

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 371 (Jones-Sawyer)  
Version: April 29, 2021  
Hearing Date: June 29, 2021  
Fiscal: No  
Urgency: No  
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**SUBJECT**

Shared mobility devices: insurance and tracking

**DIGEST**

This bill amends the insurance requirements applicable to shared mobility service providers and requires providers to affix signs identifying shared mobility devices for purposes of reporting illegal or negligent behavior.

**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 severely restricted or banned in others. Various legal questions arise around whether and how these devices and the companies providing them should be regulated.

Recently enacted legislation requires cities and counties to adopt rules for the operation, parking, and maintenance of shared mobility devices allowed to operate in their respective jurisdictions. It also requires shared mobility service providers to maintain certain levels of commercial general liability insurance coverage.

This bill makes several changes to the existing insurance requirements, including a loosening of who can underwrite such coverage and a new requirement that such coverage apply to damages suffered by a pedestrian as a result of the negligent conduct of the shared mobility device owner or user. The bill also places a requirement on providers to affix signs on each shared mobility device that allows for easy identification for reporting illegal or negligent activity.

This bill is sponsored by the California Council of the Blind. It is supported by other disability rights groups and the Consumer Attorneys of California. It is opposed by

shared mobility service providers, cycling organizations, and others. Should this bill pass out of this Committee, it will be referred to the Senate Insurance Committee.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires a shared mobility service 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. 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. (Civ. Code § 2505(b).)
- 2) Requires the above coverage to have 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. (Civ. Code § 2505(b).)
- 3) Prohibits the insurance from excluding coverage for injuries or damages caused by the shared mobility service provider to the shared mobility device user. (Civ. Code § 2505(b).)
- 4) Requires cities and counties that authorize providers to operate within their jurisdiction to adopt rules for the operation, parking, and maintenance of shared mobility devices by ordinance, agreement, or permit terms, as specified. Providers are required to comply therewith. (Civ. Code § 2505(c).)
- 5) Defines “shared mobility device” to mean an electrically motorized board, motorized scooter, electric bicycle, bicycle, as those terms are defined, 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 § 2505(a)(1).)
- 6) Defines “shared mobility service provider” as 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.
- 7) Provides that nothing in the above provisions shall prohibit a city or county from adopting any ordinance or regulation that is not inconsistent with this title. (Civ. Code § 2505(d).)

This bill:

- 1) Requires the mandated insurance coverage to 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.
- 2) Provides that nothing therein 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 provision cannot be waived or modified by contractual agreement, act, or omission of the parties.
- 3) Allows the required commercial general liability insurance coverage to be secured with an admitted insurer, or a nonadmitted insurer that is eligible to insure a home state insured, as provided.
- 4) Makes the operative date of the above changes July 1, 2022.
- 5) Requires a shared mobility service 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 provided, to identify the device for the purpose of reporting illegal or negligent activity. The sign shall minimally 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.

## COMMENTS

### 1. Regulating shared mobility devices

Electric scooters and bikes have become ubiquitous in many California cities. 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 what guidelines and consumer protections should be put into place. The CEO of one electric scooter company, Bird, makes their position clear: "Where there's no laws, that's where we go in."<sup>1</sup>

In California, state law provides certain baseline safety requirements around equipment that should be worn or affixed to devices and where such transportation devices can be

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<sup>1</sup> 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/>. All internet citations herein are current as of June 6, 2021.

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. Local authorities, consumer groups, and disability rights advocates complain of safety concerns for users and pedestrians, as well as the sight of these devices scattered throughout these jurisdictions. In response, SB 1286 (Muratsuchi, Ch. 91, Stats. 2020) enacted Section 2505 of the Civil Code (Section 2505) last year.

SB 1286 set a baseline regulation requirement for the local jurisdictions. Section 2505 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.

Relevant here, Section 2505 also requires providers, at a minimum, to maintain commercial general liability insurance coverage with a carrier doing business in California, 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. To ensure users were protected, the law prohibits the required insurance from excluding coverage for injuries or damages caused by the provider to the user. The statute includes a clause that it does not restrict local jurisdictions from implementing more rigorous regulations not inconsistent with Section 2505.

## 2. Adjustments to the liability insurance requirements

According to the author:

To understand issues for those who are nonvisual, 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.

This bill changes the existing insurance requirements in Section 2505 by requiring the mandated liability insurance to cover “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*.” Therefore, shared mobility service providers

are required to ensure they have coverage that covers not only damages to users caused by their own actions or omissions, but damages to others as well, even where the user of the device is to blame.

The California Council of the Blind, the sponsor of the bill, explains the need for these changes:

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. Under current law, the use of shared mobility devices is largely regulated by local governments. However, state law does require that providers of these devices ensure that liability insurance exists when they are rented to end users. Nothing in state law, however, requires that this liability insurance cover pedestrians injured in accidents with these devices, including situations where the end user leaves the device in the middle of the sidewalk and a pedestrian falls over the device. 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. 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, the council believes that this may incentivize deterrence measures against such inappropriate conduct.

The current provisions that explicitly require that users be covered by the liability insurance shared mobility service providers must carry was driven by the many injuries faced by users of these devices. However, as the California Council of the Blind references, it is not just users that are being injured or impacted by the widespread use of shared mobility devices:

For months, public officials, doctors and scooter company employees have warned about the dangers associated with riding electric scooters, which have appeared in more than 100 cities worldwide since last year. At the same time, in emergency rooms across the country, trauma doctors have reported an influx of severe injuries among users of the devices that began as soon as they appeared on city streets.

Now, many of these people are beginning to warn about the dangers the devices pose to pedestrians. There are no official numbers illustrating how frequently pedestrians are injured by scooters, but doctors interviewed in five cities say badly injured pedestrians are showing up in trauma centers multiple times a week.

In San Diego – where thousands of e-scooters have flooded the streets – the founder of one neighborhood group told the city council’s public safety committee that his elderly neighbors are afraid to set foot outside, knowing a broken hip can be a debilitating injury requiring surgery. Curt Decker, executive director of the National Disability Rights Network, said the devices are a commuting nightmare for the visually impaired and those who get around via wheelchair.

While able-bodied people can usually maneuver around e-scooters, the elderly and disabled can have a much harder time, said Wally Ghurabi, medical director of the Nethercutt Emergency Center at the UCLA Medical Center in Santa Monica.

“I’ve seen pedestrians injured by scooters with broken hips, multiple bone fractures, broken ribs and joint injuries and soft tissue injuries like lacerations and deep abrasions,” he said, estimating he sees several people injured by e-scooters each week.<sup>2</sup>

However, shared mobility service providers, along with numerous cycling associations, the City of Santa Monica, and the Civil Justice Association of California express strong concerns with these provisions in letters of opposition. A coalition of providers, including Bird, Lime, and Spin, explain:

Unprecedented in nature, AB 371 extends existing liability insurance requirements for injuries to third parties by riders to astronomical levels. Our existing commercial general liability insurance already covers injuries and damages where micromobility operators are found to be at fault. Each of our companies already obtain high-rate insurance policies to satisfy current law and to ensure sufficient insurance is in place to respond to accidents and personal injuries that occur. AB 371 makes it impossible for operators to be insured in the State under the proposed expanded liability coverage provision.

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<sup>2</sup> Peter Holley, *Pedestrians and e-scooters are clashing in the struggle for sidewalk space* (January 11, 2019) The Washington Post, [https://www.washingtonpost.com/business/economy/pedestrians-and-e-scooters-are-clashing-in-the-struggle-for-sidewalk-space/2019/01/11/4ccc60b0-0ebe-11e9-831f-3aa2c2be4cbd\\_story.html](https://www.washingtonpost.com/business/economy/pedestrians-and-e-scooters-are-clashing-in-the-struggle-for-sidewalk-space/2019/01/11/4ccc60b0-0ebe-11e9-831f-3aa2c2be4cbd_story.html).

As a starting point, it's important to note that no such insurance product for this type of coverage exists within the private marketplace nor does any other state require it. Insurance products are data-driven and priced by the probability of losses which isn't currently available. Such an insurance product, if created, would also assume the most conservative pricing model and likely be cost-prohibitive. By imposing an enormous burden on shared e-scooter operations, California's environmental and transportation goals would therefore be undermined as the industry would not be able to obtain such unprecedented insurance coverage.

In response to these concerns, several amendments were taken in the Assembly. The bill now makes clear that nothing therein prohibits a provider from requiring users to sign indemnity contracts that require users to indemnify the provider for the user's proportionate share of liability. It further prohibits the indemnity contract from requiring the user to defend or indemnify the provider for the provider's negligence or willful misconduct and prohibits the waiver, or modification by contractual agreement, act, or omission of the parties, of the requirements in Section 2505. This paves the way for providers to hold users accountable should the providers be held responsible for injuries caused solely or in part by the user.

The recent set of amendments also delay the operative date and provide flexibility as to which carriers providers can secure coverage with. Specifically, rather than require the coverage to be secured with a carrier doing business in California, the bill authorizes shared mobility service providers to maintain the required liability insurance with "an admitted insurer, or a nonadmitted insurer that is eligible to insure a home state insured" pursuant to the Insurance Code.

The author argues these amendments ensure "that e-device providers will not bear sole responsibility for negligence caused by users" and that there is an adequate market for such insurance coverage. He asserts that the delayed implementation "adds adequate and standard time for the insurance product to be available to provide coverage for accident victims."

The providers respond that these amendments "do not remove the responsibility from the scooter company or need to carry insurance that is not in existence today and only encourages costly litigation." They argue: "[o]perators will have to incur the expense of the riders actions on the front end through insurance AND on the back end in enforcing any indemnity agreement to prove rider negligence which is extremely unlikely."

Given the prevalence of these devices on California's sidewalks and streets, the increasing reliance on them for regular transportation, and the attendant spike in injuries to bystanders, the Committee must determine whether the companies providing these devices should ensure there is adequate liability insurance coverage to protect those crossing paths with these devices and their users, regardless of whether

damages are caused by the provider, the user, or both. To respond to concerns about the heightened level of coverage for such incidents, the author has agreed to amendments that limit the required coverage for injury or property suffered by a pedestrian when the injury involves, in whole or in part, the negligent conduct of the shared mobility device user to \$100,000 for each occurrence for bodily injury or property damage, and \$500,000 in the aggregate for all occurrences in the policy period. In addition, to give more time to secure such coverage, this requirement will not become effective until January 1, 2023, as will the provision governing indemnity. The changes providing flexibility for the insurer used are to go into effect January 1, 2022.

To ensure users are made aware of the potential for this liability, the author is taking amendments that require, on or before January 1, 2023, providers to provide a disclosure to users that their existing insurance policies might not provide coverage for liability resulting from the use of shared mobility devices and that they should contact their insurance company or insurance agent to determine if coverage is provided. Users must acknowledge the disclosure, which must be placed on each device.

### 3. Device identification

A relatively less controversial element of the bill requires shared mobility service providers to affix a readily accessible, single, unique, and clearly displayed tactile sign to each shared mobility device that identifies the device for the purpose of reporting illegal or negligent activity. The signs must contain raised characters and accompanying Braille that complies with applicable provisions of the Building Code. At a minimum, the sign must include the name of the service provider and an alphanumeric ID that is visible a minimum of five feet away and not obfuscated by branding or other markings.

The author argues this provision “provides accessibility by requiring braille and tactile signage to be added to e-devices so nonvisual pedestrians can receive the necessary contact information to file an injury report to the relevant e-device provider.”

### 4. Additional stakeholder positions

Disability Rights California writes in support:

Users of e-devices often park them on sidewalks, which are a hazard for people with mobility disabilities and those who are blind. People with mobility disabilities often have to use wheelchairs, walkers, canes, and scooters. Many do not have the physical ability to move the e-devices to the side [of] a space, where the person can easily maneuver around them. Blind people often depend on canes, support animals, and their other senses to get from one place to another. It is crucial that disabled people are properly protected if they are injured by e-devices being left on the sidewalk due to negligence.



Having e-devices on sidewalks puts all pedestrians at risk. Children, the elderly, and other pedestrians are also at danger of tripping and injuring themselves, trying to get around the devices.

The Association of California State Employees with Disabilities makes the case for the bill:

AB 371 represents a significant step forward in attempting to solve the increasing problem of shared mobility devices abandoned on the regular paths of travel for many of our members as they are going back and forth to work, or moving to and from appointments while on the job. These devices not only cause an inconvenience, but also pose a significant risk of bodily injury to them.

It is time that those businesses which rent these devices assume some responsibility for their safe return to designated drop-off locations, instead of allowing their customers to just leave them in the street or on the sidewalk. AB 371 attempts to provide a legal framework that is both economically and socially responsible, while providing a greater level of physical and legal protection for at-risk people in the disability community.

The City of Santa Monica writes in opposition:

AB 371 would require operators to maintain insurance that will provide a source of funds from which pedestrians can recover even if their injuries are based on user negligence, with the burden resting with the operators to put in place and then pursue indemnification from users. It is the City's understanding that these new requirements will lead to a substantial increase in insurance costs for operators which could severely impact the fiscal viability of some of the operators that are, or may become, part of our shared mobility program.

The City of Santa Monica supports the responsible use of shared mobility in our city, and we also support the provisions of the bill that will provide information in Braille to identify a device for the purpose of reporting an injury; unfortunately, we are opposed to the potentially onerous insurance requirements proposed in the bill.

Writing in opposition, the California Bicycle Coalition argues that the insurance provisions in the bill "would undermine the viability of shared bike and scooter systems in California." They assert:

It will impede the expansion of such systems and their integration with transit which is necessary to provide affordable and equitable access to mobility for Californians. Even today, without that integration, shared bikes and scooter systems have eliminated tens of millions of car trips from our city streets in the past decade. The insurance provisions in AB 371 jeopardize this important potential.

### **SUPPORT**

California Council of the Blind (sponsor)  
Association of California State Employees with Disabilities  
Association of Regional Center Agencies  
California Insurance Wholesalers  
California Walks  
Consumer Attorneys of California  
Disability Rights California  
Disability Rights Education & Defense Fund  
Guide Dogs for the Blind  
Lighthouse for the Blind and Visually Impaired  
Surplus Line Association of California

### **OPPOSITION**

Bay Area Council  
Bicycle Transit Systems  
Bird  
California Bicycle Coalition  
Calstart  
Chamber of Progress  
Circulate San Diego  
City of Santa Monica  
Civil Justice Association of California  
Hoppr  
League of American Bicyclists  
Lime  
Link Scooters  
Los Angeles County Bicycle Coalition  
North American Bikeshare Association  
Peopleforbikes  
Razor  
San Diego County Bicycle Coalition  
Santa Monica Chamber of Commerce  
Santa Monica Spoke  
Spin

Streets for All  
Wheels

**RELATED LEGISLATION**

Pending Legislation: AB 859 (Irwin, 2021) authorizes a public agency to require a mobility services operator to periodically submit anonymized trip data, and clarifies that trip data is personal information as defined in the California Consumer Privacy Act and subject to the Electronic Communications Privacy Act. This bill was held in the Assembly Appropriations Committee.

Prior Legislation:

AB 1286 (Muratsuchi, Ch. 91, Stats. 2020) *See* Comment 1.

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. The bill would have authorized persons and peace officers to relocate such devices, as specified. This bill died in the Senate Transportation Committee.

AB 3116 (Irwin, 2020) would have authorized a public agency to require a mobility services operator to periodically submit anonymized trip data, and clarified that trip data is personal information as defined in the California Consumer Privacy Act and subject to the Electronic Communications Privacy Act. This bill died in the Assembly Appropriations Committee.

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.

**PRIOR VOTES:**

Assembly Floor (Ayes 59, Noes 3)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 9, Noes 0)

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