

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 371 (Jones-Sawyer) – As Introduced February 1, 2021

SUBJECT: Shared mobility devices: insurance and tracking

SUMMARY: This bill would require a shared mobility service provider (provider) to affix to each shared mobility device (device) a tactile sign containing raised characters and accompanying Braille, as specified, and would specify that insurance required under existing law shall apply to any personal injury or property damage suffered by a pedestrian when the injury involves, in whole or in part, the negligent conduct of the device owner or user. Specifically, **this bill would:**

- 1) Require a provider to affix to each device a readily accessible, single, unique, and clearly displayed tactile sign containing raised characters and accompanying Braille, complying with Section 11B-703 of the Building Code, to identify the device for the purpose of tracking and reporting. The sign shall minimally consist of the company name of the provider and an alphanumeric ID assigned by the provider that is visible from a minimum of five feet and not obfuscated by branding or other markings.
- 2) Provide that, notwithstanding any other law, the insurance coverage required pursuant to existing law shall apply to any personal injury or property damage suffered by a pedestrian when the injury involves, in whole or in part, the negligent conduct of the device owner or user.

EXISTING LAW:

- 1) Requires that before distribution of a device, a provider shall enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use. The agreement or permit shall, at a minimum, require that the shared mobility service provider maintain commercial general liability insurance coverage with a carrier doing business in California, with limits not less than one million dollars (\$1,000,000) for each occurrence for bodily injury or property damage, including contractual liability, personal injury, and product liability and completed operations, and not less than five million dollars (\$5,000,000) aggregate for all occurrences during the policy period. The insurance shall not exclude coverage for injuries or damages caused by the shared mobility service provider to the shared mobility device user. (Civ. Code Sec. 2505(b).)
- 2) Requires any city or county that authorizes a provider to operate within its jurisdiction to adopt rules for the operation, parking, and maintenance of shared mobility devices before a provider may offer any shared mobility device for rent or use in the city or county, as specified. (Civ. Code Sec. 2505(c).)
- 3) Defines “shared mobility device” to mean an electrically motorized board, motorized scooter, electric bicycle, bicycle, each as respectively defined in the Vehicle Code, or other similar personal transportation device that is made available to the public by a shared mobility service provider for shared use and transportation in exchange for financial compensation via a digital application or other electronic or digital platform. (Civ. Code Sec. 2505(a).)

- 4) Exempts from the definition above a self-propelled wheelchair, motorized tricycle, or motorized quadricycle, if operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian. (Civ. Code Sec. 2505(a) and Veh. Code Sec. 415(b).)
- 5) Defines “shared mobility device provider” to mean a person or entity that offers, makes available, or provides a shared mobility device in exchange for financial compensation or membership via a digital application or other electronic or digital platform. (Civ. Code Sec. 2505(a).)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to ensure that pedestrians injured by the negligent conduct of a shared mobility device owner or user are able to report the negligent conduct and would clarify that the insurance that providers are required by law to carry would apply to those injuries. This bill is sponsored by the California Council of the Blind.
- 2) **Author’s statement:** According to the author:

Existing law requires a shared mobility provider to hold liability insurance when obtaining a permit or entering into an agreement with the local entity with jurisdiction over the area. However, existing liability coverage is not extended to cover a pedestrian injured by a shared mobility device due to negligent conduct. Additionally, e-devices currently do not have braille or tactile signage for pedestrians with visual impairments to identify the device provider to report an injury.

AB-371 ensures existing protections will cover pedestrians injured by a shared mobility device, whether in use or parked inappropriately. This bill also requires the addition of braille and tactile signage for pedestrians with visual impairments to access necessary contact information to identify the device provider and file an injury report.

- 3) **Shared mobility devices offer the promise of alleviating many urban transportation woes, but not without creating other problems:** Shared mobility devices are a relatively new transportation option where devices like bikes, electric bikes, and electric scooters are shared among users. They are typically enabled by technology such as mobile applications, and the services providing for their use are frequently run by private companies. Providing more low-emission mobility options can create a more diverse, convenient, and accessible transportation network that may reduce emissions and congestion, and improve quality of life in cities.

That is not to say that incorporating shared mobility devices into California communities has been without problems. As with all new technologies, shared mobility devices can also pose significant challenges regarding the management of public rights-of-way, encouragement of public safety, and adaptation of old regulations to new business models. Shared electric bikes and scooters, with their promise of improving congestion and offering low-cost, green transportation in urban areas, have nonetheless been widely criticized as riders fail to properly operate them. For example, NBC included the following in a report on the shared mobility device problem growing in Dallas:

They're in Uptown, where 20-somethings sip craft cocktails on breezy outdoor patios, and in White Rock Lake, where moms in yoga pants meet to push strollers. From the Margaret Hunt Hill Bridge, bikes are visible in the Trinity River below. The bikes are everywhere downtown, leaning against cement planters, outside parking garages and cafes, lined up at Dealey Plaza.

The bikes belong to companies that are hoping to change how people get around cities. Dockless bike-share startups, already common in China, have been making their way into the U.S. The idea is simple and utopian — easily accessible, low-cost bikes that people can grab, use and leave just about anywhere.

The problem, however, is they do leave them anywhere — and everywhere.

With at least five companies having introduced their services to Dallas, there are thousands of these bikes throughout the city. They clog sidewalks and pile up on street corners. Mayor Mike Rawlings, the former CEO of Pizza Hut, likened them to the tribbles from Star Trek, saying they “asexually reproduce or something.”¹

Approximately three years ago, after Beverly Hills approved a six-month ban on shared mobility devices, it quickly began impounding electric scooters throughout the city. In discussions at a special meeting that July, council members said they were furious at how scooter companies had launched in cities without warning.

Recently, the Sacramento Bee reported that two people died in electric scooter crashes in California, prompting new safety concerns as the shared mobility devices become more common on city streets. According to the Bee, “[a] 53-year-old man died in San Diego after he lost control and hit a tree. The victim, who had been riding on the sidewalk, suffered serious head injuries, police said. He was not wearing a helmet. [...] A 41-year-old man on an electric scooter died in Santa Monica last week when he fell off a scooter and was hit by a car.”²

To ensure that injuries are adequately covered with appropriate insurance policies and that cities have appropriate frameworks in place *prior* to shared mobility devices being distributed for local use, the Legislature enacted AB 1286 (Muratsuchi, Ch. 91, Stats. 2020), which requires that local governments adopt operation, parking, and maintenance rules for devices, requires providers to have certain amounts of general commercial liability insurance coverage, and prohibit riders from waiving legal rights.

This bill would expand upon the consumer protections established in AB 1286 by requiring both visible and tactile signage on devices so that pedestrians injured by individuals who have rented devices can contact the appropriate provider and/or local jurisdiction to report the negligent conduct. This bill would also clarify that the insurance required of providers by existing law shall apply to any personal injury or property damage suffered by a pedestrian

¹ Nieuwesteeg, *Dockless bikes promise the future of transportation, but litter the city of Dallas*, NBC , <<https://www.nbcnews.com/tech/innovation/dockless-bikes-promise-future-transportation-litter-city-dallas-n866351>> [as of March 25, 2021].)

² Bizjak, *How dangerous are electric scooters? Two deaths in California show the risks are real*, Sacramento Bee, Mar. 20, 2019.

when the injury involves, in whole or in part, the negligent conduct of the shared mobility device owner or user.

- 4) **Bill requires standardized information on shared mobility devices for the purpose of reporting incidents:** This bill would require providers to affix a “readily accessible, single, unique, and clearly displayed tactile sign containing raised characters and accompanying Braille” to each device to “identify the device for the purpose of tracking and reporting.” The sign must contain, at minimum, the company name and an alphanumeric ID that is visible from a minimum of five feet and not obfuscated by branding or other markings.

These requirements are intended to ensure that pedestrians, including blind and low vision pedestrians, are able to report incidents with shared devices to the appropriate authority, be that the municipality or the provider. The California Council of the Blind, sponsor of this bill, writes in support:

AB 371 recognizes that electric scooters and similar devices, known as shared mobility devices, pose a threat to pedestrians and have resulted in numerous accidents that in some cases have caused significant injury. [...]The council has become aware that there are frequent instances when people with disabilities, including those who are blind or have low vision, and other pedestrians have been hit by or fallen over these devices and sometimes suffered significant injuries as a result.

AB 371 would require that, when a pedestrian is injured or suffers personal property damage and the incident involves the negligent conduct of either the manufacturer or end user of the device, the liability insurance would cover the personal injury or property damage.

In addition, AB 371 would require shared mobility device manufacturers to place tactile signage, as prescribed, that would enable people with vision loss involved in such an incident to know who the manufacturer was and contact that entity. Without such identifying signage, pedestrians who are blind or have low vision would not be able to determine who they can contact with respect to coverage for any injury they suffer.

This bill attempts to solve safety concerns at very minimal cost to the manufacturers of shared mobility devices.

Staff notes that the word “tracking” generally raises concern among many privacy advocates. (*See, e.g.*, this Committee’s analysis of AB 859 (Irwin, 2021).) Given that the intent of the provision discussed in this comment is to allow for identification of a device company or particular device that has been involved in an accident or otherwise caused injury, the author has agreed to strike the word tracking and better align the text of the bill with the author’s intent to allow pedestrians to report illegal or negligent activity.

Author’s amendment:

- Page 3, line 35 and 36 strike “tracking and”
- Page 3, line 36, after “reporting, insert “illegal or negligent activity”

- 5) **Insurance requirements:** Existing law requires shared mobility device providers to maintain commercial general liability insurance coverage with limits not less than \$1,000,000 for each occurrence for bodily injury or property damage, including contractual liability, personal injury, and product liability, and not less than \$5,000,000 aggregate for all occurrences during the policy period. (Civ. Code Sec. 2505(b).) This bill would further specify that the required insurance described above shall apply to any personal injury or damage suffered by a pedestrian when the injury involves the negligent conduct of the shared mobility device owner or user.

In support of these requirements, Lighthouse for the Blind and Visually Impaired writes:

The sudden spread of scooters in pedestrian spaces is one such technology that raises grave concerns among California’s half-million blind and low vision pedestrians. We know. Three years ago, LightHouse locations throughout the bay area were choked with scooters haphazardly parked on sidewalks, sometimes abandoned and fallen over. Other times riders of such scooters illegally whizzed by on sidewalks, a hazard to blind and sighted alike. [...]

AB 371 would require that, when a pedestrian is injured or suffers personal property damage and the incident involves the negligent conduct of either the manufacturer or end user of the device, the liability insurance would cover the personal injury or property damage. This common-sense approach will provide at least a remedy against those users of shared mobility devices who do not obey local ordinances or otherwise show adequate consideration for pedestrians. In addition, LightHouse believes that this may incentivize deterrence measures against such inappropriate conduct.

In opposition, micromobility companies Lime, Bird, and Spin (hereinafter, “micromobility companies”) argue that this bill is unprecedented in nature and extends liability insurance requirements for injuries to astronomical levels, and that, because no such insurance product exists, “[s]uch an insurance product, if created, would also assume the most conservative pricing model and likely be cost-prohibitive.” They also argue that this bill would single out the e-scooter industry when countless other industries do not provide the same insurance, and that this bill would immunize reckless and negligent behavior of users.

Generally, insurance requirements play an important role in ensuring that individuals can obtain redress for injuries suffered due to the negligence of another person or company. This can be especially critical in the case of startup companies without much capital. Last year, this Committee passed AB 1286, which required general commercial liability insurance to cover bodily injury or property damage, including contractual liability, personal injury, and product liability. While that bill specified that the required insurance shall not *exclude* coverage for injuries or damages to the device user caused by the provider, importantly, it did not specify who must suffer an injury to be covered by the general liability insurance policy. From a practical perspective, this makes sense. A user signing up to ride a shared mobility device could be asked to waive his or her rights by the provider, but a pedestrian who is not a party to the contract could not. While AB 1286 was clearly intended to provide a consumer protection to a device user that a provider may ask them to waive, the language also suggests that the Legislature intended any foreseeable injury resulting from a provider putting a product into the community, such as injury to users *and* pedestrians, to be covered.

While not in support or opposition, Apollo, who provides insurance to all micromobility operators in California, has submitted a letter to this Committee stating the following:

AB 371 requires the creation of an insurance product that does not currently exist in Apollo's portfolio or to our knowledge in the micro-mobility insurance industry marketplace. The proposed language in AB 371 makes reference to insuring shared mobility device users for their negligence in damages they may cause to third parties. This would undoubtedly change the risk profile for micro-mobility operators in California, and it is not something Apollo is willing to provide insurance coverage for. As the only general liability insurance provider for all micro-mobility operators in California, we believe that this proposed bill, if passed would immediately put micro-mobility operations in California at risk since it would create an exposure that is uninsured.

This Committee has asked Lime, Bird, and Spin for a copy of their insurance policy so that it may evaluate the coverage micromobility companies are currently maintaining before suggesting any amendments that could address the concerns they have raised. To date, that policy has not been provided.

While reviewing the general commercial liability policy for micromobility devices would be informative, it is not necessary in order for the Committee to consider whether, as a matter of public policy, requiring shared mobility device service providers to maintain insurance to cover *the negligence of the user of the device* is the best way to ensure that communities and consumers are kept safe. On the one hand, by the very nature of their business model, shared mobility device service providers have no ability to vet or otherwise evaluate the individuals who rent their devices. In the rental car context, where a driver's license and insurance are required and renters typically pick up their cars in person, the rental car agency has an opportunity to evaluate the renter (*e.g.*, verify identity and/or age, refuse to complete the transaction if a renter is clearly intoxicated or under the influence of drugs). In contrast, shared mobility device service providers are not present when a device is rented for use. Additionally, given the experiences of communities where shared mobility devices have been rolled out, it is reasonably foreseeable that device users, pedestrians, and even property may incur injuries related to or arising out of shared mobility device use. On the other hand, while individuals who rent cars can clearly cause more damage to pedestrians or property with an automobile than a scooter or bicycle, injured persons are arguably protected by the fact that all drivers in California must carry liability insurance. This is not the case for scooter operators. These observations indicate that perhaps a new model for insurance should be required for this industry, since the levels of risk and harm it creates that are relatively unique.

As a matter of public policy, this Committee is primarily concerned with ensuring that individuals who have been harmed are made whole, and insurance is often the mechanism that makes this goal possible. While it is certainly important to promote clean, affordable transportation, it is also important that products and services are not put out into the community that are dangerous or unsafe.

In the event that this Committee passes this bill, it may wish to establish minimum insurance requirements appropriately tailored to this particular industry, so that communities can enjoy the benefits of low-cost, green, individual transportation, while also ensuring that riders and

community members are protected in the event of injury. Clarifying that mobility providers may seek indemnity from riders for injuries that are caused by a rider's negligent or willful acts should ensure that riders and providers are both responsible for their proportionate liability when an injury is caused to a third party pedestrian. The following language would accomplish this goal and ensure that one party, be it the provider or the user, is not solely liable for the negligence of the other party.

Potential indemnity language:

3) Nothing in this section shall prohibit a provider from requiring a user to enter into an indemnity contract whereby the user will indemnify the provider for the user's proportionate share of liability. The indemnity contract shall not require the user to defend or indemnify the provider for the provider's negligence or willful misconduct. This section shall not be waived or modified by contractual agreement, act, or omission of the parties.

Staff notes that this bill has been double-referred to the Assembly Judiciary Committee, where it will be analyzed if passed by this Committee. While insurance requirements fall within the topic of "consumer protection" which is within this Committee's jurisdiction, issues of liability typically fall within the jurisdiction of the Judiciary Committee. Thus, this bill's requirement that insurance requirements shall apply to cover injuries suffered by pedestrians falls squarely within the jurisdiction of both committees. Accordingly, should this Committee wish to pass this bill with the indemnity language above, it is appropriate for this amendment to be taken in the Judiciary Committee.

6) **Prior legislation:** AB 1286 (Muratsuchi, Ch. 91, Stats. 2020) *See* Comment 4.

AB 2989 (Flora, Ch. 552, Stats. 2018) authorized a local authority to allow for the operation of a motorized scooter on a highway with a speed limit of up to 35 miles per hour, as specified; specified that the existing maximum 15 mile per hour speed limit for the operation of a motorized scooter applies regardless of a higher speed limit applicable to the highway; and required operators under 18 years of age to wear a helmet.

AB 604 (Olsen, Ch. 777, Stats. 2015) defined "electrically motorized skateboards" and required these devices to meet certain operational requirements.

AB 1096 (Chiu, Ch. 568, Stats. 2015) defined various classes of electric bicycles and establishes parameters for their operation in California.

SB 441 (Chesbro, Ch. 722, Stats. 1999) defined "motorized scooters" and required these devices to meet certain operational requirements.

7) **Double-referral:** This bill has been double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council of the Blind (Sponsor)

Association of Regional Center Agencies
Consumer Attorneys of California
Disability Rights California
Guide Dogs for the Blind
Lighthouse for the Blind and Visually Impaired

Opposition

Bird (unless amended)
Lime (unless amended)
Spin (unless amended)

Analysis Prepared by: Nichole Rocha / P. & C.P. / (916) 319-2200