Friday, February 25, 2022

The Honorable Susan Rubio
Chair, Senate Insurance Committee
1021 O Street, Room 3310
Sacramento, CA 95814

Re: Support for AB 371 (Jones-Sawyer) – E-Device Braille & Liability Protection for Pedestrians

Dear Chairwoman Rubio,

Ours is a group of citizens advocating for measures to restore safety to the walkways of our city, San Diego, on behalf of pedestrians generally, and particularly on behalf of the mobility and vision impaired who are adversely impacted by motorized rental scooter companies and their renters.

We have long advocated for third party insurance coverage to be held by renters of Shared Mobility Devices, (SMDs), as most drive without any such coverage and pedestrians and property owners who suffer injury or loss have difficulty recovering the associated costs. Therefore we are delighted to see the legislation proposed by AM Jones-Sawyer.

In reviewing the bill we propose three items that we believe need attention, the first of which we are simply bringing to the attention of members of the Senate Insurance committee for future attention.

The original with emphasis added related to the three points we make below reads:

(b) (1) Before distribution of a shared mobility device, a shared mobility service 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 an admitted insurer, or a nonadmitted insurer that is eligible to insure
a home state insured under Chapter 6 (commencing with Section 1760) of Part 2 of Division 1 of the Insurance Code, **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.

(2) Notwithstanding any other law, effective January 1, 2023, the insurance coverage required pursuant to paragraph (1) shall apply to include coverage for **any personal injury or property damage suffered by a pedestrian when the injury involves**, in whole or in part, the negligent conduct of the shared mobility device **owner or user**, of at least one hundred thousand dollars ($100,000) for each occurrence for bodily injury or property damage, and five hundred thousand dollars ($500,000) in the aggregate for all occurrences in the policy period.

1. In section (1), we believe one million dollars is too low and should be at a minimum be two million dollars. The City of San Diego settled a claim in 2019 for injuries suffered by a woman who, in 2015, fell from a Segway driven on a sidewalk. This accident led to a payment by the City of San Diego of $1.7m. In our view $1m is not enough general liability insurance for the company given the potential severity of the injuries a person can sustain. Since the companies are rarely found liable unless there is negligence for something like mechanical failure, the premiums should not be significant.

We raise this to bring this matter to the attention of the members of the Senate Insurance committee in the hope that the extant legislation, (rather than the current bill), can be amended at some point in the future.

2. Given that (2) refers to property damage we believe the **bold** text above should be amended, (additional text in **red**), to read:

“...any personal injury or property damage suffered by a pedestrian or property owner when the injury or property damage involves…”

As it currently reads, although property damage is recognized, the damage to property may not be experienced only by a pedestrian, e.g. if the device driver hits a parked car.

3. Further, we believe the amendment in the quoted section above that strikes out “owner or user” and replaces it with “user” should not be made and that “owner or user” should remain. This is because parked devices are in the possession of
the owner, i.e. the rental company, and a court may attribute blame for injury or
damage resulting from a parked device to negligence on the part of both the
owner and the user. We elaborate this as follows:

Provision for liability coverage for both the owner and user when either a pedestrian is
injured or property damaged as a result of the negligence of either the owner or the
user to address a shared mobility device parked inappropriately is needed as:

• **Parked devices are in the possession of the rental company not the user:**
  Once a renter finishes their use of the device, possession reverts to the owner,
  which is the rental company and at that point the companies invariably make the
device immediately available for rent again.

In addition, of course, the rental companies “stage” their devices in the public
domain and they remain parked until someone rents them. Here in San Diego
the Sustainability & Mobility department in a report to the City’s Active
Transportation & Infrastructure committee indicated that on average a shared
mobility device is in a parked state for 23.5 hours a day. During that period it is
possible for the devices to fall, say, due to high winds and as a result cause
injury or damage.

• **The renter informs the company of the location and condition of the device:**
The rental company requires the renter to provide a photograph of the device
when they finish with it, as part of the end of ride process. The picture informs
the company of the device’s location, position and condition, and is time and
date stamped. We believe that all rental companies adopt this process though it
is not a requirement by law.

• **All the rental companies use GPS tracking that also enables them to know
  with a high degree of accuracy where the device is located:**
The GPS tracking system used by all the companies, (again not a legal requirement),
enables them to know where their devices have been left either by their
employees, who have “staged”, (i.e. placed them in their initial locations at the
start of the day), or “rebalanced” (i.e. moved them from the location the user left
them and located them elsewhere) them or by their renters when they finish
renting and park them. This is a necessity for those companies operating a
“dockless” system as otherwise employees would not be able to locate them for
collection, rebalancing, charging or maintenance.

• **All the rental companies carry Commercial General Liability insurance a
requirement of State law and the local authority granting authorization to the
company to operate - e.g. see the City of San Diego’s form DS-802 issued by
Development Services department as part of its permitting process.**
Thus any liability for injury sustained as a result of a parked device may be attributed to the rental company, i.e. the owner, and not the renter and, as the rental company is both informed of the location, placement and condition of the device and employs people to stage and rebalance their devices as well as to attend to recharging them it can move the device if need be to avoid such liability. In addition, some of the companies already use technology that identifies and indicates when the device falls over, which increases its potential to trip someone. If companies want to avoid liability they should use such technology.

However, if a device has been used, we expect the rental companies may seek to attribute at least some liability to the user who parked the device on the grounds that even if informed of a dangerously parked device they require time to rectify it and that any subsequent injury or damage that occurs before they can do so is due to the negligence of the user.

Thus we believe that there is the possibility of proportional liability that could potentially be shared by both a user who negligently left the device in a position that subsequently caused injury or damage and the owner which knew of the condition of the device yet negligently failed to rectify it. Thus we ask that the committee retain the words “owner and user” as indicated above.

Opponents of the bill claim that imposing the requirements it does on the companies creates an undue burden on them that will drive them out of business. Yet, as indicated above, the companies already provide significant elements of insurance coverage as required by both the State of California and the local authority under whose auspices they operate. The additional costs of providing liability protections to pedestrians, especially the mobility and vision impaired, as well as to property owners, are therefore likely to be negligible.

In addition, the cost to the companies of providing personal third-party liability insurance can be covered via their pricing structures. For example the activation fee they all charge could be increased by the nominal amount the companies would spend to obtain the coverage required. We believe the cost of such coverage to be nominal because if it were not the implication would be that the risk of injury of pedestrians or damage to property would be so high as to bring into question the safety of the devices as a mode of transportation and whether they should be allowed to be used on the streets of California.

In our view sacrificing the protection of pedestrians is neither desirable nor will ensure the rental companies, none of which are profitable, become so.

Sincerely,

Jonathan Freeman PhD  
Founder.

Janet Rogers  
Director of Governmental Advocacy