

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1286 (Muratsuchi) – As Amended April 8, 2019

SUBJECT: Shared mobility devices: agreements

SUMMARY: This bill would require a shared mobility service provider, as defined, to enter into an agreement with, or obtain permit from, the local jurisdiction that, among other things, requires the provider to maintain a specified amount of general liability insurance before distributing a shared mobility device within that jurisdiction. The bill would also require the local jurisdiction to adopt safety rules regarding the use of the shared mobility devices, as specified. Specifically, **this bill would:**

- 1) Require, before distribution of a shared mobility device, that a shared mobility service provider enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use that, at a minimum, requires the shared mobility service provider to comply with both of the following:
 - Maintain a policy of insurance, with a carrier admitted in California, that covers liabilities incurred by the shared mobility service provider and a shared mobility device user, with limits not less than \$5,000,000 for each occurrence for bodily injury and property damage, including contractual liability, personal injury, and products and completed operations. The insurance shall not exclude coverage for injuries or damages caused by the shared mobility service provider to the shared mobility device user.
 - The shared mobility provider agreement between the provider and a user shall not contain a provision by which the user waives, releases, or in any way limits their legal rights, remedies, or forum under the agreement.
- 2) Require, before the shared mobility service provider offers any shared mobility device for rent or use, that the city or county adopt operation, parking, maintenance, and safety rules regarding the use of the shared mobility devices, and require the shared mobility service to comply with those rules.
- 3) Provide that nothing in this section shall prohibit a city or county from adopting any ordinance or regulation that is not inconsistent with this bill.
- 4) Define a “shared mobility device” to mean an electronically motorized board, motorized scooter, electric bicycle, bicycle, motorized skateboard, or any other personal transportation device that is not a motor vehicle, and 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 digital platform.
- 5) Define a “shared mobility device provider” or “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.

6) Contain a severability clause, as specified.

EXISTING LAW:

- 1) Defines “bicycle” to mean a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels and sets forth regulations related to the operation of bicycles including, among other things:
 - That a person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle, including, but not limited to, provisions concerning driving under the influence of alcoholic beverages or drugs.
 - That bicycles have certain braking systems, bicycle lamps, and reflectors, as specified.
 - That a person operating a bicycle upon a roadway at a speed less than the normal speed of traffic must ride as close as practicable to the right-hand curb or edge of the roadway, except as specified.
 - That persons operating bicycles are prohibited from carrying any package, bundle, or article which prevents the operator from keeping at least one hand on the handle bar.
 - That the above provisions, among others, do not prevent local authorities from regulating the registration, parking, or operation of bicycles, as specified, so long as the regulations do not conflict with the provisions of the code. (Veh. Code Secs. 231; 21200 - 21206.)
- 2) Sets forth definitions of different classes of electric bicycles, and defines that term to mean 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 a specified speed. Electric bicycles are subject to similar requirements as bicycles, listed above. (Veh. Code Sec. 312.5.)
- 3) Defines “motorized scooter” to mean any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor, and sets forth regulations related to the operation of motorized scooters that are very similar to the regulations for bicycles, above. In addition, the regulations also provide:
 - That persons operating a motorized scooter must use bike lanes when available, as specified.
 - That operators of motorized scooters are prohibited from doing any of the following, among other things:
 - Operating a motorized scooter in excess of 25 miles per hour, as specified, with a passenger, on a sidewalk, or carrying any package, bundle, or article that prevents the operator from keeping at least one handle on the handlebars.
 - For operators under the age of 18, operating a motorized scooter without wearing a bicycle helmet, as specified.
 - Operating a motorized scooter without a valid driver’s license or instruction permit.

- Leaving a motorized scooter lying on its side on any sidewalk, or park a motorized scooter on a sidewalk in any other position, so that there is not adequate path for pedestrian traffic.
 - That this article does not prevent a local authority from regulating the registration of motorized scooter and the parking and operation of motorized scooters on pedestrian or bicycle facilities and local streets and highways, if that regulation is not in conflict with this code. (Veh. Code Secs. 407.5; 21220 - 21235.)
- 4) Defines “electrically motorized board” to mean any wheeled device that has a floorboard designed to be stood upon when riding, which is not greater than 60 inches deep and 18 inches wide, is designed to transport only one person, and has an electric propulsion system, as specified, and sets forth regulations related to the operation of electronically motorized boards including, among other things:
- That electrically motorized boards shall only be operated by persons 16 years of age and older.
 - That it is unlawful for a person to operate an electrically motorized board upon a highway while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug.
 - That a person shall not operate an electrically motorized board upon a highway, bikeway, or any other public bicycle path, sidewalk, or trail, unless that person is wearing a properly fitted and fastened bicycle helmet.
 - That every electrically motorized board shall be equipped with lamps and reflectors, as specified, and shall only operate on highways with a speed limit less than 35 miles per hour. Electrically motorized boards shall not be operated in excess of 15 miles per hour, or at a speed greater than is reasonably prudent having due regard for weather, visibility, pedestrian and vehicular traffic, and the surface and width of the highway, bikeway, public bicycle path, sidewalk, or trail, and in no event at a speed that endangers the safety of any person or property. (Veh. Code Secs. 313.5; 21290 - 21296.)
- 5) Defines “motor vehicle” to mean a vehicle that is self-propelled, but does not include 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. (Veh. Code Sec. 415.)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to protect shared mobility device operators and the community at large by ensuring that local governments require shared mobility providers, among other things, maintain certain levels of insurance prior to distributing shared mobility devices in their localities. This bill is sponsored by the Consumer Attorneys of California.

2) **Author's statement:** According to the author:

Shared Mobility Devices, like bikes and scooters, which are rented across a mobile platform, can be helpful to local governments as they search for eco-friendly, low-cost options to solving “the last mile” transportation options and creating access for traditionally underserved communities. However, the lack of uniform consumer protections is problematic.

In a number of California cities, the devices have been introduced in the city without discussion or rule-making by the local government. Some cities have sought injunctions against this practice, and in some cities the devices are no longer available. [...]

There are public safety concerns for the riders as well. Four scooter riders have died and many riders and pedestrians have suffered injuries. In January this year, The Journal of the American Medical Association issued a report detailing a 2018 study of scooter injuries in two Southern California emergency rooms. The findings were: 249 patients went to the ER for scooter injuries; 96% were injured as riders. [...]

California has been in the forefront of consumer protection with emerging technologies such as our first-in-the-nation insurance requirements for transportation network companies such as Uber and Lyft. Companies that offer Shared Mobility Devices are already complying with minimum insurance requirements in cities like San Francisco and Santa Monica. AB 1286 would codify these regulations to create a uniform statewide standard, require basic safety standards, and prohibit waivers of rights to protect riders.

3) **Shared mobility devices offer the promise of alleviating many urban transportation woes, but not without creating other problems:** Shared mobility devices are a new transportation option where devices like bikes, electric bikes, and electric scooters are shared among users. They are typically enabled by technology or a mobile application, and these services are frequently run by private companies. 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, encouraging public safety, and adapting old regulations to new business models. Shared electric bikes and scooters, with their promise of improving congestion and offering low-cost, green transportation in urban areas, have been widely criticized as riders fail to properly operate them. Last year, NBC reported on the shared mobility device problem growing in Dallas:

They're in Uptown, where 20-somethings sip craft cocktails on breezy outdoor patios, and in White Rock Lake, where moms in yoga pants meet to push strollers. From the Margaret Hunt Hill Bridge, bikes are visible in the Trinity River below. The bikes are everywhere downtown, leaning against cement planters, outside parking garages and cafes, lined up at Dealey Plaza.

The bikes belong to companies that are hoping to change how people get around cities. Dockless bike-share startups, already common in China, have been making their way into

the U.S. The idea is simple and utopian — easily accessible, low-cost bikes that people can grab, use and leave just about anywhere.

The problem, however, is they do leave them anywhere — and everywhere.

With at least five companies having introduced their services to Dallas, there are thousands of these bikes throughout the city. They clog sidewalks and pile up on street corners. Mayor Mike Rawlings, the former CEO of Pizza Hut, likened them to the tribbles from Star Trek, saying they “asexually reproduce or something.” (Nieuwesteeg, *Dockless bikes promise the future of transportation, but litter the city of Dallas*, NBC (Apr. 16, 2018).)

Last July, after Beverly Hills approved a six-month ban on shared mobility devices, it quickly began impounding electric scooters throughout the city. In discussions at a special meeting in July, council members said they were furious at how scooter companies had launched in cities without warning.

Recently, the Sacramento Bee reported that two people died in electric scooter crashes in California, prompting new safety concerns as the shared mobility devices become more common on city streets. “A 53-year-old man died in San Diego after he lost control and hit a tree. The victim, who had been riding on the sidewalk, suffered serious head injuries, police said. He was not wearing a helmet. [...] A 41-year-old man on an electric scooter died in Santa Monica last week when he fell off a scooter and was hit by a car.” (Bizjak, *How dangerous are electric scooters? Two deaths in California show the risks are real*, Sacramento Bee (Mar. 20, 2019).)

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, this bill would require that local governments adopt operation, parking, maintenance, and safety rules, require shared mobility device providers to have certain amounts of insurance coverage, and would prohibit any rider waiver of legal rights.

In support, Consumer Watchdog writes, “AB 1286 addresses ‘the wild west’ of e-scooters by enacting minimum state protections to: adopt minimum insurance requirements; prohibit ‘click and accept’ waivers of legal rights or forums; and require cities and counties to adopt operation, parking, maintenance, and safety rules.[...] Because of the lack of basic regulation, scooter riders have died and many riders and pedestrians have suffered injuries. Scooter riders have been pouring into emergency rooms with a wide range of injuries that doctors normally associate with victims of car wrecks – broken noses, wrists, shoulders, facial lacerations and fractures, as well as blunt head trauma that can lead to permanent brain damage. [...] The solution is common sense state wide consumer protections to provide access to insurance and minimum safety requirements.”

- 4) **Bill applies to all, including future, shared mobility devices:** This bill would require local governments and shared mobility device service providers to enter into specified agreements prior to those devices being distributed locally for rent or use. The bill would define “shared mobility device” to mean an electronically motorized board, motorized scooter, electric bicycle, bicycle, motorized skateboard, or any other personal transportation device that is not a motor vehicle, and 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 digital platform.

While the bill points to a number of devices that are defined and regulated under law (such as the electric bicycle, bicycle, motorized scooter, and electronically motorized board), it also includes “motorized skateboards” in the definition of shared mobility device. Unlike electronically motorized boards, electronic skateboards are prohibited on any sidewalk, roadway, or any other part of a highway or on any bikeway, bicycle path or trail, equestrian trail, or hiking or recreational trail as a matter of existing law. In other words, the definition in this bill is problematic in that it overlooks the fact that shared mobility device providers should not be making motorized scooters available for use on public roads and sidewalks. (*See Veh. Code Sec. 21968.*)

Though not obvious on its face, perhaps even more problematically, the bill provides that any device that is not a “motor vehicle,” is a shared mobility device, so long as it is made available to the public for shared use in exchange for financial compensation via a digital application or digital or electronic platform. “Motor vehicle” is defined as a vehicle that is self-propelled (as opposed to a bicycle, which is “propelled exclusively by human power”) and is not used by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian. (*See Veh. Code Sec. 415(a) and (b).*) Arguably, limiting the definition of shared mobility device by reference to the definition of “motor vehicle” was intended to ensure that persons using self-propelled wheelchairs or similar devices because of physical disability would not be unintentionally covered by the bill. That being said, by incorporating the definition of “motor vehicle” into the definition of “shared mobility device,” this bill could arguably result in new types of shared transportation being *excluded* from the definition in the future, because new devices will likely be self-propelled.

At the same time, this bill seems to reflect an intent by the author and sponsor to provide a flexible definition of shared mobility device that can capture new technologies as they become available. While creating technology-neutral definitions are arguably preferable when possible to avoid future legislation each time new technologies and devices are developed, as a matter of public policy, regulations should be tailored to the risks a particular product creates. Establishing regulations today for transportation devices that do not yet exist could potentially result in the adoption of inappropriate standards for those particular devices. Notably, this bill does not require regulations by way of statute. Instead, it requires local jurisdictions to develop those standards by way of local regulations. As such, local jurisdictions should be cognizant that the standards may not be “one size fits all” and should periodically review those standards as new devices emerge.

The following suggested amendment would eliminate the potential negative consequences of the shared mobility device definition noted above, and, at the same time would ensure that disabled persons using transportation devices would not be required to enter into agreements with local governments prior to using their transportation devices. The amendments would otherwise strike the limiting reference to “motor vehicle” and replace it with “or other similar device” to ensure that new shared mobility devices that are not specifically included in the statute will still fall under the provisions of this bill.

Author’s amendments:

On page 2, lines 16-17, strike “motorized skateboard”

On page 2, line 17, after “or other” insert: “*similar*”

On page 2, line 17, after “device” insert: “*except as provided in subdivision (b) of*”

On page 2, lines 17-18, strike “*that is not a motor vehicle as defined by*”

- 5) **Bill requires local governments to adopt rules regarding the operation, parking, maintenance, and safety of shared mobility devices:** California already has various safety standards codified in the Vehicle Code with respect to bicycles, electric scooters, and electrically motorized boards. These include requiring specified lamps, reflectors, and braking systems. Persons operating these devices are required by law to travel below certain speeds and on certain types of roads and/or bike paths. All persons operating an electrically motorized board are required to wear a bike helmet, and persons under the age of 18 are required to wear helmets on bicycles and electric scooters. These safety standards apply to any bicycle, electric scooter, or electrically motorized board on the road, regardless of whether it is personally owned or owned by a private company and rented out for individual use.

Despite these existing requirements, a number of local governments and many individuals have expressed frustration with how shared mobility devices operate in their communities. To the extent that many of these frustrations could be alleviated in the future through better planning and better education of device users (such as where to ride and park the devices), local governments are in a better position than shared mobility service providers to determine where and how devices should be operated and parked. They are also in a better position to educate the community (and prospective riders) about rules related to the use of shared mobility devices. Finally, local governments, charged with maintaining public health and safety, should, as a matter of public policy, be able to require routine maintenance of shared mobility devices that members of the community use. A number of local governments have already provided thoughtful regulations to ensure their communities benefit from the use of shared mobility device programs. For example, last September the Los Angeles City Council approved the city’s first set of rules for scooter companies. The rules are temporary in order to give transportation officials time to adapt the policies as necessary before lawmakers approve a permanent plan, and include various requirements, such as:

- A 15 mile per hour speed limit and a requirement that the bicycles and scooters to be parked upright on the outer edge of the sidewalk, near bus benches, parking meters, and advertising kiosks.
- Shared mobility service providers will have two hours each morning to remove any vehicle that blocks the public right of way, or risk losing their permits. The companies must pay \$28.32 an hour if any city employees must move a scooter or bike.
- A permit to operate in Los Angeles will cost \$20,000 annually, and licensing each vehicle will cost \$130 a year, or \$39 a year in low income areas.
- Shared mobility service providers are limited to 3,000 scooters or bikes anywhere in the city, but can deploy up to 2,500 more in low-income areas.

- Shared mobility service providers must provide a smart phone application available in multiple languages, and a way for users to rent a vehicle with cash and without a phone.
- The city requires bicycle companies to include batteries on half of their bikes to assist older and less physically fit riders, or to make 1% of their fleet handicap accessible.

By requiring that these decisions are made by local governments and shared mobility device service providers *prior* to the devices being used in communities, this bill should arguably ensure that device users and communities alike are better able to benefit from the shared mobility device programs.

That being said, staff notes that a number of cities and counties already have shared mobility devices operating in their communities. As a general rule, laws are applied prospectively, and not retroactively, as to ensure that legislation is not unjust and oppressive to the extent that it punishes individuals for violations of laws not yet enacted, unsettles vested rights, or disturbs the legal effects of prior transactions. At the same time, local governments do have a duty to maintain the health and safety of the community, and injuries that can occur (both in the case of users and members of the community) in relation to shared mobility devices can be extreme. To the extent that the Committee and author wish to ensure that communities with shared mobility device programs already in operation be held to some of the requirements of this bill, the author offers the following amendment. The amendment would not interfere with existing contracts, but would require the local governments of communities already using shared mobility devices to adopt operation, parking, maintenance, and safety rules by January 1, 2021. For communities already using these devices, this amendment would give local governments and providers a full calendar year to establish local rules, which should benefit communities while also providing flexibility to providers.

Author's amendment:

On page 3, line 23, after “(c)(1)” insert: “*A city or county that authorizes a provider to operate within its jurisdiction on or after January 1, 2020*”

On page 3, after line 27 insert: “*(2) A city or county that authorized a provider to operate within its jurisdiction before January 1, 2020, the city or county shall adopt operation, parking, maintenance, and safety rules regarding the use of shared mobility devices by January 1, 2021.*”

On page 3, line 28, strike “(2) *The shared mobility service*” and insert: “(3) *A provider*”

- 6) **Insurance requirements:** This bill would require shared mobility service providers to maintain a policy of insurance that covers liabilities incurred by the shared mobility service provider and a shared mobility device user, with limits not less than \$5,000,000 for each occurrence for bodily injury and property damage, including contractual liability, personal injury, and products and completed operations. The bill additionally specifies that the insurance shall not exclude coverage for injuries or damages caused by the shared mobility service provider to the shared mobility device user.

Consumer Attorneys of California, sponsor, writes in support:

Because of the lack of basic regulation, scooter riders have died and many riders and pedestrians have suffered injuries. Scooter riders have been pouring into emergency rooms with a wide range of injuries that doctors normally associate with victims of car wrecks – broken noses, wrists, shoulders, facial lacerations and fractures, as well as blunt head trauma that can lead to permanent brain damage. [...]

Emergency rooms and researchers are taking note. The Journal of the American Medical Association issued a report in January detailing a 2018 study of scooter injuries in two Southern California emergency rooms. The findings were: 249 patients went to the ER for scooter injuries; 96% were injured as riders, only 5.7% wore helmets; 40% suffered head injuries; 31% had fractures; and 27.7% had contusions. California must do all it can to prevent these serious injuries and deaths. [...]

The solution is common sense: state minimum insurance requirements. California has been in the forefront of consumer protection with emerging technologies such as our first-in-the-nation insurance requirements for transportation network companies such as Uber and Lyft. Requiring transportation network companies to maintain minimum levels of insurance vastly improved consumer safety. Now, we must lead on shared mobility devices. Scooter companies are already complying with minimum insurance requirements in cities like San Francisco (2 Million) and Santa Monica (5 Million). AB 1286 would codify these regulations to create a uniform statewide standard.

Staff notes that at the time of this writing, while it appears that both Santa Monica and Los Angeles require \$5,000,000 of general liability coverage per occurrence, other communities are requiring much less by way of insurance coverage from shared mobility device service providers, and these communities often have an aggregate requirement as well. For example, San Francisco requires \$2,000,000 per occurrence, with a \$4,000,000 aggregate. Long Beach requires \$1,000,000 per occurrence with a \$2,000,000 aggregate. Sacramento requires \$1,000,000 per occurrence, with no aggregate. This bill, which would require \$5,000,000 per occurrence, and is silent on the issue of an aggregate amount of insurance that must be provided, sets up a scheme with seemingly open-ended liability for businesses seeking to rent shared mobility devices to a community. While it is clear how much coverage would be required per accident, it is not clear if there would be a cap on total liability. At \$5,000,000 per occurrence, many companies may go bankrupt or be unable to gain approval for use in a city in the first place. In opposition, Bird, who provides electric scooters for rent in a number of cities, writes:

First it is wrong [to state] that shared mobility operators lack sufficient liability insurance coverage. Bird's commercial general liability insurance already covers any injuries or damages caused where Bird is at fault, including injuries suffered by riders. The type of insurance coverage AB 1286 is requiring (liability insurance for injuries to third parties by riders) presently does not even exist and is not required by any city in California.

Second, AB 1286 would impose an extraordinary level of liability on shared scooter operators by requiring them to pay for the negligent or reckless misconduct of others. Under AB 1286, drunk and reckless scooter riders would be immunized from any damages they cause, with all liabilities being paid for by the shared scooter operator instead. Such legislation represents dangerous public policy: it creates a moral hazard and

increases the likelihood that scooter riders behave recklessly, knowing that a third party will be responsible for any damage they cause.

Further, a coalition of micromobility companies, including Jump, Lime, and Technet write in opposition:

Micromobility companies already negotiate high-rate insurance policies with cities that hold providers financially accountable for accidents and personal injury arising from their own negligence. However, AB 1286 goes far beyond what is responsible by requiring micromobility service providers to hold insurance that covers liabilities caused by the user. This is inappropriate because (1) standard commercial general liability policies would not cover the liability of an entirely independent third party such as a user, (2) providers have no control over users or their potential liability, (3) users may have their own insurance that could apply, such as homeowners' insurance, and (4) absolving users of responsibility for their liabilities creates a dangerous moral hazard, akin to requiring Toyota to pay for damage caused by drunk drivers of Toyota vehicles. In addition, the bill would require coverage at a staggering minimum of five million dollars in "bodily injury or property damage, including contractual liability, personal injury, and product liability and completed operations," far in excess of what cities around the world, including in California, currently require.

Generally, insurance requirements can play an important role in ensuring that consumers can obtain redress for injuries suffered due to the negligence of a company. This can be especially critical in the case of startup companies without much capital. As a matter of public policy, however, this Committee should consider whether requiring shared mobility device service providers to maintain insurance to cover *the negligence of the user of the device* is the best way to ensure that communities and consumers are kept safe. On the one hand, by the very nature of their business model, shared mobility device service providers have no ability to vet or otherwise evaluate the individuals who rent their devices. Unlike in the rental car context, where a driver's license is required and renters typically pick up their cars in person, thereby creating a situation where the rental car agency can evaluate the renter (*e.g.*, verify identity and/or age, refuse to complete the transaction if a renter is clearly intoxicated or under the influence of drugs), shared mobility device service providers are not present when a device is rented for use. It is additionally reasonably foreseeable that device users may be injured during the course of use. On the other hand, while individuals who rent cars can clearly cause more damage with an automobile than a scooter or bicycle, automobile drivers are also protected by virtue of being in a vehicle. Renters of shared mobility devices are exposed to the elements and are more likely to suffer serious injury if hit by a vehicle. These observations indicate that perhaps a new model for insurance should be required for this industry, because of the levels of risk and harm it creates that are relatively unique.

In the event that this Committee passes this bill, it may wish to require minimum insurance requirements appropriately tailored to this particular industry, so that communities can enjoy the benefits of low-cost, green, individual transportation, while also ensuring that riders and community members are protected in the event of injury.

- 7) **Bill does not require privacy protections for trip data:** This bill addresses issues related to shared mobility devices which, under this bill, are generally categorized as any personal transportation device made available to the public for shared use and transportation in

exchange for financial compensation via a digital application or platform. Part of the technology involved with these devices requires that the provider have access to location data at the beginning and end of each trip, so that the devices can be retrieved for charging and maintenance. In addition, many providers of these devices keep continuous trip data, which necessarily raises questions as to what is and can be done with that trip data and how that might impact the privacy of the operator. Take for example, Los Angeles, which recently launched a one year program approving certain shared mobility devices within its jurisdiction. Under new city rules, every company with a permit to rent out scooters or shared bicycles must send data to transportation officials for every trip the shared mobility devices make.

Los Angeles officials argue that location data will help the city determine which companies are failing to follow operating rules that cap the number of devices and restrict where they can be parked, and that tracking the bikes and scooters electronically will also be faster and cheaper than paying employees to look for them. As noted in a recent Los Angeles Times article, this type of tracking arguably constitutes government surveillance:

Uber, which operates Jump scooters, and several data privacy organizations have said the city's policy constitutes government surveillance, and would yield far more information about bicyclists and scooter riders than is available for drivers or transit commuters.

Many scooter trips in Los Angeles are tourist joyrides, but public officials say the zippy, electric devices could become a meaningful transportation alternative that helps commuters get to transit stops and run errands without driving.

The city will require companies to share information on the start point, end point and travel time of each bike or scooter trip within 24 hours after it ends, and whether the vehicle entered zones where riding or parking are restricted.

The data would not include a rider's name, but even in sprawling metropolitan areas, paths between home, work and school are typically unique, experts say. Someone with basic coding skills and access to the data could easily connect a trip to an individual person.

"This data is incredibly, incredibly sensitive," said Jeremy Gillula, the technology projects director for the Electronic Frontier Foundation, a San Francisco-based digital rights group.

The vast trove of information could reveal many personal details of regular riders — such as whom they're dating and where they worship — and could be misused if it fell into the wrong hands, the nonprofit Center for Democracy and Technology told the city in a letter. [...]

The city has urged California regulators to adopt a similar model for trips made in Uber and Lyft cars, which would reveal vast amounts of information on the companies' operations statewide — data cities badly want to review, but that the companies have jealously guarded.

The dispute highlights the lack of trust between cities and transportation companies that have typically moved into new markets without asking permission, working with local officials or sharing details on their operations. [...]

The city plans to require companies to submit ride data starting April 15. Uber is pushing for a model that would require the companies to share less detailed information, and has urged the Transportation Department to submit the plan to the City Council for debate. (Nelson, *L.A. wants to track your scooter trips. Is it a dangerous precedent?*, L.A. Times (Mar. 15, 2019).)

This Committee has long expressed concern regarding the collection and sale of geolocation data. While this bill is silent on whether local governments can require this sensitive data as a condition of approving a shared mobility device for use in a jurisdiction, AB 1112 (Friedman) which is currently in the Assembly Transportation Committee, addresses this issue more directly. That bill would allow a local authority to require this data as a condition for operating the program only if certain requirements are met.

AB 1112 has been double-referred to this Committee, which will look closely at the issue of data collection and sharing, should that bill pass out of the Assembly Transportation Committee. While the two bills arguably address different issues with regard to shared mobility device programs, there is a fair amount of overlap. Specifically, both bills require shared mobility device service providers (or, in the case of AB 1112 “scooter share operators”) to maintain minimum levels and insurance, but differ in the amount and type of coverage. Both bills also seeks to address the regulations and rules that should be adopted by local governments before shared mobility devices are dispersed. As noted in the legislative findings of AB 1112, “[t]he Legislature finds and declares that a basic level of statewide standards for local regulation of motorized scooters is desirable because it encourages innovation and ensures basic expectations for consumers, but that this division in no way is meant to limit any regulations a local authority can otherwise implement beyond the minimum standards outlined in this division.”

Similarly, as expressed by the Consumer Attorneys of California, the sponsors of this bill, “E-scooters and bikes have appeared in major California cities often overnight – leaving cities and counties in the dust as they attempt to catch up and create regulations. What results is a patchwork of conflicting laws and regulations. For example, San Francisco, Santa Monica and others have issued regulations and a permit process. West Hollywood, Beverly Hills, Newport Beach, Huntington Beach and others have gone the opposite way and have placed bans on scooters after scooter companies dumped their product in the cities without approval. Other cities have taken no action and are waiting to see what actions neighboring cities take. Scooters may provide an eco-friendly, low-cost transportation option, but the lack of uniform consumer protections is very problematic.”

Accordingly, to the extent that these two bills could result in conflicting laws, the authors should work together as the bills move through the legislative process to ensure that uniform policies are developed for local governments to apply when approving shared mobility devices for use in their jurisdictions. Such collaboration should arguably ensure that the goal of uniformity and consistency for local government and riders alike, a goal that both authors share, is met.

- 8) **Bill prohibits any waiver of user’s legal rights:** This bill would provide that agreements between the provider and a user shall not contain a provision by which the user waives, releases, or in any way limits their legal rights, remedies, or forum. Explaining the need for this prohibition on waiver of legal rights, the Consumer Attorneys of California write:

Scooter companies’ rental agreements currently include complicated waivers, which unconscionably release them from any and all responsibility upon the touch of a rider’s finger. The waivers are so long that one company’s 18,404-word agreement stretches for 261 cell phone screen pages. These complicated waivers relieve the companies of responsibility for any injuries or deaths, even when it is their fault. For example, toward the end of one company’s agreement is a provision saying the scooter is rented “as is” and the company makes no warranty as to quality or condition of the scooter. The agreements limit their liability to \$100 regardless of the injury or faulty equipment. But, if you do want to recover this \$100, you cannot go to court or join together as a class. The waiver also forces you into private, confidential and secret binding arbitration. Yet another provision changes the statute of limitations from two years to one year, a trap for someone who may need to seek redress through the courts.

In opposition, The California Chamber of Commerce writes:

The language in AB 1286 referencing the “waiver” of a “forum” is essentially an outright ban on arbitration and therefore, is very likely preempted under Federal Arbitration Act (FAA). The Federal Arbitration Act prohibits any state statute that seeks to interfere with, limit, or discriminate against arbitration. *See Southland Corp. v. Keating*, 465 U.S. 1, 10, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984); *AT&T Mobility LLC v. Concepcion*, 562 U.S. 333 (2011).

In March 2018, the Second District California Court of Appeal also determined that banning arbitration agreements as a condition of a **consumer contract** violated the Federal Arbitration Act (FAA) and was preempted. Specifically, in *Saheli v. White Memorial Medical Center*, 21 Cal.App.5th 308, the court determined that AB 2617 was preempted under the FAA as it placed a special restriction on arbitration agreements in consumer contracts that were not imposed on other contracts. The appellate court stated, “The above legislative history clearly shows the motivating force behind the enactment of AB 2617 was a belief that arbitration is inherently inferior to the courts for the adjudication of Ralph Act and Bane Act claims. In accordance with this dim view of arbitration, the Legislature placed special restrictions on waivers of judicial forums and procedures in connection with such claims. In practice, such restrictions discourage arbitration by invalidating otherwise valid arbitration agreements. It is precisely this sort of hostility to arbitration that the FAA prohibits.” [...]

Accordingly, AB 1286 will undoubtedly be challenged as preempted under the FAA and ultimately invalidated.

Contracts and agreements that are unconscionable or in violation of public policy can be void or unenforceable, either in whole or in part. That being said, arbitration is a legal form of dispute resolution, which can provide benefits in some cases. Whether local governments can prohibit businesses from including specified waivers in their user agreements is a question which rests heavily on interpretation of federal law. Staff notes that this bill is double-

referred to the Assembly Judiciary Committee, where it will be sent if passed by this Committee. The Judiciary Committee has typically had jurisdiction over these types of issues.

- 9) **Related legislation:** AB 1112 (Friedman) would authorize local authorities to regulate motorized scooters by, among other things: assessing limited penalties; authorizing the collection of certain fees; authorize a local authority to require a scooter share operator to provide to the local authority trip data for all trips starting or ending within the jurisdiction; and, authorizing the enactment of requirements more restrictive than those applicable to riders of privately owned scooters or bikes. This bill would require “scooter share operators,” as defined, to maintain specified levels of general liability insurance, automobile insurance, and workers compensation insurance. This bill is in the Assembly Transportation Committee.
- 10) **Prior legislation:** AB 2989 (Flora, Ch. 552, Stats. 2018) authorized a local authority to allow for the operation of a motorized scooter on a highway with a speed limit of up to 35 miles per hour, as specified; specified 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; and required operators under 18 years of age to wear a helmet.
- AB 604 (Olsen, Ch. 777, Stats. 2015) defined “electrically motorized skateboards” and required these devices to meet certain operational requirements.
- AB 1096 (Chiu, Ch. 568, Stats. 2015) defined various classes of electric bicycles and establishes parameters for their operation in California.
- SB 441 (Chesbro, Ch. 722, Stats. 1999) defined “motorized scooters” and required these devices to meet certain operational requirements.
- 11) **Double-referral:** This bill has been double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Attorneys of California (Sponsor)
 Consumer Federation of California
 Consumer Watchdog
 Disability Rights California

Opposition

Bird
 California Chamber of Commerce
 Civil Justice Association of California
 Lime
 Technet
 Uber Technologies, Inc.

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