

- SUBJECT:** Specifying liability for construction defects; requiring certain disclosure
- COMMITTEE:** Business and Industry — favorable, with amendment
- VOTE:** 5 ayes — Oliveira, Shine, Collier, Villalba, Workman
1 nay — Romero
1 absent — Stickland
- SENATE VOTE:** On final passage, April 19 — 29-2 (Estes, Hall)
- WITNESSES:** For — Clayton Utkov, ABC, TCA; Michael Ward, Greater Metroplex Interiors Inc.; Dale Payne, Prism Electric; Fred Wilshusen, Texas Construction Association; (*Registered, but did not testify:* Jon Fisher, Associated Builders and Contractors of Texas; Marc Rodriguez, PHCC of Texas; Michael White, Texas Construction Association; Perry Fowler, Texas Water Infrastructure Network (TXWIN); Ken Boen)
- Against — Scott Oliver, San Antonio Water System; David Lancaster, Texas Society of Architects; (*Registered, but did not testify:* Peyton McKnight, American Council of Engineering Companies of Texas; Jody Richardson, Plains All American Pipeline LP; Michael Garcia, Texas Association of Manufacturers; Scott Stewart, Texas Chemical Council; Carol Sims, Texas Civil Justice League; Mari Ruckel, Texas Oil and Gas Association)
- BACKGROUND:** Observers have noted that while a construction contractor relies on a licensed professional to prepare design documents, the contractor retains liability for a construction defect occurring due to design errors. Some suggest builders should not be responsible for the consequences of errors in documents they are not authorized to prepare.
- DIGEST:** SB 1215, as amended, would establish that a contractor performing work under a contract for the construction or repair of an improvement to real property was not responsible for the consequences of defects in plans,

specifications, or other bid documents provided to the contractor by the other party to the contract or a representative of the other party to the contract. A contractor could not provide warranty for the accuracy, adequacy, sufficiency, or suitability of these design documents.

The bill would require a contractor to disclose to the property owner any condition discovered during construction that was unknown or could not have been reasonably known during the design phase. A contractor who failed to disclose the condition could be held liable.

A person could not waive these requirements unless the contractor agreed to waive these requirements in writing.

The bill would take effect September 1, 2017, and would apply only to a contract entered into on or after the effective date.

NOTES:

The committee amendment would change the requirements for a person to waive the regulations created by this chapter. As amended, the bill would differ from the Senate-passed version by allowing the contractor to waive the requirements in writing instead of prohibiting all waivers.