

**14<sup>th</sup> Annual Changes and Trends Affecting  
Special Need Trusts**

February 15-16, 2018  
Austin, Texas

**An Update on the ABLE Act**

**Stephen W. Dale, JD, LL.M**

**Author Contact Information:**

Stephen W. Dale, JD, LL.M  
The Dale Law Firm, P.C.  
127 Aspen Drive, Suite 200  
Pacheco, California 94553  
[steve@dalelawfirm.com](mailto:steve@dalelawfirm.com)  
925.826.5585

# **University of Texas 14th Annual Changes and Trends Affecting Special Needs Trusts**

## **An update on the ABLE Act**

**Stephen W. Dale, JD, LL.M**  
**February 15, 2018**

### **Program Description**

*An update on the ABLE Act, with strategies about how to use this new tool to enhance your practice including case studies to illustrate how to use ABLE Accounts, as well as how to educate your clients and community.*

### **Opening Comment**

The ABLE Act was passed in December of 2014, and as of this writing, there are 32 programs open across the country. A majority of these programs are open to anyone in any state, while the ABLE programs in Florida, Georgia, Kentucky, Louisiana, Maryland, Missouri, New Hampshire, South Carolina, New York and Vermont are exclusively for their own citizens.

While it is expected that many more states will enact their own programs in the coming years, ABLE Act programs are available now and even though programs in California and Texas are not yet operational, there is no reason to wait to use this new tool. This is partially true because, so far, the existing programs will allow a transfer of an ABLE Act account to another state's program with little or no problem or expense.

The ABLE Act was first introduced in 2007. The initial bill and the disability programs that initiated the legislation were originally very critical of special needs trusts and attorneys and advisors in the special needs trust industry. In fact, many of the early promotions of the ABLE Act villainized the special needs trust attorney and the special needs trust industry, while omitting key features of the legislation not the least of which is not mentioning the Medicaid lien.

Oddly enough, the final legislation as passed and modified in 2014 create a tool that can work very nicely with special needs trusts and presents the special needs trust practitioner with a real opportunity to use the ABLE Act as a platform to educate their communities about the need for funding to assist a person with a disability to provide for services. In addition, this is a great opportunity to form meaningful coalitions between all stakeholders that focus on the need for sustainable resources for persons with disabilities and their families to build bridges rather than maintain walls of isolation. Implementation at the state level provides stakeholders and advocates a platform not only to educate our communities about this tool, but to focus on a broader need of examining all options as well as the need for systemic change in our social service and judicial systems.

### **Typically, the Interest in a New Program has a Limited Shelf Life**

If history is a guide, the window of opportunity to use the ABLE Act as a platform for change has a limited period of time that the community will pay attention. For example, the PASS Plan, or a Plan for Achieving Self-Support (PASS) that was passed in 1996, allows a person with a disability to set aside otherwise countable income and/or resources for a specific period of time in order to achieve a work goal. When the PASS Plan was first introduced, there was a great deal of attention to this new tool, but within 5 years the attention in this tool waned. This does not reflect that PASS Plans lacks importance, just that there are many issues that affect persons with disabilities and their families and focuses change in time. ABLE Act Accounts are here to stay, and likely to remain an important tool, but if history is an indicator, the level of interest that persons with disabilities and families have today with this new tool will not be as focused 5 years from now as it is today. This gives the disability rights advocate and the special needs trust community a limited time to take full advantage of this platform to reach out to the communities they serve.

The ABLE Act is a new tool with many uses and a great deal of education is going to be needed. The fact is, to make some educated decisions, persons with disabilities and their families need to understand all the different options, their strengths, and their challenges.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: An Update on the ABLE Act

Also available as part of the eCourse

[ABLE: Updates and Ways You Should and Should Not Use It](#)

First appeared as part of the conference materials for the  
14<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"ABLE Act Update"