹⁴²

Many settlors of spendthrift trusts are hesitant to sign such affidavits.¹⁴³ Such hesitation is not because the transfer is fraudulent or illegal.¹⁴⁴ Rather, a creditor may seek to have the transfer considered fraudulent by forcefully pursuing one of the nine different factors.¹⁴⁵ Similar to Nevada, West Virginia does not provide any exception creditors, but with the low standards in place, one may argue that the lack of exception creditors does not add more than a scintilla of protection to the DAPT.¹⁴⁶ When weighing the Nevada statute and the West Virginia statute against one another, it is clear why Mr. Oshins ranks Nevada as number one on the chart and West Virginia remains unranked.¹⁴⁷

Having analyzed both a state that is considered a citadel for DAPTs as well as a state considered to be a DAPT cemetery, it may be useful to look at a few states falling in between the two extremes.¹⁴⁸ South Dakota is ranked second on the Oshins Chart by a difference of one point behind Nevada.¹⁴⁹ The only difference between South Dakota and Nevada is that section 55-16-1 of the South Dakota Codified Laws allows the exception creditors of divorcing spouses, alimony, and child support.¹⁵⁰ Exception creditors, allowed by certain states, are statutorily permitted to obtain judgments of funds otherwise protected by a DAPT.¹⁵¹ There is a more significant drop in points from second place to third, with Ohio scoring eighty-five points.¹⁵² The likely reason behind this is that section 5816 of the Ohio Revised Code

138. *See id.*; *see also* NEV. REV. STAT. ANN. § 166.170 (West 2017) (stating that in order to succeed on a claim against the trust, a creditor must prove by clear and convincing evidence that the transfer of property was fraudulent).

139. *See id.*

140. *See id.*

141. *Id.* at § 44D-5-503b.

142. *See id.*

143. *See* W. VA. CODE ANN. § 44D-5-503a (West 2016).

144. *See id.*

145. *See id.*

146. *See id.*

147. *See id.*; *see also* NEV. REV. STAT. ANN. § 166.010 (West 2017) (the language of the statute as well as the inclusion of a clear and convincing standard of proof provide near unfettered protection to assets).

148. *See* Oshins, *supra* note 12.

149. *See id.*

150. *See* S.D. CODIFIED LAWS § 55-16-1 (West 2017).

151. *See* Oshins, *supra* note 12.

152. *See id.*

requires an affidavit to be provided with the transfer of property, as is required under West Virginia law.¹⁵³ As the rankings go down, there are slight changes between each of the states.¹⁵⁴ The following states are ranked fourth through fourteenth, respectively: Missouri, Tennessee, Delaware, Alaska, Rhode Island, New Hampshire, Wyoming, Hawaii, Michigan, Mississippi, and Utah.¹⁵⁵

E. Importance of Ranking

Mr. Oshins has compiled these various weighted factors and annually updates the Oshins Chart based on the effectiveness of the DAPT protection in each state, but for what reason?¹⁵⁶ As previously mentioned, deciding where to establish a DAPT is a game that is played by a settlor's estate planner and estate planning attorney.¹⁵⁷ The Oshins Chart is one of the most important tools that these parties will use when deciding where to establish a DAPT.¹⁵⁸ The nine weighted factors all play a role in selecting which state will be the most beneficial to a client.¹⁵⁹ When a state goes through the process of statutorily adopting DAPTs into law, it is not an easy task.¹⁶⁰ Adopting DAPTs requires widespread support and large sums of money to fund lobbying for the law's adoption.¹⁶¹

With so many hurdles to overcome, a state should have the goal of being one of the most effective states among those that have adopted DAPTs.¹⁶² While a state must keep creditor's interests in mind and not destroy their rights completely, it must strike a fair balance between the rights of creditors and debtors.¹⁶³ A state must adopt a mindset similar to the film *Field of Dreams*: "If you build it, they will come."¹⁶⁴ In this case, if a state adopts a sufficient DAPT framework, the settlors will come, often with their valuable assets in hand.¹⁶⁵

While it is not required to achieve the highest ranking on the Oshins Chart, states should strive to be near the middle or top.¹⁶⁶ States can fine tune different aspects of a DAPT to remain competitive on the chart.¹⁶⁷ Individuals may believe that certain factors do not apply to them, such as alimony or child support, and may not care whether or not a state allows such

153. See OHIO REV. CODE ANN. § 5816.06 (LexisNexis 2017).

154. See Oshins, *supra* note 12.

155. See *id.*

156. See *id.*

157. See *id.*

158. See *id.*

159. See *id.*

160. See Ebeling, *supra* note 108.

161. See *id.*

162. See *id.*

163. See *id.*

164. FIELD OF DREAMS (Universal Pictures 1989).

165. See Ebeling, *supra* note 108.

166. See Oshins, *supra* note 12.

167. See *id.*

exception creditors.¹⁶⁸ Further, a settlor may not mind signing an affidavit if he has absolutely nothing to hide and does not mind agreeing under oath to a list of statements certifying the validity and honesty of the transfer.¹⁶⁹

The law allows individuals to establish DAPTs in states other than the location of their principal residence.¹⁷⁰ However, individuals should have ties with a certain state to avoid the appearance of a fraudulent transfer.¹⁷¹ While transferring property to a DAPT in another state is more appealing to the government than transferring funds to an account in the Cayman Islands, doing so still raises red flags.¹⁷² The fact that an individual owns property or has family in another state goes a long way when upholding the validity of an out of state DAPT.¹⁷³

F. Risks to Take

While an individual may hope that creating a DAPT will allow near unfettered protection when all of the proper steps are followed to ensure the conveyance was not fraudulent, a few risks are still involved.¹⁷⁴ The long arm of the law can reach into a DAPT under particular circumstances.¹⁷⁵ Federal courts and judges have near unlimited power to enforce the laws of society.¹⁷⁶ The Supremacy Clause of the U.S. Constitution does not require federal courts to follow all state laws, including state DAPT laws.¹⁷⁷

The main example of a federal court being able to seek judgement from a DAPT is through bankruptcy proceedings.¹⁷⁸ In certain cases, the DAPT of a debtor in bankruptcy proceedings will pass into the bankruptcy estate.¹⁷⁹ If the debtor is a resident in the state in which the DAPT is formed, it is likely that the DAPT will become part of the bankruptcy estate, allowing the federal court access to the property therefrom.¹⁸⁰ The easiest way to ensure that creditors do not have a somewhat easy path to a DAPT is to avoid federal courts and bankruptcy proceedings at all cost.¹⁸¹ But if an individual does find himself in bankruptcy proceedings, it is best to be domiciled in a state other than where the DAPT was formed to avoid attachment.¹⁸²

168. See Ebeling, *supra* note 108.

169. See *id.*

170. See *id.*

171. See *id.*

172. See *id.*

173. See *id.*

174. See *id.*

175. See *id.*

176. See *id.*

177. See *id.*

178. See *id.*

179. See *id.*

180. See *id.*

181. See *id.*

182. See *id.*

The second way in which DAPTs can be risky is based on the Full Faith and Credit Clause of the U.S. Constitution.¹⁸³ Under the Full Faith and Credit Clause, a creditor or individual may obtain judgment in one state and have that judgment enforced in a different state.¹⁸⁴ A recent case out of Montana and Alaska settled a long awaited debate about the enforcement of DAPTs between states.¹⁸⁵ In the case of Toni 1 Trust, by *Tangwall v. Wacker*, Mr. Tangwall brought suit in a Montana state court and sought to have an Alaskan DAPT considered fraudulent.¹⁸⁶ Section 34.44.110(K) of the Alaska Statutes sought to claim that Alaska has exclusive jurisdiction over fraudulent transfers, attempting to limit fraudulent claims to Alaskan courts only.¹⁸⁷ However, the Alaska Supreme Court ruled that Alaska did not have that ability under the Full Faith and Credit Clause.¹⁸⁸ The court's ruling allowed the Montana judgment to be enforced against the Alaskan DAPT.¹⁸⁹ This ruling was monumental and possibly catastrophic for certain Alaskan DAPT settlers.¹⁹⁰ This holding allows creditors to sue in states other than the state in which the DAPT was created.¹⁹¹

As mentioned above, states such as West Virginia do not require the clear and convincing standard to prove that a transfer of property was fraudulent.¹⁹² The Supreme Court of Alaska has now (almost) expressly instructed creditors to seek judgments against Alaskan DAPTs in relaxed burden states and then bring the judgement back to be enforced in Alaska.¹⁹³ Creditors will no doubt take advantage of states with such relaxed standards of proof to seek judgments against DAPTs in jurisdictions with more rigid standards.¹⁹⁴ While Alaska was the first state to cement this ruling into binding precedent, other states will likely follow suit.¹⁹⁵

There is no bright-line method for avoiding the scenario mentioned above, except to avoid suit in states with a relaxed burden of proof on the creditor.¹⁹⁶ It is important that creditors do not have a way to obtain personal jurisdiction over the DAPT settlor in such cases.¹⁹⁷ If a settlor does not reside

183. See Grady Dickens, *Don't Do DAPT*, TEXAS TRUSTS, ESTATES, AND TAXES, (Feb. 6, 2019), <https://www.texasstatesblog.com/2019/02/dont-do-dapt/> [perma.cc/35YQ-DHby].

184. See *id.*

185. See Toni 1 Trust, by *Tangwall v. Wacker*, 413 P.3d 1199 (Alaska 2018).

186. See *id.*

187. See *id.*

188. See *id.*

189. See *id.*

190. See Jay Adkisson, *Alaska Supreme Court Hammers Last Nail in DAPT Coffin for Use in Non-DAPT States In Toni 1 Trust*, FORBES (Mar. 5, 2018), <https://www.forbes.com/sites/jayadkisson/2018/03/05/alaska-supreme-court-hammers-last-nail-in-dapt-coffin-for-use-in-non-dapt-states-in-toni-1-trust/#7fd63eed62a7> [perma.cc/Y4MX-5BTB].

191. See *id.*

192. Toni 1 Trust, by *Tangwall v. Wacker*, 413 P.3d at 1199.

193. See *id.*

194. See Adkisson, *supra* note 190.

195. See *id.*

196. See *id.*

197. See *id.*

in the state, it may be important that he or she takes precautionary measures to not establish minimum contacts with the state.¹⁹⁸

III. ASSET PROTECTION IN TEXAS, OR NOT

The Texas Property Code remained relatively unchanged regarding the formation of trusts by Texans for a significant period of time.¹⁹⁹ Self-settled spendthrift trusts have never been a broad topic of conversation among Texas lawmakers.²⁰⁰ However, with the changing times facing Americans and Texans today, the need to bring self-settled asset protection trusts to Texas is alive and well.²⁰¹ With seventeen states already adopting DAPTs into law, the pressure is now on Texas to follow suit.²⁰²

A. Here and Now

For Texas to legalize DAPTs, section 112.035 of the Texas Property Code must be amended.²⁰³ Currently, section 112.035 disallows self-settled spendthrift trusts by explicitly stating “if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor’s beneficial interest does not prevent the settlor’s creditors from satisfying claims from the settlor’s interest in the trust estate.”²⁰⁴ The language which presents a problem is the inability of a settlor to also be a beneficiary and receive protection from creditors.²⁰⁵ While the language in section 112.035 still disallows DAPTs, a 2013 amendment to the Texas Property Code made strides in the right direction towards spendthrift trusts.²⁰⁶ Texas now allows an exception to the prohibition of spendthrift trusts by narrowly allowing spouses to use *inter vivos* trusts, or living trusts to shield assets from creditors.²⁰⁷ Other than this narrow exception, if Texans are seeking to create a DAPT, they must do so outside of their home state.²⁰⁸ This positive development shows that the conversation in favor of DAPTs in Texas is growing.²⁰⁹

Texas has the second largest economy in the nation, generating \$1.8 trillion every year.²¹⁰ With such a large economy comes individuals with

198. *See id.*

199. *See* TEX. PROP. CODE ANN. § 112.035.

200. *See id.*

201. *See* Ebeling, *supra* note 108.

202. *See id.*

203. *See* TEX. PROP. CODE ANN. § 112.035.

204. *Id.* § 112.035(d).

205. *See id.*

206. *See id.*

207. *See id.*

208. *See* Ebeling, *supra* note 108.

209. *See* TEX. PROP. CODE ANN. § 112.035.

210. *See Best States for Business*, FORBES (Nov. 2018), <https://www.forbes.com/places/tx/perma.cc/64VG-UD35>].

significant amounts of wealth.²¹¹ While it is unknown exactly how much of Texans' money is kept in foreign jurisdictions or even in out of state jurisdictions, the number is likely significant.²¹² Due to the fact that wealthy individuals want to protect their money at all costs, there is a need for DAPTs in Texas.²¹³

B. The Change

The benefits available to Texans and the State of Texas through the adoption of DAPTs can be significant if an effective statute is adopted.²¹⁴ The Oshins Chart provides a unique set of criteria to follow when deciding how to adopt DAPTs into law.²¹⁵ Texas lawmakers must fine tune the Property Code to be competitive regarding the strength of the DAPT.²¹⁶ Adopting a weak DAPT statute, such as the West Virginia statute discussed previously, will not benefit Texas.²¹⁷ Texans will continue to seek other outlets in order to protect their assets if the Texas DAPT statute does not provide sufficient protection.²¹⁸

The most important factor to consider in amending the Property Code involves the language of the code itself.²¹⁹ The precise language sets the bar for the strength that the DAPT provides.²²⁰ Texas, being a traditionally conservative state, will likely face various issues when implementing certain competitive factors on the Oshins Chart, such as exception creditors.²²¹ Most individuals will argue that certain exception creditors must be allowed, the main exception being for child support.²²² While Nevada is first on the list likely due to the fact that no exception creditors are allowed, it is still possible to remain competitive while allowing the exception of child support and alimony, as exhibited by South Dakota's number two ranking on the chart.²²³ Allowing such exception creditors will likely be in Texas's best interest in adopting DAPTs.²²⁴ To remain competitive on the Oshins Chart, Texas

211. *See id.*

212. *See* Kenneth Rapoza, *Tax Haven Cash Rising, Now Equal to at Least 10% of GDP*, FORBES (Sept. 15, 2017), <https://www.forbes.com/sites/kenrapoza/2017/09/15/tax-haven-cash-rising-now-equal-to-at-least-10-of-world-gdp/#70682d2570d6> [perma.cc/XG8V-PNPC].

213. *See id.*

214. *See* Oshins, *supra* note 12.

215. *See id.*

216. *See* TEX. PROP. CODE ANN. § 112.035.

217. *See* W. VA. CODE ANN. § 44D-5-503a (West 2016).

218. *See* Oshins, *supra* note 12.

219. *See id.*

220. *See id.*

221. *See* Scott Milder, *Texas Republicans Stray From Conservative Roots*, HOUS. CHRON. (July 22, 2018), <https://www.houstonchronicle.com/opinion/outlook/article/Texas-Republicans-heady-13094022.php> [perma.cc/F8VN-ETJH].

222. *See* Oshins, *supra* note 12.

223. *See id.*

224. *See id.*

should strongly consider disallowing preexisting creditors from accessing DAPTs.²²⁵

On the Oshins Chart, the top five states do not allow any exception creditors beyond child support and alimony.²²⁶ By allowing only two exception creditors, settlors of DAPTs can be confident that their assets are still in good hands under Texas law.²²⁷ Disallowing all preexisting creditors access to assets in DAPTs is a drastic step that Texas lawmakers will have to take, which could possibly disadvantage a large number of creditors in the state.²²⁸ There is the possibility that creditors may become hesitant to loan money or goods to Texans due to the fact that assets may be shielded by DAPTs.²²⁹ However, both lawmakers and creditors can be at ease knowing that a fraudulent transfer burden of proof is in place.²³⁰

Many Texas lawmakers likely look down upon DAPTs, associating them with fraudulent transfers.²³¹ However, Texas lawmakers can prevent the majority of fraudulent transfers by writing a fraudulent transfer standard of proof into the Property Code.²³² The majority of states that have adopted DAPTs use a clear and convincing standard.²³³ Texas uses a similar standard in the Uniform Fraudulent Transfer Act, hopefully preventing all fraudulent transfers of assets into Texas DAPTs.²³⁴ While a few fraudulent transfers may survive this standard, we as Texans can be hopeful that such transactions never occur.²³⁵ If a DAPT is determined to be fraudulent, the trust will become void under Texas law and creditors will be allowed access to the assets in the trust.²³⁶ The familiar clear and convincing standard should help ease the minds of Texas lawmakers when considering the adoption of DAPTs.²³⁷ Lawmakers can be confident knowing they did not create an avenue for the criminal and fraudulent shielding of assets.²³⁸

The clear and convincing standard is not the only fraudulent protectionist measure that Texas will have regarding DAPTs.²³⁹ While it is not favorable to the ranking on the Oshins Chart, as mentioned above, Texas currently has a Uniform Fraudulent Transfer Act in section 24 of the Texas Business and Commerce Code.²⁴⁰ Sections 24.005(b)(1)-(11) of the code prohibit the fraudulent transfer of assets into DAPTs by providing specific

225. *See id.*

226. *See id.*

227. *See id.*

228. *See* Bill Fay, *What Is Predatory Lending?*, DEBT.ORG (Sep. 21, 2017), <https://www.debt.org/credit/predatory-lending/> [perma.cc/6V9X-UKNN].

229. *See id.*

230. *See* TEX. BUS. & COM. CODE ANN. § 24.001.

231. *See* Ritchie, *supra* note 7.

232. *See* TEX. BUS. & COM. CODE ANN. § 24.001.

233. *See* NEV. REV. STAT. ANN. § 166.170(b)(2) (West 2017).

234. *See* TEX. BUS. & COM. CODE ANN. § 24.001.

235. *See* Ritchie, *supra* note 7.

236. *See* TEX. BUS. & COM. CODE ANN. § 24.001.

237. *See* NEV. REV. STAT. ANN. § 166.170(b)(2) (West 2017).

238. *See* TEX. BUS. & COM. CODE ANN. § 24.005(b)(1)-(11).

239. *See id.* § 24.001.

240. *See id.*

criteria as to when transfers are considered fraudulent.²⁴¹ In section 24.005, a transfer is considered fraudulent if a “creditor’s claim arose before or within a reasonable time after the transfer was made or the obligation was incurred.”²⁴² While Texas will be burdened on the Oshins Chart by the Uniform Fraudulent Transfer Act, it does not prevent Texas from staying competitive among other DAPT states.²⁴³ Texas must seek to gain quality points in a different category on the chart, such as not requiring an affidavit of insolvency for each new transfer into a DAPT.²⁴⁴

An affidavit of insolvency is an extremely formal document signed under oath that oftentimes creates feelings of unease among settlors who are being forced to sign it.²⁴⁵ As mentioned above, a settlor’s unease is not because the settlor is worried the conveyance is fraudulent.²⁴⁶ Rather, swearing to a laundry lists of factors under oath creates a feeling of hesitancy amongst settlors.²⁴⁷ While lawmakers may view foregoing the affidavit as an avenue or loophole for fraud, that is not the case.²⁴⁸ There remains several safeguards in place to prevent fraudulent transfers of assets from occurring.²⁴⁹

Ease of use is the main benefit of not requiring an affidavit with each transfer of assets into a DAPT.²⁵⁰ In today’s society, individuals prefer ease of use in nearly every facet of life.²⁵¹ From technology to business transactions, Americans prefer things to be easier.²⁵² By not requiring an affidavit with each transfer, Texans will be able to easily create a DAPT and make follow up transfers.²⁵³ This factor alone will give Texas an advantage over many states on the Oshins Chart, including Ohio and Tennessee (numbers three and five, respectively), which both require an affidavit with each transfer.²⁵⁴ Texas lawmakers can recover competitive points in this category on the Oshins Chart by not requiring an affidavit.²⁵⁵

The last criteria that can set Texas apart regarding the competitiveness of DAPTs is the statute of limitations for current and future creditors.²⁵⁶ Civil claims in Texas have between a two to four year statute of limitations,

241. *See id.* § 24.005(b)(1)-(11).

242. *See id.* § 24.005(a).

243. *See Oshins, supra* note 12.

244. *See id.*

245. *See* W. VA. CODE ANN. § 44D-5-503b (West 2016).

246. *See id.* § 44D-5-503a (West 2016).

247. *See id.* § 44D-5-503b (West 2016).

248. *See Ritchie, supra* note 7.

249. *See id.*

250. *Cf. Oshins, supra* note 12 (indicating several considerations which determine rank, but not without emphasis on affidavits).

251. *See* Dan Gingiss, *How to ‘Do Simple Better’ in Your Customer Experience*, FORBES (Mar. 21, 2018), <https://www.forbes.com/sites/dangingiss/2018/03/21/how-to-do-simple-better-in-your-customer-experience/#6fddc5137204> [perma.cc/9FBS-LK8N].

252. *See id.*

253. *See id.*

254. *See Oshins, supra* note 12.

255. *See id.*

256. *See id.*

depending on the claim.²⁵⁷ Compared to other states, Texas has rather conservative statutes of limitations.²⁵⁸ Nevada, which is at the top of the DAPT chart, has a civil statute of limitations from two to six years.²⁵⁹ When considering the adoption of DAPTs, Texas should seek to remain conservative in the length of the statute of limitations for current and future creditors.²⁶⁰ Current DAPT states have statute of limitations from one and a half to four years.²⁶¹ Continuing Texas tradition, lawmakers should seek to have the statute of limitations set at two years.²⁶² Two years is a reasonable amount of time for current and future creditors to effectively assert their claims.²⁶³ A limitation period extending beyond two years would prevent Texas from remaining a top level competitor in the asset protection field.²⁶⁴

One factor that Texas should not and will not consider changing is the state income tax.²⁶⁵ The Oshins Chart gives a five percent weight to the criteria of state income tax.²⁶⁶ Texas is ahead of several other states on the chart due to the omission of a state income tax.²⁶⁷ Texans are only required to pay federal income taxes.²⁶⁸ This factor requires no change by Texas lawmakers when adopting DAPTs into law.²⁶⁹

The State of Texas and its lawmakers clearly have many hurdles to jump in order to pass DAPTs into law.²⁷⁰ However, the factors are clear in what needs to be accomplished to remain competitive in comparison to other DAPT states.²⁷¹ The Oshins Chart can serve as a guide to Texas lawmakers by showing the criteria and the weighted importance of each factor in considering the effectiveness of a DAPT.²⁷²

C. Success for Texas

Texans can hope that the problem of Texas money leaving the state can be stopped or greatly limited by the adoption of DAPTs.²⁷³ However, this

257. See Cara O'Neill, *Civil Statutes of Limitations*, NOLO (Oct. 5, 2017), <https://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html> [perma.cc/UQB3-A4LN].

258. See *id.*

259. See Oshins, *supra* note 12.

260. See *id.*

261. See *id.*

262. See O'Neill, *supra* note 257.

263. See *Reasonable Statutes of Limitations Are an Important Aspect of a Fair Civil Justice System*, N.J. CIV. JUST. INST. (May 29, 2014) <http://www.civiljusticenj.org/reasonable-statute-of-limitations-are-an-important-aspect-of-a-fair-civil-justice-system/> [perma.cc/HZG8-RZMT].

264. See Oshins, *supra* note 12.

265. See *id.*

266. See *id.*

267. See *id.*

268. See Lauren Perez, *States with No Income Tax*, SMART ASSET (Nov. 16, 2018), <https://smartasset.com/taxes/states-with-no-income-tax> [perma.cc/REZC-HD45].

269. See *id.*

270. See Milder, *supra* note 221.

271. See Oshins, *supra* note 12.

272. See *id.*

273. See Nyekano, *supra* note 16.

effect may be slow in nature.²⁷⁴ As mentioned above, the process of bringing assets back into U.S. jurisdiction is a burdensome process.²⁷⁵ The process may be slow and gradual over the next few generations.²⁷⁶ As new generations inherit wealth, we can hope that Texas assets will remain in Texas, and previously foreign-held assets will make their way back into Texas to enjoy the protections granted by Texas law.²⁷⁷

Alaska, the first state to adopt DAPTs, did not experience significant benefits from the adoption of DAPTs.²⁷⁸ The reason behind Alaska's lack of success is likely due to the small economy and the geographical location of the state.²⁷⁹ Alaska did not appeal to wealthy individuals as a safe place to place their assets into trusts.²⁸⁰ However, Texas will not experience the same problems as Alaska in the adoption of DAPTs.²⁸¹ Texas differs from Alaska in both of these respects.²⁸² Texas has the possibility of becoming a haven for individuals seeking to protect their assets.²⁸³ Texas' geographical location guarantees more success than Alaska.²⁸⁴ Being centrally located between the east and west coast offers an ideal location with several prominent cities, such as Houston and Dallas adding to Texas' draw.²⁸⁵ With the booming Texas economy, more money is coming into the state than ever before.²⁸⁶ Companies like Toyota and McKesson moving their headquarters to Texas continues to boost the state economy.²⁸⁷ Not to mention, the Permian Basin in West Texas produces more oil than all but two countries in the world.²⁸⁸ Texas has the perfect economy to attract settlers to establish DAPTs in the state.²⁸⁹ The only thing holding Texas back from experiencing success with DAPTs is the adoption of DAPTs into law.²⁹⁰

274. *See id.*

275. *See id.*

276. *See id.*

277. *See id.*

278. *See Lee, supra* note 74.

279. *See id.*

280. *See id.*

281. *See id.*

282. *See* Melissa Repko, *McKesson, Nation's Sixth Largest Company, Is Moving Corporate HQ From California to Irving*, DALLAS NEWS (Nov. 30, 2018), <https://www.dallasnews.com/business/health-care/2018/11/30/medical-industry-giant-mckesson-move-headquarters-irving> [perma.cc/6ZXY-5GLE].

283. *See id.*

284. *See* Gordon Dickson, *Texas Adds the Equivalent of Another Arlington to its Population*, STAR-TELEGRAM (Dec. 20, 2017), <https://www.star-telegram.com/news/business/growth/article190750684.html> [perma.cc/FS23-J25Y].

285. *See id.*

286. *See id.*

287. *See id.*

288. *See* Matt Egan, *Texas to Pass Iraq and Iran as World's No. 3 Oil Powerhouse*, CNN (July 17, 2018), <https://money.cnn.com/2018/07/17/investing/texas-oil-iran-iraq-permian-basin/index.html> [perma.cc/E7J4-3BXM].

289. *See id.*

290. *See* Taylor, *supra* note 7.

IV. CONCLUSION

Offshore accounts have been a problem in the U.S. since their inception in the Cook Islands many years ago.²⁹¹ American assets are being hidden in offshore sites and protected by the laws of foreign nations.²⁹² When Alaska became the first state to allow asset protection trusts in the United States in 1997, the first step was made in an effort to keep American assets on home turf.²⁹³ While Alaska did not experience widespread success with DAPTs, several other states have.²⁹⁴ As the Oshins Chart rankings show, Nevada provides the most protection to assets when placed in a DAPT, a trait Texas should strive for.²⁹⁵ So why has Texas not taken the stride towards legalizing DAPTs here in the Lone Star State?²⁹⁶

The pressure is on Texas to adopt DAPTs into law.²⁹⁷ With the adoption of DAPTs in Texas comes many benefits for the state as well as its citizens.²⁹⁸ The adoption will not be a hard task for lawmakers.²⁹⁹ While the fear of fraudulent transfers will be a factor in lawmakers minds, adopting DAPTs should do the opposite.³⁰⁰ DAPTs create a legal way to keep assets in America as well as the State of Texas.³⁰¹ The criteria needed to become an effective competitor among DAPT states has been set forth above.³⁰² Relying on the factors on the Oshins Chart, Texas can become an effective jurisdiction for DAPTs.³⁰³ The benefits are waiting; Texas must take advantage of DAPTs.³⁰⁴

291. See Lee, *supra* note 74.

292. See *id.*

293. See *id.*

294. See *id.*

295. See *id.*

296. See Milder, *supra* note 221.

297. See *id.*

298. See Thomas O. Wells, *Domestic Asset Protection Trusts-A Viable Estate and Wealth Preservation Alternative*, 77-May FLA. B.J. 44 (2003) (discussing the history of DAPTs and the benefits they have on states).

299. See Milder, *supra* note 221.

300. See Wells, *supra* note 298.

301. See *id.*

302. See Oshins, *supra* note 12.

303. See *id.*

304. See *id.*