
SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair

2021 - 2022 Regular

Bill No:	AB 371	Hearing Date:	June 22, 2022
Author:	Jones-Sawyer		
Version:	June 9, 2022 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	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 shared mobility service providers to maintain third party liability insurance of at least \$10,000 to cover personal injuries or death to a pedestrian as a result of the user's negligence, if the user does not obtain such coverage, as specified; requires providers to notify customers of the likelihood that their existing insurance policies, as specified, will not cover liability related to the use of a shared mobility device; and requires the California Department of Insurance (CDI) to study coverage levels and make recommendations in a report if necessary.

ANALYSIS:

Existing law:

- 1) Defines "shared mobility device" to mean an electrically motorized board, motorized scooter, electric bicycle, bicycle, or other similar personal transportation device, as specified, 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 platform. (Civil Code § 2505(a))
- 2) 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))
- 3) Defines "shared mobility service 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))
- 4) 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))

- 5) 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))

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, that at a minimum, consists of the company name, phone number, and email address of the service provider, and is visible a minimum of five feet and not obfuscated by branding or other markings.
- 2) Authorizes providers to meet the commercial general liability insurance requirements in #4 above with an admitted insurer or eligible nonadmitted insurers, as specified.
- 3) Requires, effective July 1, 2023, shared mobility service providers' agreements or permits with cities or counties require the providers, or users, to maintain insurance coverage for personal injury or death suffered by a pedestrian when the injury involves, in whole or in part, the negligent conduct of the shared mobility device user, of \$10,000 for each occurrence.
- 4) Specifies, beginning July 1, 2023, that nothing in this bill prohibits 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. Prohibits this requirement from being waived or modified by contractual agreement, act, or omission of the parties.
- 5) Requires, on or by July 1, 2023 that shared mobility service 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.
- 6) Requires CDI to study, in collaboration with a city or county, whether the coverage requirements are appropriate to the risk, and to deliver the study and any recommendations to the Legislature and both Committees on Insurance no later than December 31, 2026.

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 a 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.

This bill arises from a stated concern that riders of these devices are not insured for the liability they may incur during an accident, and that the devices are often left in public rights of way by their users. These actions create a significant risk of injury to pedestrians, and especially to visually impaired individuals and those with other disabilities. The author proposes requiring insurance coverage be provided by the provider of services, on behalf of the rider to guard against the rider’s negligence. While insurance policies vary, homeowners, auto, or rental policies are unlikely to provide coverage for a user’s liability when they are negligent in their riding or parking of a device.

Insurance Coverages. To ensure that injuries to riders caused by the service provider 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). This required that local governments adopt operation, parking, and maintenance rules for devices, required providers to maintain general commercial liability insurance coverage in the amount of \$1 million per incident, \$5 million in the aggregate, and prohibits 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 (Muratsuchi) covers injuries to riders caused by the provider, but does not explicitly provide coverage for injuries to pedestrians. For example, if a device breaks mid ride due to poor provider maintenance, injuring the rider, the insurance could provide recovery to the rider. If a rider negligently runs down a pedestrian, this coverage does not apply. If the device breaks mid ride due

to poor maintenance, injuring the rider and the pedestrian, then the pedestrian might have a chance at recovery under this policy.

A more nuanced example of potential liability can result if users were to complain to a provider repeatedly about the wheel size of a scooter causing risk of a fall on bumpy roads or sidewalks. If the provider never redesigns its scooters while other's do to make them safer, it is possible that the product could fall behind the 'state of the art' and be found to be unreasonably dangerous to the user or consumers, creating liability for the company for injuries to riders who are thrown off the scooter on a bumpy roads.

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 across a public walk way could potentially 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 (Muratsuchi) 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. Currently, in order to distribute a shared mobility device, the provider is required to have an agreement with or permit from the local jurisdiction. This bill requires, effective July 1, 2023, the agreement or permit with local jurisdictions include a requirement there be insurance coverage of \$10,000 for personal injury 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.

The moral hazard argument contends that public policy favors the person who causes the damage to be responsible for it. Simply put: they who create risk should bear it. Opponents have argued this bill creates a new liability structure that may be unlike existing law for similar rental products. They point out that 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.

How much coverage is enough? A prior version of this bill as it left the Senate Committee on Judiciary 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. The bill in print now only requires a \$10,000 policy for bodily injury only. It provides for no property coverage.

A brief review of the insurance coverages provided by operators, and of requirements, shows this structure is not entirely without precedent. For instance, the bill in print now is modeled after a requirement put in place by the City of Cincinnati in 2021 for a city pilot project where providers (in this case Bird and Lime) were required to ensure their riders had coverage in case of bodily injury or death of no less than \$10,000.

A review of insurance provided by providers in different countries suggests that \$10,000 will not be cost prohibitive. For instance, Lime's website that explains the insurance coverages offered to riders mentions "Rider's Liability Coverage."¹ This insures a rider for bodily injuries and property damage caused by the rider to other persons resulting from the use of a Lime or JUMP vehicle.

Lime lists 25 countries that it provides some level of insurance for its riders, mainly in Europe, but also including the United Arab Emirates, Australia, South Korea, and Israel. The U.S. is not listed. Most of these policies appear to only cover injuries to the rider, similar to what is already required by law in California. Lime lists France, the U.K., Germany, and Denmark, as jurisdictions with the "motor liability certificate" which indemnifies the rider and provides coverage for injuries to third parties. The France and UK certificate provides unlimited coverage for bodily injury or death. The Germany certificate provides for €100 million in coverage, up to €15 million per injured person. The coverage provided by the Danish certificate is not mentioned, but the Danish Road Traffic Act requires personal injury coverage of DKK 129 million (1 Danish Krone = about \$.14 so the requirement is approximately equivalent to \$18 million.)

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 2019.² 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.³ 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.

¹ [Li.me/insurance](https://www.lime.com/insurance)

² <https://www.consumerreports.org/electric-scooters/safety-risks-of-riding-e-scooters-on-the-sidewalk-iihs-study/>

³ <https://www.consumerreports.org/product-safety/national-crash-data-from-e-scooter-ride-share-companies-revealed-for-first-time/>

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 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 is 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 insurance requirements exist for shared mobility devices either. 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 (that does not exclude shared mobility device liability), they are likely uninsured against accidents they cause.

Suggested Amendments

The Committee may wish to recommend amendments to the bill that would 1) include \$1,000 in property coverage for assistive technology devices, as defined in Section 7002, Title 9 of the California Code of Regulations, used by persons with disabilities; 2) change the required coverage from personal injury to bodily injury or death; 3) authorize a shared mobility service provider to partner with an insurer to offer riders their own insurance coverage over the provider’s digital application; 4) require shared mobility device providers to maintain an up to date list of its users that maintain their own insurance coverage; 5) authorize a provider to enter into an agreement with its users who maintain their own insurance coverage that would remove the user from the provider’s coverage; 6) specify that this agreement between provider and user is voided when the user’s insurance policy lapses or expires; 7) requires insurers that partner with a provider to sell coverage over its app to promptly notify the provider of lapse or expiration of the user’s policy; 8) reforms the notifications to users regarding insurance coverage; and 9) adds analysis of allowing providers offer users their own coverage to the California Department of Insurance study.

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 authorized 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) permitted 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.

AB 604 (Olsen, Chapter 777, Statutes of 2015) allowed 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) established new categories of electric bicycles and placed restrictions on their operation.

SB 441 (Chesbro, Chapter 722, Statutes of 1999) defined a "motorized scooter," and required 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.” They write in support:

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 (opponents have stated no objection to adding relevant contact information in Braille). 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, will 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.”

Biking organizations, in particular the North American Bikeshare and Scootershare Association, the League of American Bicyclists, and People for Bikes, write in opposition that the requirements of this bill would jeopardize long standing and popular bikeshare systems, and stifle growth of the micromobility industry.

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
Safe Walkways
Surplus Line Association of California
1 individual

OPPOSITION:

Active San Gabriel Valley
Bay Area Council
Bicycle Transit Systems
Bike Bakersfield
Bike SLO County
Bird
California Bicycle Coalition
Calstart
Central California Asthma Collaborative
Chamber of Progress
Circulate San Diego
City of Oakland
City of Santa Monica
Civil Justice Association of California
Hoppr
Inland Empire Biking
League of American Bicyclists
Link Scooters
Los Angeles County Bicycle Coalition
Marin County Bike Coalition
Napa County Bicycle Coalition
Neutron Holdings, INC. (DBA Lime)
North American Bikeshare Association
Pasadena Complete Streets Coalition
People for Bikes
Planning and Conservation League
Razor
Sacramento Area Bicycle Advocates
Safe Routes Partnership
San Diego County Bicycle Coalition
San Francisco Bicycle Coalition
Santa Ana Active Streets
Santa Barbara BCycle
Santa Monica Chamber of Commerce
Santa Monica Spoke
SBBIKE+COAST
Shasta Living Streets
Silicon Valley Bicycle Coalition
Silicon Valley Leadership Group
Spin

Streets for All
Technet
Transform
Wheels

-- END --