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## SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair

2021 - 2022 Regular

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<b>Bill No:</b>	AB 371	<b>Hearing Date:</b>	July 8, 2021
<b>Author:</b>	Jones-Sawyer		
<b>Version:</b>	July 1, 2021		
<b>Urgency:</b>	No	<b>Fiscal:</b>	No
<b>Consultant:</b>	Brian Flemmer		

**SUBJECT:** Shared mobility devices: insurance and tracking

**DIGEST:** Requires shared mobility devices, as defined, to include specified information in raised characters and Braille, as specified; requires the mandatory liability insurance maintained by the provider to cover injuries to a pedestrian, as specified; and requires providers to notify customers of the likelihood that their existing policy coverages will not cover liability related to the use of a shared mobility device.

**ANALYSIS:**

Existing law:

- 1) 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. (Civil Code § 2505(a))
- 2) 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. (Civil Code § 2505(b))
- 3) 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. (Civil Code § 2505(c))
- 4) 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. (Civil Code § 2505(a))

- 5) 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. (Civil Code § 2505(a) and Vehicle Code § 415(b))

This bill:

- 1) Requires a shared mobility device provider to affix to each shared mobility device a readily accessible, single, unique, and clearly displayed tactile sign containing raised characters and accompanying Braille, as specified, to identify the device for the purpose of reporting an injury. Specifies that the sign must, at a minimum, consist of the company name of the service provider and an alphanumeric ID assigned by the service provider that is visible a minimum of five feet and not obfuscated by branding or other markings.
- 2) Requires, effective January 1, 2023 that providers must maintain commercial general liability insurance with an admitted insurer, or nonadmitted insurer, and that coverage 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 shared mobility device owner or user, of at least \$100,000 for each occurrence of bodily injury, and \$500,000 in the aggregate.
- 3) Specifies, beginning January 1, 2023, that nothing in this bill 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.
- 4) Requires, beginning January 1, 2023 that providers must disclose to its customers, via its mobile application and a disclosure affixed to the device, that the customer's homeowners, auto, or renters policy likely does not provide coverage for their liability resulting from the use of a shared mobility device and that they should contact their insurance company or agent to determine if coverage is provided.

## **Background**

According to the Author:

“To understand issues for individuals who are blind or have visual impairments, you cannot have your eyes open. Existing law provides liability coverage for users who fall victim to e-device accidents, but does not cover pedestrians and accident victims. AB-371 will close the gap in coverage to provide these existing liability protections to pedestrians and accident victims of e-device negligence. Additionally, this bill provides accessibility by requiring braille and tactile signage to be added to e-devices so pedestrians who are blind or have vision impairments can receive the necessary contact information to file an injury report to the relevant e-device provider.”

Shared mobility devices are a relatively new transportation option where devices like bikes, electric bikes, and electric scooters are shared among users. These devices offer the promise of alleviating many urban transportation woes, and are often called a “first mile, last mile” solution to making public transit use more convenient. They are typically enabled by technology such as mobile application. 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.

### *Insurance Coverages*

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, Chapter 91, Statutes of 2020), which requires that local governments adopt operation, parking, and maintenance rules for devices, requires providers to maintain general commercial liability insurance coverage in the amount of \$1million per incident, \$5million in the aggregate, and prohibit riders from waiving legal rights. The bill also ensured that shared mobility device operators are regulated by the cities they operate in. Cities must adopt regulations that include setting rules for operation, parking, and maintenance before the shared mobility device provider may begin operation.

The insurance coverage required under AB 1286 cover injuries to riders caused by the provider, but does not provide coverage for injuries to pedestrians. There is some question, however, if the provider shares responsibility for a negligently parked scooter that injures someone, how much responsibility, and at what times. If a court determines that it does, trip and fall cases in the event that a scooter is laying a public walk way could be covered by the provider’s existing insurance policy mandated under AB 1286.

### *Rider Negligence*

This bill expands 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 also clarifies that the insurance required of providers by 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 shared mobility device owner or user.

This bill was previously amended as it passed the Assembly Committee on Judiciary that make clear nothing in this bill would prevent the provider from requiring the user to indemnify the provider for the user’s proportionate share of liability for injury to a pedestrian. This amendment sought to address opposition concerns that this bill creates a moral hazard (ie. lack of incentive to guard against risk) by unfairly requiring providers to pay for damages caused by users. The amendment, however, did not remove the opposition, but has raised new questions about the structure of this liability scheme.

The moral hazard argument contends that public policy favors the person who causes the damage to be responsible for it. They who create risk should bear it. This bill creates a new liability structure that may be unlike anything in law for similar rental products. In the event of an injury, the injured party may be more likely to sue the provider than the rider whose negligence caused the injury. For other rental devices such as a jet ski, it would not be uncommon to be required to sign a liability waiver holding the rental company harmless. In the bill as written, a provider would not be able to waive liability in this way, but after a successful suit or negotiated claim, would have to decide whether to sue its rider for their share of liability. For a company trying to attract a loyal customer base, this could be a difficult decision.

Recent amendments taken in the Senate Committee on Judiciary have limited the amount of liability a shared mobility device user has for the negligent acts of its riders to \$100,000 per incident, \$500,000 in the aggregate.

### *Shared Mobility Risks*

According to the Consumer Product Safety Commission, e-scooters resulted in 50,000 emergency department visits and 27 fatalities between 2017 and 2019.<sup>1</sup> Two of the largest shared mobility device providers, Bird and Lime, launched in the Fall of 2017. A 2019 Consumer Reports article notes that by July 2018, these companies had received 470 reports of electric scooter injuries.<sup>2</sup> A separate 2019 estimate conducted by Consumer Reports, based on information obtained from hospitals and public agencies, suggested that as many as 1500 had been injured from an e-scooter crashes since 2017. While this information highlights the risk of injury scooters create, it does not identify what proportion of injuries are to the rider or to a pedestrian, whether the injury was due to product defect, rider negligence, or a collision with a vehicle.

Mopeds, scooters and motorized bicycles are each defined and treated differently by California law. In California, you do not need a motorcycle-specific license or DMV registration for scooters and motorized bikes. Riding mopeds, on the other hand, requires both valid registration and an M1 or M2 license. Operating a moped on California roads also requires liability insurance.

Electric bicycles are divided into three classes. A “class 1 electric bicycle,” or “low-speed pedal-assisted electric bicycle,” is a bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour. A “class 2 electric bicycle,” or “low-speed throttle-assisted electric bicycle,” is a bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour. A “class 3 electric bicycle,” or “speed pedal-assisted electric bicycle,” is a bicycle equipped with a motor that provides

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<sup>1</sup> <https://www.consumerreports.org/electric-scooters/safety-risks-of-riding-e-scooters-on-the-sidewalk-iihs-study/>

<sup>2</sup> <https://www.consumerreports.org/product-safety/national-crash-data-from-e-scooter-ride-share-companies-revealed-for-first-time/>

assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour, and equipped with a speedometer. Class three electric bicycles cannot be operated by someone under 16, and all other operators must wear a helmet when riding on the street. No liability insurance requirements exist for these bicycles like for mopeds.

No such insurance requirement exists for shared mobility devices as well. Many riders may believe that an existing insurance policy such as their homeowners, renters, or auto policy will provide some coverage for their liability. Homeowners and renters policies may typically cover a bicycle rider's liability, unless that bike is motorized. Auto policies typically do not offer coverage for anything with less than four wheels. Unless a scooter rider has an insurance rider providing for general liability coverage (and that does not exclude shared mobility device liability), they are likely uninsured against accidents they cause.

### *Comparison to Auto Requirements*

Opposition generally contend that requiring providers maintain \$100,000 of coverage for the negligent act of a shared mobility rider is excessive when compared to the minimum auto insurance requirements. California's financial responsibility law requires that drivers must maintain financial responsibility by self-insurance, bond, or an insurance policy of at least \$15,000 per occurrence of bodily injury or death, \$30,000 in the aggregate, and \$5,000 for property damage. These limits have been in place since at least 1974 (sources vary: some suggest the law goes back to 1967). At that time, \$5000 worth of property damage covered the average cost of a new car. Adjusted for inflation to 2021 dollars, \$15,000 in 1974 equals \$81,905, and adjusted for inflation from 1967 equals \$120,895. There have been unsuccessful efforts in recent years to increase the auto insurance liability requirements. Nevertheless, the Committee may wish to consider whether the insurance requirement created by this bill should be governed by auto insurance requirements, or whether a fresh look at the potential risk of harm justifies higher levels of coverage be held by an operator.

### **Suggested Amendments**

There are two main ways that rider negligence can lead to injury of a pedestrian, either through a collision, or through negligent parking. An argument can be made that the provider, by putting these devices into circulation, and the rider of the devices share responsibility for ensuring that the devices are out of public rights of way to prevent trip and fall type injuries. The Committee may wish to consider amendments to address the moral hazard of requiring the provider's insurance coverage to cover injuries caused by rider's negligence in collisions, or willful acts of the rider that are unrelated to the storage of the shared mobility device. Public policy generally prefers they who create the risk bear it. The bill was recently amended to notify users of the likelihood they are uninsured. The committee may also wish to consider amendments that make it easier to obtain insurance coverage, potentially by making policies available over the provider's mobile application.

### **Related/Prior Legislation**

AB 1286 (Muratsuchi, Chapter 91, Statutes of 2020) required a shared mobility service provider maintain commercial general liability insurance in amounts not less than \$1

million per event, \$5 million in the aggregate. Defined shared mobility device to mean an electrically motorized board, motorized scooter, electric bicycle, bicycle, or other similar personal transportation device, except as provided. Additionally required cities and counties that authorizes a shared mobility device provider to operate within its jurisdiction to adopt operation, parking, and maintenance rules, as provided, regarding the use of the shared mobility devices in its jurisdiction before the provider may offer shared mobility devices for rent or use.

AB 1112 (Friedman, 2020) would have prohibited an unauthorized person from removing an unattended micromobility device from a highway to a storage facility, garage, or other place. Would have authorize a person to relocate an illegally parked micromobility device a short distance in order to clear a highway, sidewalk, doorway, or public bicycle path or trail for vehicle or pedestrian traffic. Would have allowed a peace officer to relocate an illegally parked micromobility device to a properly parked location.

AB 2989 (Flora, Chapter 552, Statutes of 2018) permits a local authority to authorize the operation of a motorized scooter on a highway with a speed limit of up to 35 miles per hour and would additionally allow for operation of a motorized scooter on a highway with a higher speed limit if the motorized scooter is operated within a Class IV bikeway. Specifies 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. Requires the operator of a motorized scooter to wear a helmet only if the operator is under 18 years of age.

AB 604 (Olsen, Chapter 777, Statutes of 2015) allows electrically motorized skateboards to be operated on sidewalks, roads and bike paths unless prohibited by a local government, with specified restrictions.

AB 1096 (Chiu, Chapter 568, Statutes of 2015) establishes new categories of electric bicycles and places restrictions on their operation.

SB 441 (Chesbro, Chapter 722, Statutes of 1999) define a "motorized scooter," and require these devices to meet certain operational requirements.

### **ARGUMENT IN SUPPORT:**

The Consumer Attorneys of California (CAOC) support AB 371 because it “ensures pedestrians are afforded liability coverage if they are injured by a shared mobility device. This bill also requires the addition of braille and tactile signage with raised characters on devices to help the visually impaired identify the device provider and locate necessary contact information to file an injury report.” CAOC adds that “shared mobility devices, such as scooters and bikes (collectively e-devices), become a more popular means of transportation, pedestrians face an increased risk of injury. Improperly parked e-devices and riders using the devices in the pedestrian walkway pose a great danger and can lead to severe injuries for pedestrians, especially the visually impaired who rely on clear walkways free of hindrance. . . The absence of braille and tactile signage with raised characters on e-devices prevents the visually impaired from accessing information about the provider after an injury. The addition of such signage

will ensure pedestrians with visual impairments can properly identify the device provider's contact information to file a report."

### **ARGUMENTS IN OPPOSITION:**

This bill is opposed by the major companies that provide shared mobility devices, in particular Lime, Bird, and Spin, unless it is amended to remove the expanded liability insurance requirements. (The opponents have stated no objection to adding relevant contact information in Braille, but have taken issue with adding an alphanumeric identifier.) Opponents contend that device providers already maintain adequate insurance for accidents that harm users. However, this bill, the opponents contend, would "expand liability insurance to cover negligent or reckless behavior of users. Under this bill, the reckless e-scooter drivers would be immunized from any damages they cause, with all liabilities being covered by the shared e-scooter operators." Opponents contend that the bill would not only fail to meaningfully improve safety, but that it would create a "perverse incentive" and establish "a moral hazard by not holding individual parties responsible for their own actions, effectively absolving riders who behave recklessly since shared e-scooter operators would ultimately be responsible for any damage they cause." Finally, opponents contend that companies that provide shared mobility devices already obtain high-rate insurance policies, and they fear that the expanded liability created by this bill would make it "impossible for operators to be insured in the State."

The Civil Justice Association of California writes:

Under existing law, scooter companies are required to maintain liability insurance to cover injuries to users of the devices. AB 371 unfairly singles out scooter companies by also requiring them to obtain insurance that covers any injury to a pedestrian caused by the negligent conduct of the scooter rider. This effectively makes scooter companies liable for the acts of the scooter rider. While safeguarding pedestrians, particularly those with visual impairment, is laudable, this bill does not advance that goal. Shifting the responsibility of wrongful acts of riders onto others is contrary to the goal of improved scooter safety for pedestrians. It will encourage negligent scooter riders to be more, not less, negligent. AB 371 is also highly arbitrary as it holds scooter companies to a different liability standard than other recreational transportation rental companies. This bill will jeopardize the survival of scooter companies and a convenient and valued transportation for the public. AB 371 should be amended to remove the shifting of liability from scooter riders to scooter companies."

### **SUPPORT:**

California Council for the Blind (Sponsor)  
Association of California State Employees with Disabilities  
Association of Regional Center Agencies  
California Insurance Wholesalers Association  
California Walks  
Consumer Attorneys of California  
Disability Rights of California  
Disability Rights Education & Defense Fund

Guide Dogs for the Blind  
Lighthouse for the Blind and Visually Impaired  
Surplus Line Association of California  
1 individual

**OPPOSITION:**

Bay Area Council  
Bicycle Transit Systems  
Bird  
California Bicycle Coalition  
Calstart  
Chamber of Progress  
Circulate San Diego  
City of Oakland  
City of Santa Monica  
Civil Justice Association of California  
Hoppr  
League of American Bicyclists  
Link Scooters  
Los Angeles County Bicycle Coalition  
Neutron Holdings, INC. (DBA Lime)  
North American Bikeshare Association  
People for Bikes  
Razor  
San Diego County Bicycle Coalition  
Santa Monica Chamber of Commerce  
Santa Monica Spoke  
Silicon Valley Leadership Group  
Spin  
Streets for All  
Technet  
Wheels

**-- END --**