

- SUBJECT:** Aligning anti-lapse statute with the transfer-on-death deed
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield
- 0 nays
- SENATE VOTE:** On final passage, April 19 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** *On House companion bill, HB 3121:*
For — Trish McAllister, Texas Access to Justice Commission
- Against — None
- BACKGROUND:** Estate Code, ch. 114 creates a transfer-on-death deed (TODD) instrument. The TODD allows a property owner to transfer real property to a beneficiary upon the owner's death without going through the probate process. A standard TODD form appears under sec. 114.151.
- Sec. 114.103(a)(2) provides that when there is one beneficiary who does not survive the transferor by 120 hours, the beneficiary's interest lapses, or becomes void. Sec. 114.103(a)(4) provides that when there are two or more beneficiaries and one dies before the transferor, the anti-lapse statute (Estates Code, ch. 255, subch. D) applies, and the deceased beneficiary's share is divided among his or her surviving descendants.
- Concerns have been raised that under the TODD laws, the anti-lapse statute applies only in cases in which the deceased individual had designated more than one beneficiary on the deed and that it should also apply when there is one beneficiary.
- DIGEST:** SB 2150 would provide that Estates Code, ch. 255, subch. D applied to a transfer-on-death deed (TODD) regardless of the number of beneficiaries a deceased individual had designated.

SB 2150 also would make relevant changes to the language in the Estate Code's TODD instrument and would provide three additional sections on the TODD forms. The three new sections would allow transferors to note their preference in the event of different scenarios involving predeceased beneficiaries, including when at least one primary beneficiary survived the property owner, when no primary beneficiary survived the property owner, and when no alternate beneficiaries survived the property owner.

The bill would take effect September 1, 2017, and would apply to a TODD executed and acknowledged on or after that date.

NOTES:

A companion bill, HB 3121 by Farrar, was reported favorably by the House Judiciary and Civil Jurisprudence Committee on May 4 and placed on the General State Calendar for May 11.