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STATEWIDE BALLOT PROPOSALS -- II

PROPOSAL D: NO-FAULT INSURANCE

Four proposals have been placed on the November 3rd statewide ballot. Proposal D which is discussed below, would amend various sections of the state insurance code to limit certain automobile insurance benefits and to reduce rates. Proposal B, which would limit the number of terms that could be served by the state's congressional delegations members of the Legislature, and elected officials of the executive branch of state government was discussed in **Council Comments** No. 1010. The remaining ballot proposals will be discussed in a subsequent **Council Comments.**

THE ISSUE IN BRIEF

Proposal D was placed on the November 3rd statewide ballot by initiative petition and, if approved by voters, would add one new section and Amend 12 existing sections of the Michigan insurance code to, among other things:

- requires on or before April 1, 1993, that an insurer reduce by an average of 20 percent the automobile insurance rates in effect on November 1, 1992. An insurer would be entitled to a partial or total exemption upon showing that the rate reduction would impair the insurer's ability to earn a fair rate of return on automobile insurance policies written in Michigan. In 1990, the average combined (liability, collision, and comprehensive) premium in Michigan was $669.06, 17th highest in the nation.

- limit the benefits payable for allowable expenses due to personal injuries to $250,000 per loss occurrence. There is presently no limit. An insured could purchase additional personal protection insurance in increments up to $5 million;

- permit an automobile insurer to "coordinate" its benefit coverage with other health, accident, or disability insurance available to an insured motorist. An automobile insurer would not be required to pay benefits available to an insured from other sources;

- repeal existing statutory provisions that restrict the ability of an insurer to base rates, in part, upon where an insured resides;

- prohibit a former insurance commissioner, for the two-year period after leaving office, from serving as a director or officer of an insurer or other organization subject to the regulatory authority of the insurance commissioner.

Part I. Background

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 those injured in motor vehicle accidents assured, adequate, and prompt recompense for certain types of economic loss, without regard to fault. **Shavers** v **Attorney General,** (402 Mich 554; 1978). In exchanges the state Legislature repealed with respect to certain types of loss the traditional remedy of recovering damages through civil suits (tort). Basically, no-fault insurance covers economic loss up to specific statutory limits, while economic loss above those limits and grievous noneconomic 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 amount, for an injured person's care, 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 noneconomic loss, when the injury sustained causes death, serious impairment of body function, or permanent serious disfigurement.

The Essential Insurance Act

The Michigan Supreme Court upheld the constitutionality of the no-fault act in **Shavers** v **Attorney General,** (402 Mich 554; 1978). However, the Court held as unconstitutional that section of the act that required an owner of a motor vehicle to purchase no-fault insurance, on grounds that neither the Legislature nor the insurance commissioner had taken adequate action to ensure the availability of such insurance at fair and reasonable rates. The Court delayed the effective date of its ruling for 18 months to permit the Legislature an opportunity to correct the deficiencies in the no-fault act.

The Legislature responded by enacting Public Acts 145 and 147 of 1979, the essential insurance act. The Legislature sought to achieve two broad goals: to establish objective criteria as the sole basis for insurance risk classifications and to increase the availability of no-fault insurance, while restricting the range of rates which an insurer could impose in different geographic areas of the state for the same type of coverage.

Rate Classification Criteria

One concern voiced in **Shavers** was that the no-fault act and rules promulgated thereunder did not contain adequate procedures to prevent insurers from acting arbitrarily when deciding whom to insure and how much to charge. The essential insurance act required that rating classifications be based solely upon one or more objective criteria such as age and 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.

Territorial Rating Restrictions

Second, the essential insurance act required insurance risks to be grouped by geographic territory and restricted to 20 the number of base rates that an insurer could employ among them. Furthermore, the act imposed two limitations upon the level of rates. The base rate charged in a geographic territory of the state for a given type of policy had to 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 the territorial restrictions was that, other rating factors being equal, motorists should not be discriminated against as to insurance rates based upon where they reside.

1986 Amendments

In early 1986, the Legislature adopted Public Act 10 as a response to numerous criticisms from insurers that the essential insurance act territorial restrictions were unduly burdensome. Act 10 suspended the territorial restrictions until June 30, 1991. The Legislature subsequently extended the expiration date on two separate occasions -- to January 1, 1992 and to April 1, 1992 -- since a legislative solution could not be reached. A legislative solution, Enrolled Senate Bill 691, was vetoed by the Governor on April 3, 1992. Since the relevant provisions of Act 10 expired on April 1 of 1992, the essential insurance act, including its territorial rating restrictions, is again in effect.

Part II. Provisions of Proposal D

The presence of Proposal D on the November 3rd statewide ballot is a testament to two facts: the inability of state policymakers to resolve an important public policy issue and practical limitations upon the effective use of initiated legislation. Although the initiative power granted by the state Constitution extends to any laws which the Legislature may enact, the initiative is not an efficacious substitute for legislative resolution of highly technical issues such as no-fault insurance reform. Proposal D would amend the state insurance code, a code that consists of 82 chapters, containing several hundred pages of highly technical provisions. Because of this, Proposal D 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 D will require voters to implicitly 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 20 percent is accepted then it is not readily apparent why a statutory rate reduction of a greater -- or lesser -- magnitude would not be equally appropriate.

Reduction in Rates

The amount by which automobile insurance rates might be prudently reduced, and whether such reductions could be financed from existing insurance company revenues or only by reducing benefits, were questions which greatly bedeviled the Legislature. Resolution of these questions was, and remains, complicated by an utter absence of impartial data to test the validity of either proposition.

Proponents of Proposal D argue that costs, medical and litigation, must be reduced in order for vehicle insurance rates to be reduced. The proposal would require insurers, by April 1, 1993, to reduce by an average of 20 percent the rates in effect on November 1, 1992. In exchange, benefits paid for allowable expenses due to personal-injuries (see-Page 2) would be capped at $250,000 per loss occurrence, unless an insured had purchased additional coverage up to $5 million. Presently, there is no limitation upon such benefits.

Opponents contend that the rate reductions offered by Proposal D are illusory for two reasons. First, they note that the reductions would apply to rates as of November 1, 1992, and that insurers might simply raise existing rates prior to that date in order to offset any anticipated reduction. Secondly, opponents note that the proposal would allow an insurer to be exempted from the required rate reduction by demonstrating to the insurance commissioner that the reduction would impair its ability to earn a fair rate of return on automobile insurance policies written in Michigan. (Since it would be unconstitutional to subject a regulated company to a rate reduction that would deny it a fair rate of return, the second objection is really directed, not against the concept of granting exemptions but rather, against the summary manner by which an insurer under Proposal D could demonstrate the necessity for an exemption.)

Limitation of Personal Protection Insurance

As noted, Proposal D would limit to $250,000 per loss occurrence benefits payable for allowable expenses resulting from personal injuries, absent additional coverage purchased by an insured. Proponents contend that such a limitation is reasonable given that Michigan is the only state that has, since its adoption of the no-fault system, allowed unlimited medical benefits.*

Opponents of Proposal D 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. Opponents note that, at the inception of the no-fault system in

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* Public Act 136 of 1978 established, as an unincorporated, nonprofit association, the Michigan Catastrophic Claims Association to indemnify automobile insurers for that portion of personal protection insurance claims which exceed a $250,000 threshold. During calendar year 1991, the Association paid approximately $116.3 million for 1,498 active claims. Although the number of claims that exceed $250,000 constitute a relatively small percentage of total claims, such claims tend to be relatively expensive since they generally involve serious injuries for which lifetime care is required.

Michigan, unlimited medical benefits were the quid pro quo given for reducing litigation by restricting an injured person's right to sue for damages. Opponents also note that the Michigan threshold -- which requires that an injured person suffer death, serious impairment of body functions or permanent serious disfigurement -- is much more restrictive of the right to sue for damages than that in most other states.

Coordination of Benefits

Certain types of medical expenses for injuries suffered in an automobile accident may be compensable under an automobile insurance policy, or a health insurance policy, or both. The insurance policies are said to be "uncoordinated" when the right of an insured to collect under one is in no manner precluded by the right of the insured to also collect under the other for the same loss.

Proposal D would make benefit coordination mandatory by allowing an automobile insurer to take into account "other health, accident or disability coverage or protection,, whether utilized or not," that would be available to an insured motorist. Proponents of Proposal D argue that mandatory coordination will be salutary in that it will prevent "double dipping" -- collecting twice for the same injury -- and reduce costs. Opponents argue that there is nothing inappropriate about an insured collecting twice for the same injury under two distinct insurance policies for which an insured has paid two distinct premiums.

Elimination of Territorial Restrictions

As was noted at Page 3, the essential insurance act required that a base rate charged in a geographic territory of the state for a given type of policy had to be: (1) at least 45 percent of the highest base rate charged by the insurer for that policy in any other geographic territory and (2) at least 90 percent of the base rate charged by that insurer for that policy in any adjacent geographic territory. Insurers doing business in both the metropolitan Detroit area and outstate contended that, due to the statutory ratios, if they raised metropolitan Detroit rates to the level necessary to cover costs, their outstate rates would be uncompetitive. The state Legislature suspended these restrictions from February 28, 1986 until April l, 1992.

Proposal D would permanently eliminate these territorial restrictions. Proponents argue that this change would permit insurance rates to reflect costs and would encourage more insurers to do business in high-cost areas of the state. Opponents note that according to a report issued by the insurance commissioner in November 1989 -- almost four years after the territorial restrictions were suspended -- outstate insurers were not doing appreciably more business in urban areas of the state and the availability of automobile insurance in those areas was not appreciably greater than it had been under the restrictions.