

HOUSE BILL REPORT

ESHB 1325

As Passed Legislature

Title: An act relating to the regulation of personal delivery devices.

Brief Description: Regulating personal delivery devices.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Kloba, Steele, Walen, Fey and Slatter).

Brief History:

Committee Activity:

Transportation: 1/28/19, 2/27/19 [DPS].

Floor Activity:

Passed House: 3/12/19, 94-3.

Senate Amended.

Passed Senate: 4/10/19, 46-0.

House Concurred.

Passed House: 4/18/19, 92-2.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Establishes a regulatory framework for the operation of personal delivery devices, which are automated devices intended to deliver property via sidewalks and crosswalks.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Fey, Chair; Slatter, 2nd Vice Chair; Valdez, 2nd Vice Chair; Wylie, 1st Vice Chair; Barkis, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Boehnke, Chambers, Chapman, Dent, Doglio, Dufault, Entenman, Eslick, Goehner, Gregerson, Irwin, Kloba, Lovick, McCaslin, Mead, Orcutt, Ortiz-Self, Paul, Pellicciotti, Ramos, Riccelli, Shea and Van Werven.

Minority Report: Without recommendation. Signed by 1 member: Representative Young, Assistant Ranking Minority Member.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Mark Matteson (786-7145).

Background:

Autonomous Unmanned Vehicle Delivery Systems.

Unmanned vehicle systems, including autonomous systems, have been developed over time for various purposes, including governmental, research-related, hobby-related, and commercial purposes. Autonomous systems are machines capable of performing tasks in the world by themselves, without explicit human control. Examples range from autonomous helicopters to robotic vacuum cleaners. In recent years, there have been developments in the field of automated ground-based delivery systems.

Several jurisdictions, including several states and the District of Columbia, have adopted laws or regulations in recent years governing automated ground-based delivery devices. These laws and regulations have provided definitions and operational parameters for the devices, as well as modifications to the jurisdiction's rules of the road governing sidewalk use and crosswalk use. The laws have also typically excluded the devices from the definition of "motor vehicle," which eliminates the requirement that the device be subject to annual vehicle licensing requirements, for example.

Department of Licensing and Self-Certification.

In several areas of law that allow exceptions to vehicle equipment standards and/or rules of the road, the Department of Licensing (DOL) provides a process by which the vehicle owner self-certifies that the vehicle meets the requirements of the law and the use of the vehicle must comply with the law. For example, a person who owns a neighborhood electric vehicle must fill out a department-provided form in which the person certifies that he/she understands that it is a traffic infraction: to use the vehicle on roads other than those permitted by law (i.e., with a maximum speed limit of 35 miles per hour (mph), and not on a state highway); to operate the vehicle without a valid driver's license; if the vehicle is not properly registered; and if the operator does not have liability insurance. The person undertaking a self-certification must sign the form under a statement that reads, "I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

Rules of the Road—Motor Vehicles and Other Users of Highways, Including Sidewalks and Crosswalks.

State law governs the use of highway rights-of-way and how motor vehicles must address other users. In general, motor vehicles have the right-of-way within the roadway. Pedestrians are required to obey traffic signals, including those for crosswalks. Pedestrians crossing a roadway at a point other than a crosswalk must yield the right-of-way to all vehicles upon the roadway. Motor vehicles turning into a driveway or alleyway must yield the right-of-way to bicyclists and pedestrians on a sidewalk or crosswalk. A bicyclist must yield the right-of-way to a pedestrian on a sidewalk or crosswalk. Mopeds may not be operated upon sidewalks. The operation of a motorized foot scooter or a class 3 electric-

assisted bicycle on a sidewalk is not allowed, unless there is no other bicycle or pedestrian path alternative.

Traffic Infractions.

A violation of rules of the road and of a number of the other laws governing the operation of a vehicle is a traffic infraction, typically punishable by a fine or penalty. An infraction is initiated by the issuance, service, and filing of a notice of infraction. A law enforcement officer may issue a notice of a traffic infraction when the infraction was committed in the officer's presence, at the request of another officer in whose presence the infraction was committed, if the officer has reasonable cause to believe that a driver involved in an accident has committed a traffic infraction, or through the use of automated safety cameras. The officer will serve the notice on the driver of the vehicle for many infractions. For a subset of traffic infractions that concern the stopping, standing, or parking of vehicles, the citing officer will serve notice on the vehicle owner by affixing the notice to the vehicle in a conspicuous place. The officer will then file the notice with a court having jurisdiction over the infraction.

The person who has been served notice must respond within 15 days from the date of the notice, either with the payment of the fine, a request for hearing to contest the notice, or a request for hearing to explain mitigating circumstances. If the individual has failed to either pay the fine or request a hearing within 15 days, the court will enter an order assessing the monetary penalties for the infraction, and may assess additional penalties for failing to respond.

Following the payment of the fine, failure of the defendant to appear for a hearing, or upon the determination by the court that the defendant committed a traffic infraction, the court will forward to the DOL a copy of the notice of the traffic infraction and an abstract of the court's order, with respect to most infractions. The DOL is required to keep a case record of this information for each driver. For stopping, standing, or parking infractions, the court is not required to forward this information to the DOL and it does not become part of the driver's record.

Penalties or fines for many traffic infractions are set either by state statute or by the court through rulemaking. Proceeds are split between the state and local governments and are directed to the state or local general fund. Penalties for stopping, standing, or parking infractions are set by the city or county government, and proceeds from these penalties are retained at the local government level.

Summary of Engrossed Substitute Bill:

The operation of personal delivery devices (PDD or device) is authorized under certain conditions.

A PDD is an electrically powered, automated device weighing less than 120 pounds and intended primarily to transport property on a sidewalk or crosswalk at speeds of 6 mph or less. The operation of the PDD is supported by a remote operator who has the capability to monitor or control the device.

A business may operate a PDD under the following conditions:

- The PDD travels only on sidewalks and crosswalks or, in areas where sidewalks are not provided, in areas where pedestrians are permitted to travel under law, as long as the adjacent roadway has a speed limit of 45 mph or less.
- The PDD is operated in accordance with the ordinances and regulations established by the jurisdiction governing the rights-of-way where the PDD travels.
- The PDD operator is either monitoring or controlling the device.
- The business that operates the PDD maintains an insurance policy with a liability coverage of at least \$100,000 for damages arising from the operation of the device.
- The business must report any incidents resulting in personal injury or property damage to local law enforcement within 48 hours of the incident.
- The business registers an agent located in the state for the purposes of addressing traffic infractions and incidents involving PDDs operated by the business.
- The PDD has a unique identification number and a marker that includes its identification number, the name and contact information of the business that operates the device, as well as the name and contact information of the registered agent.
- The business submits a self-certification form to the DOL, both before beginning operation of PDDs and then on an annual basis thereafter, that provides: contact information and the name of the registered agent; the location of the jurisdiction in which the PDDs will operate; an acknowledgement that the PDD must display a unique identification number; an affirmation that the business possesses the required insurance; and a list of any incidents or infractions involving PDDs operated by the eligible entity.
- The PDD has a properly functioning braking system.
- The PDD is first added by the DOL to the list of PDDs submitted through the self-certification process and intended to be operated in the state.
- The business has paid a \$50 fee to the DOL.
- If the PDD is to be operated between sunset and sunrise, the device has lights on its front and rear that are visible from 500 feet or more to a driver of a car with its headlights on.

A PDD may not be operated to transport hazardous material in a quantity and form that poses an unreasonable risk to health, safety, or property when transported in commerce. A PDD may not transport consumable alcohol.

The DOL is required to create a self-certification form for a business that intends to operate PDDs. Through the form, the DOL must obtain: name and contact information of both the businesses and the registered agent, as well as the drivers license number of the agent; the location of the jurisdiction in which the PDDs will operate; an acknowledgement that the PDD must display a unique identification number; an acknowledgement that each PDD will display the required information about the registered agent and that the agent is responsible for any traffic infraction committed by the PDD; a list of each PDD that the business intends to operate during the year; an affirmation that the business possesses the required insurance; and a list of any incidents or infractions involving PDDs operated by the eligible entity. The DOL must obtain \$50 for each PDD the business intends to operate.

A PDD is excluded from the definition of "motor vehicle" and the definition of "vehicle," except with respect to certain rules of the road governing the use of sidewalks and crosswalks. In general, the operation of PDDs must adhere to the same rules of the road that apply to pedestrians. A PDD must yield the right-of-way to a pedestrian or a bicycle on a sidewalk or crosswalk. If no sidewalk is provided, the PDD must move when practicable only on the left side of the roadway or its shoulder, facing traffic, as pedestrians are allowed to do.

A violation of the terms of the regulations governing PDDs is a traffic infraction. The notice of infraction must be mailed within 14 days of the violation to the registered agent within Washington of the business that operated the PDD at the time the infraction occurred. The registered agent is the person responsible for the infraction. The infraction must be processed in the same manner as for a parking infraction, and any fine issued by the local jurisdiction must be consistent with the amount issued by the jurisdiction for parking infractions. The infraction does not become part of the registered agent's driving record.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2019.

Staff Summary of Public Testimony:

(In support) This is very exciting, almost like science fiction. The delivery device is kind of like a cooler on wheels, controlled remotely by artificial intelligence. It is programmed to get out of the way of pedestrians. This is a new technological way to accomplish everyday mundane tasks, such as the delivery of restaurant food, flowers, or books. This method is quick, nonpolluting, quiet, and does not take up space on the roadway. This sets up a framework that regulates the travel of these devices on sidewalks, including sideboards about interactions with pedestrians and bicyclists. There are concerns about speed and the delivery of alcohol that will be taken up in a forthcoming amendment.

This creates a system for the responsible operation of PDDs, by safeguarding the wellbeing of the public, while at the same time permitting the development and evolution of this smart-cities technology. The PDDs are autonomous electric low-speed, low-mass devices for delivery of property from local businesses to consumers, all facilitated by smartphone technology. These devices are intended to address the current inefficiencies in last-mile delivery, which is recognized as the most energy intensive, most environmentally harmful, and the most expensive part of the logistics chain. Under current state law, these self-propelled devices could be construed as motor vehicles and thus prohibited on sidewalks and crosswalks. The PDDs are equipped with proprietary software and other technology that allows them to avoid property, pedestrians, and bicyclists and to navigate the urban environment on sidewalks and crosswalks. The PDDs are equipped with technology that enable remote monitoring. There are currently 12 companies in the world that have similar devices under development. Starship's PDDs have encountered more than 15 million people and have traveled over 100,000 miles. This does not specify the precise type of technology

and is similar to legislation passed in other states. The PDDs offer promise for sustaining e-commerce, lowering congestion, and helping the environment.

(Opposed) None.

(Other) The root of the concern of the Association of Washington Cities (AWC) is the responsibility of the AWC members to effectively manage public rights-of-way (ROW), including sidewalks. The bill appears to shift the burden of active management of ROW onto cities. There are also some practical questions: which jurisdiction is responsible for ensuring responsibilities are met, like proper automated driving technology, insurance, and so forth? The AWC has questions about how these devices would be incorporated into the current cities' regulatory responsibilities. The AWC would like to have a thoughtful discussion on ROW management for this bill, for electric scooters, and any other new technologies coming along.

The Washington State Department of Transportation would like to see some additional safety considerations. These devices should emit an audible warning when approaching pedestrians and have a flag for visibility. The bill should clarify an agency's ability to regulate the devices on paved and unpaved trails.

Persons Testifying: (In support) Representative Kloba, prime sponsor; and Chelsea Hager and David Catania, Starship Technologies.

(Other) Logan Bahr, Association of Washington Cities; and Mike Dornfield, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.