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Legislative Position

Memorandum in support of: **S-3187—by Sen. Scutari**
Awaiting Assembly bill number

The real-life problem with 'step-down' clauses

If your personal automobile insurance policy contains a "step-down" clause, the coverage levels you chose when you purchased the policy can be "stepped down" to New Jersey's state minimum limits in certain instances. Whatever level of insurance you thought you purchased to protect yourself against liability for a third party's bodily injury—whether it was $250,000 per person and $500,000 per accident (250/500), $50,000 per person and $100,000 per accident (50/100) or somewhere in between—your coverage may be reduced to the state minimum limits of only $25,000 per person and $50,000 per accident.

Consider these scenarios where that might happen:

You chose coverage of $100,000 per person, $300,000 per accident. Your daughter in her 20s, a named driver on the policy, is home for the weekend from her apartment out of town. She runs an errand in your car and has an accident with an uninsured motorist who has several passengers in the vehicle. You are surprised to learn that even though she is a named driver on the policy, you are only covered at the state minimum of $25,000 per person and $50,000 for the accident notwithstanding the higher limits you had paid for. The policy would cover "family members" at the higher levels, but you are surprised to learn that your daughter is not considered a family member because she doesn't live in your home. The fact that you've told the insurance company that she will be driving the car from time to time doesn't matter either. The coverage is stepped down to the state minimums. (This scenario is based on the recent decision in *Polizzi v. Liberty Mut. Fire Ins. Co.,* Civil Action No.: 14-02768 (App. Div. Jan. 26, 2021).

You are driving your child and their best friend to soccer practice. There is an accident and, unfortunately, your child and their friend are injured. You had previously purchased an auto policy with coverage of $100,000 per person, $300,000 per accident. Your insurance company pays $100,000 for injuries sustained by your child's friend. However, they only pay $25,000, the state minimum, for your child. The insurance company points to the presence of an intra-family step-down exclusion in the policy that reduces bodily injury liability coverage for resident relatives like your child to the state minimum limits. (This scenario is based on the recent case of *Dela Vega v. The Travelers Insurance Co.,* Civil Action No.: A-2272-19 (App.

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Div. May 6, 2022). You are out with friends celebrating a birthday. You have a few drinks and do the responsible thing of giving your keys to a friend to take you both home in your car. If your friend were to get into an accident in your vehicle on the way home, they would not be entitled to policy limits in your policy. Instead, their recovery would be limited to the amount found in their own auto policy, running contrary to the principle that auto insurance coverage follows the automobile, not the person. Or, if your friend is not covered by another policy, then their recovery is limited to the state minimum of 35/70.

When you can’t recover the insurance that you thought you paid for, you are pointed to the fine print in the policy that contains the step-down limitation. But even if you had seen it buried in the policy, and understood the technical, sometimes counterintuitive language, you’re perplexed about why it’s in there in the first place. Shouldn’t your daughter be able to drive fully insured in the family car? Shouldn’t your child be entitled to the same benefits as their friend sitting right next to them? Shouldn’t the permissive user acting as your designated driver be entitled to more than the state minimum limits?