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AB-458 Shared mobility devices: insurance. (2023-2024)

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Assembly Bill No. 458

CHAPTER 440

An act to amend Section 2505 of the Civil Code, relating to mobility devices.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 458, Jones-Sawyer. Shared mobility devices: insurance.

Existing law requires a shared mobility service provider, as defined, to enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use before distribution of a shared mobility device, as defined. Existing law requires that agreement or permit to require that the shared mobility service provider maintains a specified amount of commercial general liability insurance with, among other things, limits not less than \$5,000,000 aggregate for all occurrences during the policy period. Existing law also requires that agreement or permit to require the shared mobility service provider to offer or make available, or confirm that 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, as specified.

This bill would provide that insurance coverage offered, made available, or confirmed under the above-described provisions is not a group insurance policy. The bill would also provide that the requirement on shared mobility service providers to offer, make available, or confirm insurance coverage for bodily injury or death suffered by a pedestrian involving the negligent conduct of the user does not prohibit an aggregated cap on that insurance coverage, and does not limit or supersede the requirement that the commercial general liability insurance maintained by the shared mobility service provider has limits not less than \$5,000,000 aggregate for all occurrences during the policy period.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2505 of the Civil Code is amended to read:

2505. (a) For purposes of this title:

(1) "Assistive technology device" has the same meaning as in Section 7002 of Title 9 of the California Code of Regulations.

(2) "Shared mobility device" means an electrically motorized board as defined in Section 313.5 of the Vehicle Code, motorized scooter as defined in Section 407.5 of the Vehicle Code, electric bicycle as defined in Section 312.5 of the Vehicle Code, bicycle as defined in Section 231 of the Vehicle Code, or other similar personal transportation device, except as provided in subdivision (b) of Section 415 of the Vehicle Code, 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.

(3) "Shared mobility service provider" or "provider" means 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.

(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) (A) (i) (I) Notwithstanding any other law, effective July 1, 2023, the agreement or permit required pursuant to paragraph (1) shall require, in addition to the coverage required by paragraph (1), 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 ten thousand dollars (\$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 one thousand dollars (\$1,000), for each occurrence. This paragraph shall not be interpreted to require coverage as provided in Division 7 (commencing with Section 16000) of the Vehicle Code.

(II) This clause shall not be interpreted to limit or supersede the requirement pursuant to paragraph (1) that the shared mobility service provider, in its agreement with or permit from the city or county with jurisdiction over the area of use, maintain commercial general liability insurance coverage with limits not less than five million dollars (\$5,000,000) aggregate for all occurrences during the policy period.

(III) This clause shall not be interpreted to prohibit an aggregated cap on the insurance required by subclause (I).

(IV) Insurance coverage offered, made available, or confirmed pursuant to this clause shall not be considered a group insurance policy.

(ii) Notwithstanding clause (i) or any other law, a shared mobility service provider or user of a shared mobility device is not required to maintain insurance coverage, as described in clause (i), for injuries of, or death to, a pedestrian or property damage involving the following devices:

(I) A bicycle propelled exclusively by human power, as described in Section 231 of the Vehicle Code. For purposes of this paragraph, "bicycle" shall not include an electric bicycle.

(II) A class 1 electric bicycle as defined in paragraph (1) of subdivision (a) of Section 312.5 of the Vehicle Code.

(III) A class 2 electric bicycle as defined in paragraph (2) of subdivision (a) of Section 312.5 of the Vehicle Code.

(iii) The Legislature finds and declares that bicycles may be recognized as safer than motorized devices when in use, and recognizes there may remain a propensity for pedestrian injuries or death resulting from shared mobility bicycles and shared mobility electric bicycles being left negligently abandoned on pedestrian walkways.

(B) A shared mobility service provider may partner with an insurer to provide an option to its users via its digital application or other electronic platform where the user may purchase insurance coverage that meets or exceeds the requirements of subparagraph (A). The shared mobility service provider shall disclose via its digital application or other electronic platform the name, contact information, and location to make a claim with the insurer they chose to partner with. The shared mobility service provider may fund the cost of providing this coverage itself and pass the cost on in its standard fee to users, or through a separate charge to users. If a user of a shared mobility device does not maintain their own insurance policy, then that coverage shall be offered or made available by the shared mobility service provider. A shared mobility service provider shall not allow a user or individual to operate or utilize a shared mobility device without the coverage identified in subparagraph (A). If a user or individual gains access to a shared mobility device without obtaining coverage through the options outlined in this subparagraph or subparagraph (C), and uses or operates it uninsured, the shared mobility service provider shall be required to provide the insurance coverage identified in subparagraph (A).

(C) (i) A shared mobility service provider may enter into separate individual agreements with users maintaining their own liability insurance coverage that meets or exceeds the requirements of subparagraph (A), to exclude the user from the

provider's insurance coverage required in subparagraph (A) when, in consideration for such an agreement, the user shall not pay a separate charge for the coverage or shall be refunded the portion of the provider's fee that pays for the provider's coverage. The agreement shall be null and void upon lapse, cancellation, or expiration of the user's policy. If a shared mobility device user entering into an agreement under this subparagraph misrepresents their maintenance of a policy or through an error or act of omission does not provide coverage, the shared mobility service provider shall be required to maintain the insurance to cover any claims resulting in injury, death, or property damage described in subparagraph (A).

(ii) It is the intent of the Legislature that, in enacting this subparagraph, shared mobility service providers have the flexibility to offer or make available insurance options to their users, while also ensuring the shared mobility service providers' insurance serves as the backstop to cover any pedestrian injuries or death, or property damage, should there be any unintended gaps in coverage as a result of users misrepresenting or not maintaining the insurance.

(D) A shared mobility service provider shall keep an up-to-date list of its users that maintain their own liability insurance coverage that meets or exceeds the requirements of subparagraph (A). The provider shall annually transmit information on the percentage of its total users in the state that maintain their own insurance coverage, in the same manner as proscribed in subdivision (b) of Section 2505.5 of the Civil Code, to the Department of Insurance.

(3) Effective July 1, 2023, nothing in this section 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 section shall not be waived or modified by contractual agreement, act, or omission of the parties.

(c) (1) A city or county that authorizes a provider to operate within its jurisdiction on or after January 1, 2021, shall 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 by any of the following:

(A) Ordinance.

(B) Agreement.

(C) Permit terms.

(2) A city or county that authorized a provider to operate within its jurisdiction before January 1, 2021, and continues to provide that authorization shall adopt rules for the operation, parking, and maintenance of shared mobility devices by January 1, 2022, by any of the following:

(A) Ordinance.

(B) Agreement.

(C) Permit terms.

(3) A provider shall comply with all applicable rules, agreements, and permit terms established pursuant to this subdivision.

(d) Nothing in this section shall prohibit a city or county from adopting any ordinance or regulation that is not inconsistent with this title.

(e) On or before July 1, 2023, a shared mobility service provider shall disclose to its 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.

(1) The disclosure shall be made to, and acknowledged by, the customer via the provider's digital application or electronic platform and posted on the provider's internet website.

(2) The disclosure shall include the following language in capital letters:

"YOUR HOMEOWNER'S, RENTER'S, OR AUTOMOBILE INSURANCE POLICIES MIGHT NOT PROVIDE COVERAGE FOR ACCIDENTS INVOLVING THE USE OF THIS DEVICE. TO DETERMINE IF COVERAGE IS PROVIDED YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT."