

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 859 (Irwin) – As Introduced February 17, 2021

Policy Committee: Privacy and Consumer Protection

Vote: 8 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill authorizes a public agency that issues a permit to an operator of mobility services to require that operator to periodically submit anonymized trip data. Specifically, this bill:

- 1) Allows a public agency to require a mobility services operator to periodically submit anonymized trip data regarding the operator's mobility devices operating in the geographic area under the public agency's jurisdiction
- 2) Authorizes a public agency to share anonymized trip data with a contractor, agent or other public agency only if all the following are true:
  - a) The purpose of the sharing is to assist the public agency in the promotion and protection of transportation planning, integration of mobility options, and road safety, including the safety of riders, operators, pedestrians and motorists.
  - b) A trip included in the data has not ended within the previous 24 hours.
  - c) Any recipient of the anonymized trip data is expressly prohibited by contract from using or disclosing the anonymized trip data for any commercial purpose.
- 3) Provide that trip data is personal information, as defined in the California Consumer Privacy Act (CCPA), and is also electronic device information, as defined in the Electronic Communications Privacy Act (CalECPA).
- 4) Defines "mobility device" as any transportation device or vehicle, including, but not limited to, a bicycle, electric bicycle, dockless bicycle, electric scooter, vehicle utilized on the online-enabled application or platform of a transportation network company (TNC), autonomous vehicle, and any other device or vehicle by which a person can be propelled, moved or drawn that is displayed, offered or placed for rent in any public area or public right-of-way.
- 5) Defines "aggregated" to mean data that reflects average information, including trip length, trip duration, approximate trip and location of no less than five separate trips by no less than five separate users.

**FISCAL EFFECT:**

- 1) Costs (GF) to the California Air Resources Board (CARB) possibly between \$1 and \$2 million dollars annually for additional staff to handle increased workload. CARB estimates additional staff will be necessary to develop and implement a survey model for reviewing trip data in order to set greenhouse gas (GHG) standards for TNC vehicles pursuant to the Clean Miles Standards Act. Costs will also include additional staff to update existing regulations requiring TNCs to provide aggregated trip data.
- 2) Costs (GF) possibly in excess of \$150,000 to the California Public Utilities Commission (CPUC) for additional staff to aggregate existing disaggregated trip data before providing to other public entities.
- 3) Possibly significant non-reimbursable costs to local agencies to re-negotiate existing agreements and current administrative practices with mobility service operators. Possible significant loss of permit fee revenue to local agencies if local agencies cannot verify real-time trip information in a disaggregated form.

**COMMENTS:**

- 1) **Purpose.** This bill states individual trip data from mobility devices is protected under CalECPA, and authorizes state or local governments to require the periodic submission of deidentified and aggregated trip data from mobility device operators.
- 2) **Los Angeles Scooter Dispute:** In 2019, the City of Los Angeles filed suit against Uber Jump because of Uber's refusal to provide real time trip data on its bikes and scooters. Los Angeles requires mobility service companies to transmit real-time data on the start point and end point of each trip, and the full route of each ride within that day. Uber refused to comply, arguing the data could easily be used to reveal personal information about riders, including where they live, work, socialize or worship.

In February 2020, the California Court of Appeals agreed with the city and found the city may require Uber to provide trip data in order to operate Jump bikes and scooters. The court pointed out permits are voluntary and Uber is not required to operate in Los Angeles. Los Angeles pointed out trip data is important to prevent certain mobility companies from flooding certain neighborhoods and leaving bikes and scooters in unsafe places. Uber filed an action against Los Angeles in federal court in 2020. This bill specifies public entities may require mobility device operators to provide anonymized trip data and that trip data is subject to the protections of the CCPA and CalECPA to further protect customer's personal information.

- 3) **Concerns.** This bill broadly defines "mobility device" to include any transportation device or vehicle, TNCs, autonomous vehicles and rental car companies. This bill also defines "public agency" to mean a state or local public agency that issues a permit to an operator for mobility services or that regulates an operator. The definition of "public agency" includes any local entity that permits TNCs to offer mobile services within its jurisdiction. It also includes CPUC and CARB since both regulate TNCs.

Several cities, CPUC and CARB have expressed concerns about including trip data within the meaning of Cal ECPA. Although Legislative Counsel has opined that Cal ECPA likely

already applies to real-time trip data, there is no case law on the issue. Both CPUC and CARB state they do not use real-time tracking data. It is unclear whether public entities are already required to comply with Cal ECPA before obtaining trip data. Additionally, if cities are allowed to request only aggregated data, several cities contend TNCs will manipulate aggregated data in ways that will violate existing permitting requirements. The opposition believes this bill will create uncertainty and confusion between the cities, the CPUC and the TNCs in the event this bill is viewed as preempting other state or local action.

Additionally, CPUC estimates it will have to hire one full-time equivalent (FTE) position to disaggregate any trip data it receives before providing it to another agency. CARB estimates it will have to hire several FTE positions to change the manner in which it currently regulates the environmental impact of TNCs pursuant to the Clean Miles Standards Act. CARB alleges that without disaggregated trip data, it will have to rely on a survey model to establish GHG standards for TNCs and still stay within the time frame required by SB 1014 (Skinner), Chapter 639, Statutes of 2018. SB 1014 requires CARB to develop TNC emission targets by January 1, 2021 for use beginning in 2023. According to CARB, using a survey model rather than anonymized disaggregated trip data will be more expensive and less accurate.

Finally, numerous labor organizations have raised concerns this bill would interfere with enforcement of protections for gig workers pursuant to AB 5 (Gonzalez), Chapter 296, Statutes of 2019 because this bill prohibits cities from receiving individual trip data necessary to audit TNCs.

#### **4) Prior Legislation.**

- a) AB 1112 (Friedman), of 2019-2020 Legislative Session, would have clarified how a local authority may require a shared mobility device provider to provide trip data within the jurisdiction of the local authority. AB 1112 died in the Senate Transportation Committee.
- b) AB 1286 (Muratsuchi), Chapter 1286, Statutes of 2020, requires mobility device providers to enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use.
- c) AB 3116 (Irwin), of the 2019-2020 Legislative Session, was identical to this bill and was held on this committee's suspense file.

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