

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 1286 (Muratsuchi)
Version: June 6, 2019
Hearing Date: August 18, 2020
Fiscal: No
Urgency: No
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SUBJECT

Shared mobility devices: agreements

DIGEST

This bill places requirements on companies that provide shared mobility devices and the local authorities that allow such devices to be operated within their jurisdictions.

EXECUTIVE SUMMARY

Over the last few years, numerous cities in California have witnessed the boom in shared bikes, scooters, and other devices. These “shared mobility devices” have been welcomed in some areas and banned in others. Various legal questions arise around whether and how these devices and the companies providing them should be regulated.

This bill requires shared mobility service providers, as defined, to enter into an agreement with or obtain a permit from the local jurisdiction in which the providers’ devices are used. Such agreement or permit must require certain minimum levels of liability insurance and must require a prohibition on contractual provisions between providers and users by which the user limits their legal rights or remedies. The bill also requires cities and counties authorizing providers to operate within their jurisdictions to establish rules governing the operation, parking, and maintenance of these devices by ordinance, agreement, or permit terms.

This bill is co-sponsored by the Consumer Attorneys of California (CAOC) and the League of California Cities. It is supported by the Environmental Defense Fund and a number of consumer protection groups. It is opposed by a number of shared mobility service providers, TechNet, and the Civil Justice Association of California (CJAC).

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This

timeline does not allow this bill to be referred and heard by more than one committee, as a typical timeline would allow. In order to vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Governance and Finance Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of their rights. (Civ. Code § 1708.)
- 2) Provides that everyone is responsible, not only for the result of their willful acts, but also for an injury to another caused by their lack of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or from lack of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)
- 3) Provides that all contracts which have for their object, directly or indirectly, to exempt any one from responsibility for their own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law. (Civ. Code § 1668.)
- 4) Defines a “bicycle” as a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels. (Veh. Code § 231.)
- 5) Defines an “electric bicycle” as a bicycle equipped with fully operable pedals and an electric motor of less than 750 watts. (Veh. Code § 312.5.)
- 6) Defines an “electrically motorized board” as any wheeled device that has a floorboard designed to be stood upon when riding that is not greater than 60 inches deep and 18 inches wide, is designed to transport only one person, and has an electric propulsion system averaging less than 1,000 watts, the maximum speed of which, when powered solely by a propulsion system on a paved level surface, is no more than 20 miles per hour. The device may be designed to also be powered by human propulsion. (Veh. Code § 313.5.)
- 7) Defines a “motorized scooter” as any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor. This device may also have a driver seat that does not interfere with the ability of the rider to stand and ride and may also be designed to be powered by human propulsion. (Veh. Code § 407.5.)

- 8) Subjects these modes of transport to various requirements and regulations, including safety requirements and restrictions on operation. Existing law also provides for further regulations by local authorities. (Veh. Code §§ 21200 et seq., 21220 et seq., 21290 et seq.)

This bill:

- 1) Defines a “shared mobility device” as an electrically motorized board as defined in Section 313.5 of the Vehicle Code, motorized scooter as defined in Section 407.5 of the Vehicle Code, electric bicycle as defined in Section 312.5 of the Vehicle Code, bicycle as defined in Section 231 of the Vehicle Code, or other similar personal transportation device, except as provided, 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.
- 2) Defines “shared mobility service provider” (“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.
- 3) Requires a provider, before distribution of a shared mobility device, to enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use (“local authority”). The agreement or permit shall, at a minimum, require that the provider comply with both of the following requirements:
 - a) require that the provider maintain commercial general liability insurance coverage with a carrier doing business in California, 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 completed operations, and not less than \$5,000,000 aggregate for all occurrences during the policy period. The insurance shall not exclude coverage for injuries or damages caused by the provider to the shared mobility device user (“user”); and
 - b) the shared mobility provider agreement between the provider and a user shall not contain a provision by which the user waives, releases, or in any way limits their legal rights or remedies under the agreement.
- 4) Requires a local authority that authorizes a provider to operate within its jurisdiction on or after January 1, 2020, 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 local authority’s jurisdiction by any of the following:

- a) ordinance;
 - b) agreement; or
 - c) permit terms.
- 5) Requires a local authority that has already authorized a provider to operate before January 1, 2020, and continues to so authorize that operation, to adopt rules for the operation, parking, and maintenance of shared mobility devices by the same methods laid out above by January 1, 2021.
 - 6) Requires a provider to comply with all applicable rules, agreements, and permit terms established pursuant to this subdivision.
 - 7) Provides that it does not prohibit a local authority from adopting any ordinance or regulation that is not inconsistent with this title.

COMMENTS

1. Regulation by local authorities

Electric scooters and bikes have become ubiquitous in many California cities over the past few years. They have become incredibly popular and provide residents and visitors with an environmentally-friendly mode of transportation. However, with their arrival have come questions about whether and how they should be regulated. The CEO of one electric scooter company, Bird, makes their position clear: "Where there's no laws, that's where we go in."¹

In California, state law provides certain baseline safety requirements around equipment that should be worn or affixed and where such transportation devices can be operated and at what speeds. These state laws also explicitly provide for further regulation at the local level not inconsistent with those state laws.

Providers have made the use of these devices much easier, providing ready availability and the ease of securing a device with the push of a smartphone button. However, many local jurisdictions have lamented that these shared mobility devices have appeared out of nowhere without any warning from providers. The local authorities complain of safety concerns for users and pedestrians, as well as the sight of these devices scattered throughout these jurisdictions.

In response, many local authorities have rushed to establish their own regulations and entered into various agreements with providers. In other instances, local authorities

¹ Dara Kerr, Bird scooters CEO: 'Where there's no laws, that's where we go in' (October 9, 2018) cnet, <https://www.cnet.com/news/bird-scooters-ceo-where-theres-no-laws-thats-where-we-go-in/> [as of Aug. 5, 2020].

have outright banned their use. This bill requires local authorities to adopt rules governing the operation, parking, and maintenance of shared mobility devices, either by adopting ordinances, entering into agreements, or providing for permits, before providers are allowed to operate in those jurisdictions. Recognizing that some local authorities have already permitted the use of these devices in their jurisdictions, the bill provides that such jurisdictions have until January 1, 2021 to establish the required rules.

According to the author:

Shared mobility devices, like bikes and scooters, which are rented over smartphones, are a great new option for Californians. They can be helpful to citizens and local governments as they search for eco-friendly and low-cost options to solving “the last mile” transportation problem and to create access for traditionally underserved communities. And while I fully support the development and expansion of shared mobility devices, the lack of uniform consumer protections is problematic. I believe that we need to expand this transportation option wisely and with the best possible protections for Californians.

CAOC, a sponsor of this bill, writes:

E-scooters and bikes have appeared in major California cities often overnight – leaving cities and counties in the dust as they attempt to catch up and create regulations. What results is a patchwork of conflicting laws and regulations. For example, San Francisco, Santa Monica and others have issued regulations and a permit process. West Hollywood, Beverly Hills, Newport Beach, Huntington Beach and others have gone the opposite way and have placed bans on scooters after scooter companies dumped their product in the cities without approval. Other cities have taken no action and are waiting to see what actions neighboring cities take. Scooters may provide an eco-friendly, low-cost transportation option, but the lack of uniform consumer protections is very problematic. Often, riders leave the scooters everywhere, creating a mess and tripping hazard. There are public safety concerns, as riders over 18 are not required to wear helmets, and riders drive and park on sidewalks, creating a hazard for the riders themselves as well as the elderly, children and people with disabilities. As stated on March 24th by the San Jose Mercury editorial board, “Those electric scooters that have become ubiquitous in Bay Area urban cities are accidents waiting to happen.”

Writing in support, the League of California Cities, a sponsor of this bill, states that it “supports safe and responsible deployment of shared mobility devices that encourage alternative modes of transportation, while protecting the public that it serves.”

2. Requirements on providers

This bill requires that before providers may distribute their shared mobility devices in any specific area, they must enter into an agreement with, or obtain a permit from, the relevant local authority. The agreement or permit must require the provider to meet two requirements relating to liability.

a. Minimum liability insurance requirements

At a minimum, the provider is required to maintain commercial general liability insurance coverage with limits of at least \$1 million for each occurrence for bodily injury or property damage, including contractual liability, personal injury, and product liability and completed operations. The provider is also required to have at least \$5 million aggregate for all occurrences during the policy period. The insurance cannot exclude coverage for injuries or damages caused by the provider to the user.

Writing in opposition, the Central City Association of Los Angeles argues that the bill “encourages a patchwork of insurance requirements that exceed industry norms” and that there is “no actuarial data to suggest the risk justifies the high minimum insurance requirements in the bill.”

CAOC writes in defense of these provisions:

California has been in the forefront of consumer protection with emerging technologies such as our first-in-the-nation insurance requirements for transportation network companies such as Uber and Lyft. Requiring transportation network companies to maintain minimum levels of insurance vastly improved consumer safety. Now, we must lead on shared mobility devices. Scooter companies are already complying with minimum insurance requirements in cities like San Francisco (\$2 Million) and Santa Monica (\$5 Million).

b. Required prohibition on waiver of rights and remedies

Pursuant to the bill, the agreement and permit must also prohibit provisions in shared mobility provider agreements between providers and users by which the user waives, releases, or in any way limits their legal rights or remedies under the agreement.

Writing in opposition, a coalition of groups, including a number of providers such as Bird and Lime, states:

The bill proposes removing micromobility companies’ rights to include waiver or release provisions in their user agreements, which are standard contractual clauses designed to protect companies from liability for incidents caused through no fault of their own. Existing California law already speaks to the appropriate

scopes and limitations of such waivers. There is no policy reason why shared micromobility alone should be singled out among industries in California for additional limitations on their freedom of contract. We request that subsection (b)(2) be stricken from the bill entirely.

It is true that such waivers are generally permitted and widely used, but are subject to certain limitations and requirements laid out in statute and case law. Civil Code Section 1668 provides: "All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." Relevant judicial precedent further requires that waivers must be clear, unambiguous, and explicit in expressing the intent of the subscribing parties, as well as comprehensible in each of its essential details. (*Benedek v. PLC Santa Monica* (2002) 104 Cal.App.4th 1351, 1356; *Westlye v. Look Sports, Inc.* (1993) 17 Cal.App.4th 1715, 1731.)

In response to the opposition's arguments regarding waivers, CAOC writes:

The opposition argues that such agreements are common. However, (1) being common does not make them right and (2) they are different from other rental agreements/operators. The companies manufacture and place e-scooters into the stream of commerce and are more akin to a product manufacturer and/or retailer and less like an innocent rental agency with no control over the product. Also, the manufacturers have the exclusive control to fix/maintain the scooters. When a driver rents a vehicle, he or she is not required to waive the liability of car defects; neither should a scooter rider.

Given the increasing prevalence of these devices on California's sidewalks and streets, and the reliance on them for regular transportation, the Committee must decide whether the legal rights and remedies of Californians should be systematically limited when using these shared mobility devices. Many of the existing waivers used by providers place severe restrictions on user rights and remedies. Several providers' agreements force users to limit providers' total liability for all claims, including those based on contract, negligence, statute, or other grounds to \$100.

CJAC, a coalition of organizations including Koch Companies Public Sector, various oil companies, and several car manufacturers, also writes in opposition to the waiver restrictions in the bill:

Use of liability waivers recognizes California law's long-standing doctrine of assumption of risk. When someone is engaged in an inherently dangerous activity, like an active sport, he or she is said to have assumed the risk of that activity. *Rostal v. Neste Enterprises* (2006) 138 Ca. App. 4th 326; *Luna v. Vela* (2008) 169 Cal. 4th 102. Common sense dictates that people who ride scooters will be at

risk of falling off them and suffering some injury. Scooter riders can and should assume the risk that comes with riding a scooter because they can control whether they ride the scooter safely or not. The scooter manufacturer has no way of exerting control over the scooter rider and does not deserve full legal responsibility for accidents that may occur as a result of a rider's behavior.

It should be noted that the requirement that the agreements not force users to waive their legal rights or remedies does not preclude any defenses that might be available to providers. Therefore, providers maintain the right to assert assumption of risk, a legal defense, in response to any claims by a user, as well as all other defenses. Precluding a waiver of the user's rights does not mean any rights of the provider are waived.

c. Senate Governance and Finance Committee jurisdiction

This bill also falls within the jurisdiction of the Senate Governance and Finance Committee. The Senate Governance and Finance Committee staff note:

This bill requires local agencies that choose to authorize shared mobility device providers to meet certain minimum requirements, and allows them different ways of meeting those requirements. As a result, the bill is neither a state mandate directing local agencies to regulate these devices in a specific way, nor a limitation on local agencies' regulation of these devices, so it does not negatively affect the powers and duties of local agencies exercising their police powers to regulate these devices in a manner that suits local needs.

SUPPORT

Consumer Attorneys of California (sponsor)

League of California Cities (sponsor)

AARP

California Walks

City of Camarillo

City of Concord

City of Downey

City of Lomita

City of Torrance

Consumer Federation of California

Consumer Watchdog

Courage Campaign

Disability Rights California

Environmental Defense Fund

South Bay Cities Council of Governments

OPPOSITION

Auto Alliance
Bay Area Council
Bicycle Product Suppliers Association
Bird
California Bicycle Coalition
Central City Association of Los Angeles
Circulate San Diego
Civil Justice Association of California
Jump/Uber
Lime
Lyft
The Micromobility Coalition
North American Bikeshare Association
People for Bikes
Personal Insurance Federation of California
Razor
Silicon Valley Leadership Group
Spin
Streets for All
TechNet
Wheels
One individual

RELATED LEGISLATION

Pending legislation: AB 1112 (Friedman, 2020) provides that a “micromobility device,” defined as a bicycle, electric bicycle, or motorized scooter, is not a vehicle and provides that specified sections of the Vehicle Code do not apply to such devices. It further provides guidelines for the removal and relocation of unattended micromobility devices. This bill is currently in the Senate Transportation Committee.

Prior legislation:

AB 2989 (Flora, Ch. 552, Stats. 2018) required an operator of a motorized scooter to wear a helmet, only if they are under the age of 18, and permits local authorities to authorize the operation of motorized scooters on roads with speed limits up to 35 miles per hour.

SB 182 (Bradford, Ch. 769, Stats. 2017) prohibited a local government from requiring business licenses from drivers for transportation network companies who do not reside in its jurisdiction.

PRIOR VOTES:

Assembly Floor (Ayes 49, Noes 12)

Assembly Judiciary Committee (Ayes 9, Noes 3)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 3)
