

## **Testimony on S.197 Strict Liability for Toxic Release**

**Wed., April 18, 2018**

**By G. Ray Ault, Commercial/Industrial Real Estate specialist**

Chair Maxine Grad, Vice Chair Charles Conquest, and Members of the House Judiciary Committee; my name is G. Ray Ault, President of Ault Commercial Realty, Inc., based in Rutland. I am Past President of Vermont Realtors, the statewide Commercial Investment Board of Realtors and currently a member of the Vermont Realtors Government Affairs Committee. I am also a member of Rutland Economic Development Corporation's Public Policy Committee.

Thank you for scheduling my testimony today.

Committee Assistant Mike Bailey was good enough to eMail me Draft No. 1.2 – S.197, 4/17/2018 – MOG – 10:06 PM.

While this draft substantially narrows the scope of liability for releases of toxic substances, as passed by the Senate, limiting its application to “large users of toxic substances who release a toxic substance that results in harm”, it appears to me that it would still apply to many clients and customers of commercial and industrial real estate agents, both property owners and tenants who meet the definition in the bill.

And the Medical Monitoring section, while also narrowed in its application, still applies not only to persons actually proving harm or disease, but persons who can show proximate exposure at levels greater than normal background levels. That sounds like a still relatively low bar to be able to compel a business or property owner to cover medical monitoring costs.

My concern is as much about perceived liability or possible future liability perceived by business owners or investors considering starting a business in Vermont, or moving their business to Vermont. Passing a law setting forth strict liability for toxic release, where stricter than the laws of surrounding states, will undoubtedly put Vermont commercial and industrial property owners and business owners at a competitive disadvantage.

Vermont already has enough hurdles, such as relatively high taxes, that we should apply rigorous critical analysis before enacting yet another hurdle,...especially one in the area of business liability. Of course polluters that harm our citizens should be held accountable. But I have not yet heard the responses of business Insurers to this bill as now proposed. And it appears to contain a broad definition of harmful substance and few defenses for parties held responsible; and as mentioned above, a still low threshold for potential harm.

If insurer's, including title insurers, find potential liabilities too costly, they and commercial and industrial lenders dependent upon their approval of manageable risk levels may require insurance premiums far above competitive levels. This in turn could halt the sale or lease of such properties by businesses until data could be gathered to bring insurance costs to manageable levels. And my layman's calculation of the size of buildings potentially affected by this bill, even as narrowed, could be as small as 5,000 to 10,000 sq. ft., and on as small as a couple acres.

I applaud the inclusion in the bill of the tracking of the insurance market by the Vermont Commissioner of Financial Regulation. But this will take a period of years, not months to derive reliable data on which to base changes in law or regulation.

In conclusion, it is my opinion that Vermont's commercial and industrial real estate market will very likely suffer a serious near-term competitive disadvantage until and unless the insurance questions can be satisfactorily answered.

Thanks again for this opportunity to be heard.

Respectfully,

G. Ray Ault, President  
Ault Commercial Realty, Inc.