

STATEWIDE BALLOT PROPOSALS - II PROPOSAL C: NO-FAULT INSURANCE

Proposal C on the November 8th statewide ballot is a referendum on a law that, if approved would amend various sections of the state insurance code to limit certain automobile insurance benefits and to reduce rates.

THE ISSUE IN BRIEF

Public Act 143 of 1993, which the Legislature adopted in August of 1993, would add 41 new sections and amend 23 present sections of the state insurance code. Act 143 appears on the ballot because petitions were filed for a referendum on the law. Under the state Constitution, when referendum petitions with a sufficient number of Signatures are submitted An act is suspended until voters can approve or reject it at the next statewide general election. If approved by voters, Proposal C would, among other things,

- limit the benefits payable for allowable expenses due to personal injuries to \$1 million per loss occurrence. There presently is no limit. An insured could purchase additional personal protection insurance in \$1 million increments up to \$5 million;
- require that by April 7, 1995, insurers reduce by at least 16 percent on average the automobile insurance rates that were in effect on November 1, 1992. This reduction would apply only to persons who selected no more than \$1 million protection insurance coverage. An insurer would be entitled to a partial or total exemption from the rate reduction in circumstances;
- limit the extent to which an insured could recover damages through lawsuits under certain circumstances;
- repeal existing statutory provisions which restrict the ability of an insurer to base rates, in part, upon where an insured resides.

The No-Fault Insurance Act

Chapter 31 of the insurance code, which was enacted by Public Act 294 of 1972, is generally referred to as the "no-fault" act. The policy underlying the act was to provide persons injured in automobile accidents with assured, adequate, and prompt recompense for certain types of economic loss, regardless of fault. In exchange the state Legislature repealed with respect to certain types of loss, the traditional remedy of recovering damages through civil suits (tort).

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Essentially, no-fault insurance covers economic loss up to specific statutory limits, while economic loss above those limits and grievous non-economic loss must be recovered through the tort system.

Act 294 requires as a condition precedent to operating a motor vehicle on the highways of the state, that an owner maintain security, whether through an insurance policy or equivalent security, for payment of the following:

- **personal protection insurance**, which pays benefits for accidental bodily injury.. including: (a) allowable expenses, without limitation as to duration or amounts for an injured person's cares recovery, and rehabilitation; and (b) loss of income, replacement services loss and survivor's loss which are subject to monetary limitations and payable for up to three years after an accident.
- **property protection insurance**, which pays for accidental damage to tangible personal property.. other than negligently parked vehicles or the vehicle of an insured or its contents.
- **residual liability insurance**, which covers the following types of loss still subject to the tort system: allowable expenses, loss of incomes and loss to a survivor in excess of the monetary limitations; and non-economic loss, when the injury sustained causes deaths serious impairment of body function, or permanent serious disfigurement.

Provisions of Proposal C (Public Act 143 of 1993)

At the November 1992 general election, voters rejected (by a margin of 63 percent to 37 percent) an initiated statute which would have limited no-fault insurance benefits to \$250,000 per loss occurrence in exchange for an average 20 percent reduction in insurance rates. The following year, the Legislature enacted Public Act 143 of 1993. Act 143 will appear on the November statewide ballot as Proposal C because the statute has been subjected to referendum. One of the powers which Section 9 of Article 2 of the state Constitution reserves to the people is that "to approve and reject laws enacted by the legislature, called the referendum." A referendum is invoked by filing with the state petition signatures equal in number to at least five percent of total votes cast for all candidates for governor in the last general election. The effect of referendum is to suspend the law until the next general election which, in the case of Act 143, is this November 8th.

As was noted at the outset Proposal C would add 41 new sections and amend 23 existing sections of the state insurance code, which already is quite complex in nature. Proposal C is best understood by juxtaposing the major supporting and opposing arguments.

Quite apart from the positions of the proponents and opponents on the specific issues presented below, Proposal C will require voters implicitly to consider the question whether automobile insurance rates should be set or reduced, by legislation or by supply and demand of the marketplace. If the appropriateness of simply adopting legislation to reduce automobile insurance rates by 16 percent is accepted, then it is not readily apparent why a statutory rate reduction of a greater -- or lesser -- amount would not be equally appropriate.

Personal Protection Insurance Limitation

Proposal C would limit the benefits paid for allowable expenses resulting from personal injury (See Page 2) to \$1 million per loss occurrence, unless an insured had purchased additional coverage up to \$5 million. The insurance commissioner would be required annually to adjust the \$1 million limit so that 99 percent of personal injury claims would continue to be covered. At present there is no limitation in Michigan upon such benefits.

Proponents of Proposal C contend that such a limitation on medical benefits is reasonable because Michigan is the only state which, since adoption of the no-fault system, has allowed unlimited medical benefits. On the other hand, opponents of Proposal C argue that comparing the level of medical benefits allowed by other states is misleading without also comparing the extent to which those states restrict the rights of injured persons to recover damages through civil suits. For example, opponents note that when the no-fault system was adopted, unlimited medical benefits were the quid pro quo given for reducing litigation by restricting an injured person's right to sue for damages.

Additional Limitations Proposal C also would limit the extent to which an injured person could sue for non-economic damages in two respects: first, by requiring that a serious impairment of body function be "objectively manifested" (in essence requiring that the injury be detectable through x-ray examination, which would effectively exclude soft tissue injuries) and second, by requiring that the determination of whether a serious impairment of body function exists be a question of law for the courts rather than a question of fact for juries.

Proponents of Proposal C argue that these additional restrictions are required to reverse state court opinions that have expanded greatly the extent to which injured persons may sue. Opponents argue the current threshold -- that an injured person suffer death.. serious impairment of body function, or permanent serious disfigurement -- is sufficiently restrictive at present.

Reduction in Rates

In exchange for the foregoing limitations upon benefits and the ability to recover damages by lawsuits Proposal C would require insurers within 120 days of the effective date of Act 143 to reduce by at least 16 percent on average the automobile insurance rates in effect on November 1, 1992. This reduction would apply only to individuals who purchased the minimum \$1 million of coverage. An insured who purchased additional coverage would not be entitled to a rate reduction; however, his or her rate could not increase beyond that in effect on November 1, 1992.

Proponents contend that the reduction in benefits is necessary in order to reduce rates and make no-fault insurance more affordable. Opponents contend that the rate reduction in Proposal C would be illusory. They note the rate reduction would be temporary; after six months insurers could again file for rate increases. As opponents of Proposal C view the issues a permanent reduction in insurance medical benefits would be traded for a temporary reduction in insurance rates. In a general sense, proponents and opponents of Proposal C differ less over the magnitude of a rate reduction than over the question of whether such a reduction can be financed from existing insurance industry revenues, or only by reducing existing costs (benefits).

Elimination of Territorial Rating Restrictions

The insurance code requires rating classifications to be based solely upon one or more objective criteria such as age; driving experience; the average number of miles driven per week or year; daily or weekly commuting mileage; the type of vehicle insured; and the number of vehicles insured. The insurance code also requires that insurance risks be grouped by geographic territory and restricts to 20 the number of base rates which an insurer may employ among them. Furthermore, the act imposes two limitations upon the level of rates. The base rate charged in a geographic territory of the state for a given type of policy must be: (1) at least 45 percent of the highest base rate charged by that insurer for the same policy in any other geographic territory and (2) at least 90 percent of the base rate charged by that insurer for that policy in an adjacent geographic territory. The rationale underlying these territorial restrictions is that, other rating factors being equal, motorists should not be discriminated against as to insurance rates based upon where they reside.

Automobile insurers that do business in both the metropolitan-Detroit area and outstate have generally contended that, due to these restrictions, if they increased insurance rates in metropolitan Detroit to a level sufficient to cover costs incurred in that area of the state, their outstate insurance rates would be noncompetitive with insurers that do not do business in the Detroit area.

Proposal C would eliminate the current territorial restrictions and permit insurers to establish territories for rating purposes from contiguous geographic areas containing at least 60,000 registered vehicles. Proponents of Proposal C argue that elimination of these territorial restrictions would permit insurance rates to reflect actual costs, encourage more insurers to do business in high-cost areas of the states and increase competition. Conversely, opponents argue that insurance rates should be based on objective characteristics of the insured motorist and not on where a vehicle is garaged. Opponents argue that territorial rating amounts to redlining of urban areas, that it makes the cost of automobile insurance prohibitive, and that it increases the number of uninsured motorists.