

| | By Fiscal Year, in Millions of Dollars | | | | | | | | | |
|--------------------------|----------------------------------------|------|------|------|------|------|------|------|------|------|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
| Changes in outlays | 85 | 20 | 6 | 6 | 7 | 7 | 7 | 7 | 7 | 7 |

Section 301 specifies that any change in the surplus or deficit resulting from enactment of S. 1792 shall not be counted for purposes of enforcing the pay-as-you-go procedures.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

JCT has determined that the provision that would add streptococcus pneumoniae to the list of taxable vaccines is an intergovernmental mandate. JCT estimates that the cost of this mandate would not exceed the threshold specified in UMRA (\$50 million in 1996, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

JCT has determined that the following provisions of the bill contain private-sector mandates: (1) clarify the tax treatment of income and losses on derivatives, (2) add certain vaccines against streptococcus pneumoniae to the list of taxable vaccines, (3) expand reporting of cancellation of indebtedness income, (4) impose limitation on prefunding of certain employee benefits, (5) limit conversion of character of income from constructive ownership transactions, (6) modify installment method and prohibit its use by accrual method taxpayers, (7) limit use of nonaccrual experience method of accounting, (8) deny charitable contribution deduction for transfers associated with split-dollar insurance arrangements, (9) prevent duplication or acceleration of loss through assumption of certain liabilities, (10) require consistent treatment and provide basis allocation rules for transfers of intangibles in certain nonrecognition transactions, (11) limits distributions by a partnership to a corporate partner of stock in another corporation, (12) prohibit allocations of stock in an S corporation employee stock ownership plan, (13) impose 10 percent vote on value test for real estate investment trusts (REITs), (14) change treatment of income and services provided by taxable REIT subsidiaries, with 20 percent asset limitation, (15) modify treatment of closely held REITs, and (16) modify estimated tax rules for closely held REITs.

JCT estimates that the costs of the private-sector mandates would exceed the threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation) in each of fiscal years 2000 through 2004, with the amount of such costs ranging from a low of \$383 million in 2004 to a high of \$1,042 million in 2001.

Estimate prepared by: Revenues: Hester Grippando (226-2270), Payment to Territories of Rum Excise Tax: John R. Righter (226-2860), Streptococcus Pneumoniae Vaccine: Jeanne De Sa (226-9010).

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax Analysis.

MISLEADING ADVERTISEMENT FOR THE FAIRNESS IN ASBESTOS COMPENSATION ACT

Mr. LEAHY. Mr. President, I come to the Senate floor today to stand up for a small business in my home state—the Rutland Fire Clay Company of Rutland, VT.

For the past week, a coalition of 240 special interest organizations have run a series of the same paid advertise-

ments in such Washington-based publications as Roll Call and National Journal's Congress Daily AM. The targets of these interest groups in this expensive ad campaign are, of course, the members of this body and of the House of Representatives. The advertisement uses the recent bankruptcy reorganization filing of the Rutland Fire Clay Company to promote the Fairness in Asbestos Compensation Act, S. 758 and H.R. 1283.

Mr. President, here is a copy of this ad. The headline is: "How asbestos litigation ruined a family business." Then in the body of the advertisement is this pullout headline: "Rutland Fire Clay Files For Chap. 11." Throughout the ad is the history of this 116-year-old Vermont firm as reported in the Rutland Herald on October 19, 1999.

Finally, the ad concludes with this statement: "we believe that the interests of the hundreds of large and small businesses affected by this national travesty, their employees, pensioners, communities who depend on them, and their millions of shareholders warrant your support of the Act as well." I ask unanimous consent that the text of this advertisement be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEAHY. Mr. President, I am offended by this slick advertisement. It is clear that the executives on Madison Avenue who crafted this ad want lawmakers—you, me, and all of our colleagues—to believe that the employees of the Rutland Fire Clay Company support the Fairness in Asbestos Compensation Act and that this bill would have helped the Vermont firm avoid reorganization in bankruptcy. Nothing is further from the truth.

Thomas Martin, who is the President of the Rutland Fire Clay Company, and who is named in the advertisement, has written to me to set the record straight. Mr. Martin writes: "I reviewed the bill and my opinion is it would not help Rutland Fire Clay Company reduce this [asbestos litigation] burden, nor would it help other small businesses with thousands of claims. . . . Under S. 758 costs would be apportioned to Rutland Fire Clay Company equally, and thus higher, than under the current system."

Mr. Martin continues: "The advertisement's heading gave the impression that our family business would be 'ruined' and that our 22 employees would be out of work. The truth is that we have worked out a consensual bankruptcy plan which recognizes the value of Rutland Fire Clay Company and its employees. No jobs will be lost and we will continue to serve the fireplace and home repair markets as we have for 116 years."

Finally, Mr. Martin notes: "our firm in no way assisted in preparation of the CAR advertisement nor did we have any knowledge of it until your office sent me a copy."

I ask unanimous consent that the full text of Thomas Martin's letter to me be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. LEAHY. I have met with Tom Martin of the Rutland Fire Clay Company and corresponded with him about asbestos litigation. Mr. Martin should be commended for reaching a settlement with his insurers and the trial bar concerning his firm's asbestos problems. Unlike some big businesses that are trying to avoid any accountability for their asbestos responsibilities through national legislation, Mr. Martin and the Rutland Fire Clay Company are trying to do the right thing within the legal system.

Mr. Martin plans to lead the Rutland Fire Clay Company from bankruptcy next year as a stronger firm with a solid financial foundation for the 21st Century. I applaud Tom Martin and the employees of the Rutland Fire Clay Company for their efforts.

Mr. President, I am willing to work with my colleagues on both sides of the aisle and with interested parties to craft fair legislation to help victims and businesses, large and small, affected by asbestos. But exploiting the bankruptcy filing of a small firm in Vermont and using misleading advertisements to promote a flawed bill are not the right ways to advance our consideration of this issue, and they are certainly not an admirable way to attempt to sway opinion in or outside of this body.

I believe the 240 special interest organizations that sponsored this advertisement owe an apology to Tom Martin and the other Vermonters who work for the Rutland Fire Clay Company, and I will remind them of that obligation until they offer that apology.

EXHIBIT NO. 1

[From the Rutland Herald, Oct. 19, 1999]

RUTLAND FIRE CLAY FILES FOR CHAP. 11 HOW ASBESTOS LITIGATION RUINED A FAMILY BUSINESS: 22 EMPLOYEES AND 50,000 LAWSUITS

Asbestos lawyers would have you believe that only billion dollar companies are affected by the asbestos nightmare. But in reality, more than 300 small businesses, as well as large ones, find themselves today enmeshed in the asbestos litigation mess. This spiraling litigation—filed largely by nonsick claimants who may have been exposed to asbestos, as have a majority of all Americans, but have no physical symptoms or impairment—continues to drive firms to bankruptcy or its brink.

Just last week, Rutland Fire Clay, a small family-owned Vermont manufacturer of furnace and wood stove repair cements, was

forced into bankruptcy as a result of what it termed "the crushing burden of asbestos related lawsuits."

You should know these facts about the Rutland Fire Clay case:

Rutland Fire Clay, with its 22 employees, is a small, 116 year-old family business, in Rutland, Vermont.

The business was started in 1883 by Rufus Perkins and his two sons and has manufactured, for more than 100 years, a cement material for use in the repair of furnaces and residential wood stoves sold through hardware stores. The product originally contained a very small amount of encapsulated asbestos, although Rutland discontinued the use of asbestos in its products almost 30 years ago.

Since 1984, there have been 50,000 asbestos cases filed against the company, and 37,000 remain pending today—most of these cases involving non-sick claimants.

The company has estimated its liability for current and future asbestos claims at \$67 million, with assets of only \$3 million.

Thomas Martin, the firm's president, said in a Rutland press interview last week, that if it weren't for asbestos claims, the 116 year old company would never have wound up in bankruptcy. He described business as "excellent," with the company expecting a record sales year.

The Rutland Fire Clay case is a stark example of what happens in the asbestos litigation world today. Asbestos lawyers continue to draw from an almost limitless pool of potential defendants by targeting, with the touch of a word processing button, small and large companies—many with only a tangential association to asbestos. These "asbestos" defendants include local building products distributors, home remodeling centers, "mom and pop" hardware stores, and other unsuspecting companies who manufactured, or only distributed, products that may have contained nominal amounts of asbestos in a component part of end products, such as forklifts, cranes, gaskets, grinding wheels, lawnmower engines, etc.

While the principal focus of the bipartisan Fairness in Asbestos Compensation Act is, as it should be, on the rights of deserving asbestos victims, we believe that the interests of the hundreds of large and small businesses affected by this national travesty, their employees, pensioners, communities who depend upon them, and their millions of shareholders warrant your support of the Act as well.

EXHIBIT NO. 2

RUTLAND FIRE CLAY COMPANY,
Rutland, VT, October 29, 1999.

Hon. PATRICK J. LEAHY,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: Thank you for sending me the recent advertisement produced by the Coalition for Asbestos Resolution (CAR) that is using our recent bankruptcy filing in its campaign in support of S. 758 and its companion, H.R. 1283.

We presently have over 37,000 lawsuits pending against us and we have approximately \$4 million of insurance and \$2 million in assets. For small firms such as ours with limited remaining insurance and minimal assets, the burden of claims is indeed crushing as quoted in the CAR advertisement. However, I reviewed this bill and my opinion is it would not help Rutland Fire Clay Company reduce this burden, nor would it help any other small business with thousands of claims. As an example under section 601 apportionment of costs for the ARC are addressed. Potential disputes could easily arise between defendants as to their respective

share of costs. Our company cannot afford the expense of litigation if disagreement with the large defendants is the result. In addition, our historical costs per claim processed for defense and indemnity have been very low relative to that of other defendant companies. Under S. 758 costs would be apportioned to Rutland Fire Clay Company equally, and thus higher, than under the current system.

The advertisement's headline gave the impression that our family business would be "ruined" and that our 22 employees would be out of work. The truth is that we have worked out a consensual bankruptcy plan which recognizes the value of Rutland Fire Clay Company and its employees. No jobs will be lost and we will continue to serve the fireplace and home repair markets as we have for 116 years.

Lastly, our firm in no way assisted in preparation of the CAR advertisement nor did we have any knowledge of it until our office sent me a copy.

Thank you,
Sincerely,

THOMAS P. MARTIN,
President

MESSAGE FROM THE HOUSE

At 12:36 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 1180) to amend the Social Security Act to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in the Social Security Administration to provide such individuals with meaningful opportunities to work, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. ARCHER, Mr. BLILEY, Mr. ARMEY, Mr. RANGEL, and Mr. DINGELL as the managers of the conference on the part of the House.

MEASURE PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

S. 1832. A bill to amend the Fair Labor Standards Act of 1938 to increase the Federal minimum wage.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-5969. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on rescissions and deferrals dated October 27, 1999; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Energy and Natural Resources, and to the Committee on Foreign Relations.

EC-5970. A communication from the Director, Office of Administration, United States

International Trade Commission, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5971. A communication from the Executive Director, United States Holocaust Memorial Museum, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5972. A communication from the Secretary, The Commission of Fine Arts, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5973. A communication from the Office of Independent Counsel Thompson, transmitting, pursuant to law, a report relative to the Office's audit and investigative activities for fiscal year 1999; to the Committee on Governmental Affairs.

EC-5974. A communication from the Chair, Architectural and Transportation Barriers Compliance Board, transmitting, pursuant to law, a report relative to the Federal Managers' Financial Integrity Act; to the Committee on Governmental Affairs.

EC-5975. A communication from the Chairman and Chief Executive Officer, Chemical Safety and Hazard Investigation Board, transmitting, pursuant to law, a report relative to the Office's audit and investigative activities for fiscal year 1999; to the Committee on Governmental Affairs.

EC-5976. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Fiscal Year 1998 Annual Report on Advisory Neighborhood Commissions"; to the Committee on Governmental Affairs.

EC-5977. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility; 64 FR 56256; 10/19/99", received October 29, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC-5978. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska: Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea", received October 16, 1999; to the Committee on Commerce, Science, and Transportation.

EC-5979. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna; Opening of General Category NY Bight Fishery" (I.D. 100899B), received October 29, 1999; to the Committee on Commerce, Science, and Transportation.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-369. A resolution adopted by the House of the Legislature of the State of Michigan relative to hazardous materials facilities; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 223

Whereas, Federal law under Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires identifying the locations of facilities which handle hazardous materials and also requires the development of a plan for communities to respond