

**Sent:** Friday, April 13, 2018 2:00:59 PM  
**To:** Maxine Grad  
**Cc:** Chip Conquest; Tom Burditt  
**Subject:** S. 197 Strict Liability for Toxic Release

Dear Chair Grad and others:

I write to you with concerns about S. 197 that creates a private right of legal action and imposes “strict” liability (i.e., liability without regard to knowledge, care, negligence, or fault) upon landowners relating to a toxic discharge. This bill currently is in your committee.

This bill proposes a departure from hundreds of years of legal custom. This bill would have a chilling effect on businesses and business development.

But I am more concerned **with the private homeowner**. For example, is it fair to impose strict liability on a brand new homeowner who purchases a house with a heating oil or propane tank and who doesn’t know anything about such tanks and relies on the fuel oil delivery company to make sure that the tank isn’t old or leaking? Or, what if, during a delivery, the heating oil company spills oil onto the ground? Or what if the pest control company spills an improper pesticide on the homeowner’s property?

Further (from personal and professional experience), if there is an incident relating to a home’s oil tank in a basement or a pesticide or lawn fertilizer, **it is unlikely** that there is insurance coverage to pay for the damage, or the clean-up of the toxin or any potential damage to the ground or ground water. Two recent Vermont Supreme Court cases held for the insurance company that there was no insurance coverage to clean up or pay for damage for toxic contamination of homes (*Whitney v. Vermont Mutual, 2015 VT 140* (toxic pesticide) and *Sperling v. Allstate Ind. Co., 2007 VT 126* (basement oil tank spill)).

Under this bill, the homeowner is guilty whether or not he or she did anything wrong. It also imposes joint and several liability, meaning that if the heating oil or pest control company goes bankrupt or is unable to pay, the homeowner is exclusively on the hook for all of the damages. It also requires the homeowner to pay for the neighbor’s “medical monitoring damages” without any indication that the neighbor was injured! The homeowner with a heating oil tank is just one example. This bill would potentially affect every homeowner and thousands of small businesses in Vermont.

I urge you to vote against this bill and prevent it from leaving your committee.

Patricia

--

Patricia S. Orr, Esq.  
Law Offices of Patricia S. Orr PLLC  
129 Olde Orchard Lane  
Shelburne, VT 05482  
802-985-8429