

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 458 (Jones-Sawyer)
Version: July 3, 2023
Hearing Date: July 11, 2023
Fiscal: No
Urgency: No
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SUBJECT

Shared mobility devices: insurance

DIGEST

This bill makes technical clarifications regarding the insurance requirements applicable to shared mobility service providers.

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, including coverage covering damages suffered by a pedestrian as a result of the negligent conduct of the shared mobility device owner or user.

In response to some confusion in the industry, this bill makes technical clarification to these insurance requirements.

This bill is author-sponsored. The bill is supported by Bird, a shared mobility service provider. There is no known opposition. The bill passed out of the Senate Insurance Committee on a 7 to 0 vote.

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. (Civ. Code § 2505(b)(1).)
- 2) Requires the above coverage to have limits not less than \$1 million 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 million aggregate for all occurrences during the policy period. 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)(1).)
- 3) Requires localities that authorize providers to operate in their jurisdictions 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).)
- 4) 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. 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. (Civ. Code § 2505(a)(2).)
- 5) Requires a shared mobility service provider, in addition to the coverage currently required, to offer or make available, or to confirm the user of a shared mobility device maintains, insurance coverage for bodily injury or death suffered by a pedestrian when the injury or death involves, in whole or in part, the negligent conduct of the shared mobility device user, of \$10,000 for each occurrence of bodily injury to, or death of, one pedestrian in any one accident, and for property damage to an assistive technology device, of \$1,000 for each occurrence. Permits providers to partner with insurers or to enter into individual agreements with users, as specified. (Civ. Code § 2505(b)(2).)

- 6) 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. (Civ. Code § 2505(b)(2).)
- 7) Requires providers to disclose to their customers that the customer's existing homeowner's, renter's, or automobile insurance policies might not provide coverage for liability resulting from the use of shared mobility devices and that the customer should contact their insurance company or insurance agent to determine if coverage is provided, prior to allowing a user to initiate their first use of a device. (Civ. Code § 2505(e).)
- 8) Makes the operative date of various provisions July 1, 2023. (Civ. Code § 2505(b)(2), (e).)
- 9) Requires CDI to conduct a study, and report its findings to the Legislature by December 31, 2026, that assesses appropriate coverage requirements, the relevant insurance market, and existing practices. (Civ. Code § 2505.5.)

This bill:

- 1) Clarifies that the requirement for insurance coverage for bodily injury or death suffered by a pedestrian when the injury or death involves, in whole or in part, the negligent conduct of the shared mobility device user shall not be interpreted to do any of the following:
 - a) prohibit an aggregated cap on that coverage;
 - b) limit or supersede the requirement to maintain commercial general liability insurance coverage with limits of not less than \$5,000,000 aggregate; or
 - c) require coverage as provided in Division 7 of the Vehicle Code.
- 2) Provides that the insurance coverage for bodily injury or death suffered by a pedestrian when the injury or death involves, in whole or in part, the negligent conduct of the shared mobility device user shall not be considered a group insurance policy.

COMMENTS

1. Regulating shared mobility devices

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

operated and at what speeds. These state laws also explicitly provide for further regulation at the local level not inconsistent with those state laws.

Shared mobility service providers have made the use of shared mobility 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. One electric scooter company, Bird, previously made their position clear: “Where there’s no laws, that’s where we go in.”¹ 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, AB 1286 (Muratsuchi, Ch. 91, Stats. 2020) enacted Section 2505 of the Civil Code (Section 2505).

AB 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.

However, concerns were subsequently raised that those provisions that 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, 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

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/>. All internet citations herein are current as of June 29, 2023.

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.²

In response, AB 371 (Jones-Sawyer, Ch. 740, Stats. 2022) bolstered the insurance requirements in Section 2505 by requiring a shared mobility service provider to offer or make available, or to confirm the user of a shared mobility device maintains, insurance coverage for bodily injury or death suffered by a pedestrian when the injury or death involves, in whole or in part, the negligent conduct of the shared mobility device user, of \$10,000 for each occurrence of bodily injury to, or death of, one pedestrian in any one accident, and for property damage to an assistive technology device, of \$1,000, for each occurrence. Therefore, shared mobility service providers, as of July 1, 2023, 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.

² 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.

2. Clarification of the liability insurance requirements

The author has asserted that the changes made to Section 2505 by AB 371 have created some confusion and are at risk of being misinterpreted. The author states that because the new insurance requirement does not explicitly state an aggregate limit, insurers have misinterpreted that to mean aggregate limits are prohibited, which was clearly not the intention. There were also claims that the interplay between the requirements first required by AB 1286 and those required by AB 371 has led to varying interpretations.

Therefore, this bill clarifies that the requirement for insurance coverage for bodily injury or death suffered by a pedestrian when the injury or death involves, in whole or in part, the negligent conduct of the shared mobility device user, established pursuant to AB 371, shall not be interpreted to do any of the following:

- prohibit an aggregated cap on that coverage;
- limit or supersede the requirement to maintain commercial general liability insurance coverage with limits of not less than \$5,000,000 aggregate, as established by AB 1286; or
- require coverage as provided in Division 7 of the Vehicle Code.

The bill further provides that the insurance coverage for bodily injury or death suffered by a pedestrian when the injury or death involves, in whole or in part, the negligent conduct of the shared mobility device user shall not be considered a group insurance policy.

According to the author:

AB 458 is a technical and clarifying bill that ensures explicitly aligns the third-party insurance requirements for rental e-scooters with that of the modeled-after existing insurance product, which first stemmed from Cincinnati's third-party insurance requirement. The requirements of this bill were always intended in AB 371, however, it has come to my attention that explicit clarification is needed.

Writing in support, Bird states:

AB 458 makes necessary updates to existing law; this bill would highlight that insurance coverage required for pedestrian harm is not considered group insurance and can have an aggregate limit, which will allow companies greater access to affordable policies. Additionally, this bill would clarify that the insurance coverage for pedestrians struck by scooter riders is governed by the bill itself and not the historical Vehicle Code Division 7 written to require minimum financial responsibility for drivers of motor vehicles/automobiles. Finally, the bill would ensure that liability

insurance coverage of users would not supersede the general liability insurance coverage of shared mobility service providers.

We believe this legislation will help clarify existing insurance requirement laws, as well as allowing shared mobility service providers to more effectively comply with the provisions laid out by AB 371 (Jones-Sawyer), Chapter 740, Statutes of 2022).

SUPPORT

Bird

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 410 (Jones-Sawyer, 2023) delays the operative date of, and modifies the specifications for, the law requiring tactile signs to be affixed to shared mobility devices. AB 410 is currently on the Senate Floor.

Prior Legislation:

AB 371 (Jones-Sawyer, Ch. 740, Stats. 2022) *See* Comment 1 & 2.

AB 1286 (Muratsuchi, Ch. 91, Stats. 2020) *See* Comment 1 & 2.

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. AB 1112 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. AB 3116 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:

Senate Insurance Committee (Ayes 7, Noes 0)
Other prior votes not relevant to current version of the bill.
