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Moving right along...

Segway Seeks Legislation to Aid Market Transition for New Human Transporter Device

This year, more than 30 state legislatures have enacted laws allowing consumers to operate high-tech "scooters" called Segways on public sidewalks, bicycle paths, and/or roadways. Capitalizing on favorable federal regulatory treatment, makers of the Segway have lobbied for such legislation throughout the country. Similar legislation may be introduced in the 78th Texas Legislature.

The unique personal chariot fits into few, if any, existing statutory categories. Segway has sought state legislation to define its product as something other than a motor vehicle. That would allow the machine to be used on sidewalks rather than be relegated to streets, avoiding standard requirements such as registration and licensing. Depending on the language, a statute could ease or preclude local regulation of Segway use.

Source: Segway LLC.

The manufacturer promotes the Segway as an alternative mode of transportation that can improve worker productivity while reducing traffic congestion and air pollution in cities. However, safety concerns raised mainly by pedestrian, consumer, and public health advocates have slowed the momentum of the campaign to minimize regulatory constraints on Segway use.

(see Segway, page 2)

Lawmakers Face Decisions About Law Allowing Joint Negotiation by Physicians

Prompt payment of physicians by insurers in Texas has received much attention from state lawmakers during the interim (see *The Prompt Payment Dispute*, House Research Organization Focus Report Number 77-22, July 17, 2002). The 78th Legislature likely will address another important issue involving the relationship between physicians and insurers: the renewal or expiration of the state law on joint negotiation by physicians.

Federal antitrust laws prohibit physicians from jointly negotiating contractual arrangements with insurers unless state law specifically authorizes them to do so. In 1999, Texas physicians successfully argued that the state should permit joint negotiation under certain circumstances. That year, lawmakers enacted SB 1468 by Harris, establishing a process for joint negotiation that will expire in 2003 if not extended.

Since implementation of SB 1468, the attorney general has approved only one group for joint negotiation. Physicians and insurers generally agree that joint negotiation should remain in statute, but they differ in regard to what changes, if any, need to be made to the process.

(see Physicians, page 6)

(Segway, from page 1)

Introducing the Segway

Marketed as a "human transporter," the Segway resembles a riding version of a rotary or push lawnmower. A 19-by-25-inch platform eight inches high straddles two large tires on a single axle. Powered by two rechargeable electric motors (one per wheel), the Segway relies on multiple gyroscopes, sensors, and a computer system to monitor the standing rider's center of gravity, keep the machine upright, and move in response to body language. Lean forward and the Segway moves ahead; lean backward and it moves in reverse; stand upright and it stops. The Segway has no seat and no brakes, throttle, or accelerator. Twisting either side of the handlebar turns the machine right or left. The maximum speed is 12.5 miles per hour, but slower maximum speeds can be preset. Range is estimated at 11 to 17 miles on a single charge, depending on terrain. According to a company spokesman, the Segway can go down curbs and large steps but not up stairs.

The two commercial-industrial models weigh 83 and 95 pounds and, like the consumer model, can carry passengers weighing up to 250 pounds. The heavy-duty version can handle 75 pounds of cargo and can balance itself electronically. Cost is about $5,000. The consumer model, due out in 2003, is expected to weigh about 65 pounds and cost between $3,000 and $5,000.

The Segway is the brainchild of inventor/entrepreneur Dean Kamen, whose credits include the insulin pump, portable dialysis machine, cardiac stent, and computerized wheelchair. Based in Manchester, N.H., Segway LLC reportedly spent about $100 million on development using private investor capital. After months of secrecy involving code names for the product, the Segway debuted on national television in December 2001, and various high-profile demonstrations and media events followed. In March 2002, a Houston businessman bought the first limited-edition Segway for $160,100 through an online auction.

Segway has pursued business and government accounts through tryouts, leasing, and sales. Users include the U.S. Postal Service, National Park Service, General Electric Plastics, and several municipal utilities and local law enforcement and emergency services agencies. Federal Express has declined, however, and few, if any, manufacturers have climbed on board. The company would not disclose the number of Segways sold or in use.

Segway legislation

Before Segway began its media campaign, the National Highway Transportation Safety Administration (NHTSA) determined that the Segway is not a motor vehicle for regulatory purposes and, as such, could not be barred from sidewalks. Preferring that the Segway be subject to federal rules for consumer products — and thus not subject to NHTSA regulation — the company promoted a bill in the 107th Congress that would declare the machine a consumer product. In August 2001, the U.S. Consumer Product Safety Commission issued a preliminary opinion that the Segway likely would be considered a consumer product. Soon afterward, the commission issued a warning about motorized scooters, including recommending the use of helmets, after a rash of injuries prompted more state and local restrictions. The commission has yet to review the Segway formally because it is unavailable to the general public.

This year, 31 states have enacted laws pertaining to the use of Segways, called "electronic personal assistive mobility devices."

In April 2002, the U.S. Senate's Environment and Public Works Committee approved S. 2024 by Sen. Bob Smith, R-N.H., which would exempt Segways from the prohibition against using motorized vehicles on walkways and trails built with federal funds but controlled by state or local governments. By early September, 31 states had given the Segway a green light to operate on city streets, sidewalks, and/or bicycle paths. (See table, page 5.) In other states, similar bills died in committee or succumbed to legislative deadlines or, as in Texas, the state legislature has not met since the Segway was introduced.

Segway's legislative approach has been to build credibility through business applications (use on private property is unregulated); create what it calls "moral authority" through usage by law enforcement and other public entities; hire local lobbyists and provide test rides for lawmakers; and press for legislation to authorize the use of Segways on sidewalks. Matthew Dailida, director of state and government affairs, said Segway typically seeks legislation that would create a specific definition of the machine in the transportation code, clearly define its operational use, and define the local role in regulating use. "We want regulation first, then sales," Dailida said. "We defer to the legislatures and our sponsors on the specifics."

In statutory terms, states have classified Segways as "electric personal assistive mobility devices" (EPAMDs), typically defined as self-balancing, two-wheeled (non-tandem), electrically propelled devices designed to transport one person. The new definition may be included in motor-vehicle provisions that are amended to exempt Segways, or it may be used to create a new exception to existing prohibitions against vehicular traffic on sidewalks. Some states have redefined "pedestrian" to include a person on a Segway.

Fears about speed and control of the machine have slowed Segway's progress in seeking state and local regulatory exemptions.

According to the Insurance Institute for Highway Safety, 25 states specifically have authorized the use of EPAMDs on public streets, although in many cases, use is subject to certain limitations or may be restricted by local ordinance. Some states allow use on streets with certain speed limits, ranging from 25 mph in several states to as high as 55 mph in Ohio. Connecticut allows EPAMD use on sidewalks or highways only by people with disabilities. Iowa and Vermont prohibit use of EPAMDs on streets, and Utah prohibits their use on sidewalks.

Nine states require EPAMDs to follow rules that apply to pedestrians while on streets and sidewalks. Other common restrictions include age minimums (usually 16), lights, reflectors, and hours of operation. Less common are requirements for helmets, horns, restraints, and liability insurance. Currently, no state requires the operator of an EPAMD to be licensed, and EPAMDs generally are exempt from registration requirements, according to the insurance institute. A bill pending in Massachusetts would require a Segwayer to signal audibly when passing a pedestrian or face penalties, including fines and impoundment.

Relevant Texas laws

In Texas, Segway expects to have a bill prefiled and routed to committees dealing with public safety. Kyle Frazier, Segway's Austin representative, suggests a demonstration at the Capitol during the 2003 session. "We have to get one to the members so they can see what it's like," he said.

The likely focus of Segway-related legislation, according to the Texas Department of Transportation (TxDOT), would be on portions of the Transportation Code that define motor vehicles and prescribe their registration and operation. Sec. 502.001(13) defines "motor vehicle" as one that is self-propelled, and sec. 502.002 requires the owner of a motor vehicle to register it annually for use on public highways. Because the Segway is self-propelled, it would have to be registered before it could be operated on a public roadway, but it might not pass a safety inspection, TxDOT officials say. If not, it could not be registered and could not operate on a public roadway. Sec. 545.422 generally prohibits the operation of a motor vehicle on a sidewalk.

The Segway currently does not meet the definition of a motorized mobility device under sec. 542.008, which specifies a device, such as a motorized wheelchair, with at least three wheels and a maximum speed of 8 mph, nor the definition of an electric bicycle under sec. 541.201. The code exempts these types of devices from registration requirements. TxDOT suggests that a Segway might be considered a "play vehicle" under chapter 551 (the Consumer Product Safety Commission unofficially deemed it designed for "personal enjoyment"). In that case, municipalities could regulate its operation on sidewalks and roadways.

Safety concerns

In recent weeks, fears about speed and control of the machine have helped slow Segway's progress in seeking state and local regulatory exemptions. S. 2024 has been stalled in the U.S. Senate since early this summer, and groups representing pedestrians, children, seniors, and the disabled have mounted opposition to pro-Segway legislation in California and other states.

Among those voicing concerns are the American Academy of Pediatrics, the Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group, and the National Association of Governors' Highway Safety Representatives (NAGHSR). Warning about Segway-pedestrian collisions, they claim inadequate testing in urban settings and insufficient safety performance data. The NAGHSR urges more testing under "real world" circumstances before permitting Segways to be operated on sidewalks. Segway counters that its product has undergone extensive real-world trials and should be available for third-party testing soon.

The difficulty in categorizing the human transporter may have been what prompted one editorial writer to observe that a Segway "seems too light and too slow for the streets, yet too heavy and too fast for the sidewalks." Critics worry about blending Segways with pedestrians in places where skateboards and in-line skates are banned, such as on sidewalks. The company maintains that the rider's high degree of control makes the Segway sidewalk-friendly and that Segways have a shorter stopping distance than people walking at the same speed, despite weighing much more.

Segway representatives say they recognize the need for flexibility in municipal regulation, but they prefer as much uniformity as possible. Some local officials are enthusiastic, but others are less so. For example, Philadelphia's chief traffic engineer has advised against allowing sidewalk Segwaying because of potential injury. The Los Angeles Metropolitan Transit Authority postponed a Segway pilot project in July to study liability issues. Although stories and claims of Segway's extraordinary stability abound, the first documented Segway accident (in May 2002) injured an Atlanta tourism officer who fell while going up a downtown driveway. According to published news reports, police in Manchester, N.H., Segway's home base, indicate a preference for bicycles, saying they are more versatile.

— by Patrick K. Graves

State Laws Pertaining to Segway Use

State	Permitted on sidewalks/bicycle paths	Permitted on roads	Helmet required	Minimum age	Pedestrian laws apply
Alaska	sidewalks	yes	no	--	--
Arizona	sidewalks	yes, if no sidewalk available	no	16	yes
Connecticut	sidewalks[1]	see note 2	--	16	--
Delaware	sidewalks	yes	no	--	--
Florida	both[3]	yes, on streets with speed limits up to 25 mph[3]	younger than 16	--	--
Idaho	sidewalks	--	--	--	yes
Indiana	bicycle paths	--	no	--	--
Iowa	sidewalks	no	no	16	--
Kansas	sidewalks	yes	no	--	yes
Maine	both[3]	yes, on streets with speed limits up to 35 mph if no sidewalk or bicycle path available[3]	--	--	--
Maryland	sidewalks	yes, on streets with speed limits up to 30 mph if no sidewalk available[3]	younger than 16	--	--
Michigan	sidewalks[3]	yes, on streets with speed limits up to 25 mph	no	--	--
Minnesota	both	yes, on streets with speed limits up to 35 mph if no sidewalk available	no	--	yes
Missouri	both	yes, on streets with speed limits up to 45 mph[3]	--	16[4]	yes
Nebraska	both	yes, except on freeways and the interstate highway system[2]	--	--	--
New Hampshire	sidewalks	yes	no	--	--
New Jersey[5]	both	yes[3]	yes	16[4]	--
New Mexico	both	yes	--	--	yes
Ohio	sidewalks, unless marked for exclusive use of pedestrians, and bicycle paths[3]	yes, on streets with speed limits up to 55 mph[3]	younger than 18	14[6]	--
Oklahoma	sidewalks	yes, on municipal streets[3]	no	--	--
Pennsylvania	sidewalks[3]	yes, except on freeways	younger than 12	--	--
Rhode Island[7]	sidewalks	yes, unless highway prohibits bicycles	no	16	--
South Carolina	sidewalks	yes, if no sidewalk available	no	--	--
South Dakota	sidewalks	--	no	--	yes
Tennessee	sidewalks	yes	no	--	--
Utah	not permitted	yes, on streets with speed limits up to 35 mph and fewer than four lanes	yes	16[8]	--
Vermont	sidewalks	no	--	16	yes
Virginia	sidewalks[3]	yes, on streets with speed limits up to 25 mph and if no sidewalk available	younger than 15 if by local ordinance	--	--
Washington	sidewalks	yes, except on controlled highways[3]	no	--	--
West Virginia	sidewalks	yes	no	--	yes
Wisconsin	sidewalks[3]	yes[3]	no	--	no

[1]Only a person with a disability who has been issued a disability placard may use an EPAMD on a sidewalk or highway.
[2]Allowed on highways only to cross.
[3]Use may be restricted by local ordinance.
[4]Younger if the operator has a mobility-related disability.
[5]Use allowed only by government or commercial employee while performing assigned duties or by operator with mobility-related disability.
[6]If under the supervision of a person at least 18 years old who is responsible for the operator's immediate care.
[7]Two bills limit EPAMD use on sidewalks to government personnel; another bill has no such limitation.
[8]Younger if accompanied by the operator's parent or guardian.

Source: Insurance Institute for Highway Safety, Highway Loss Data Institute.

(Physicians, from page 1)

Antitrust restrictions

Federal antitrust law, particularly the Sherman Act of 1890, prohibits contracts or combinations that restrain interstate trade or commerce. This law limits the ability of physicians to negotiate jointly with health-benefit plans. Individual physicians can negotiate on their own, and groups of physicians, such as independent provider associations or individual practice associations (IPAs), can negotiate contract terms for their members. IPAs, however, are subject to strict federal guidelines on the sharing of proprietary information and to prohibitions against price-fixing. Groups of physicians that are not organized into an IPA may not negotiate jointly with health-benefit plans and may violate antitrust laws if they discuss among themselves the terms or conditions of their contracts with health-benefit plans.

Health-care providers claim that the manner of implementing SB 1468 has prevented fulfillment of the law's goals.

Physicians may seek advisory opinions from the Federal Trade Commission on whether their actions would violate antitrust laws. The penalty for violating antitrust law can be up to three years in federal prison or a $350,000 fine. An IPA or other group of physicians can be fined up to $10 million for an antitrust violation.

Texas' joint negotiation law

Federal law allows states to carve out exceptions to antitrust laws to enable physicians to negotiate jointly under certain conditions, as long as the state retains oversight of the process. In 1999, the 76th Legislature enacted SB 1468 by Harris (Insurance Code, chapter 29), which authorizes groups of physicians to negotiate contract terms and conditions with insurers, except for actual fee or discount amounts.

The attorney general may authorize joint negotiation of actual fee and discount amounts in limited circumstances where the attorney general finds that the benefits of joint negotiation would outweigh disadvantages from reduced competition. The rules the Attorney General's Office adopted to implement SB 1468 were designed to protect physicians' and insurers' proprietary business information while providing enough information to make expedient decisions about market share and the need for joint negotiation. SB 1468's provisions will expire September 1, 2003, unless extended by the Legislature.

Before enactment of SB 1468, physicians complained that the growth of managed care had given health-benefit plans a significant advantage over individual physicians in contract negotiations. Such contracts typically contain terms and conditions that individual physicians find onerous, such as reducing payment if a health-plan enrollee visits the doctor too often or transferring to the physician all liability for the cost of patient care. Physicians claimed that these provisions were detrimental to patient care. Individual physicians faced the choice of turning down health plans that dominate the market or joining IPAs, even if they would rather work on their own.

Health-benefit plans argued that physicians were free to contract with other plans or to find other patients if the contract terms were not to their liking. They said that the contract conditions were not too onerous for physicians, or else more physicians would have balked at signing them. If physicians had unrestricted joint negotiating power, insurers argued, health plans would have to change their contracts to suit physicians rather than to ensure that a plan's beneficiaries received an array of services at a reasonable cost.

Issues surrounding extension

Health-care providers claim that the manner of implementing SB 1468 has prevented fulfillment of the law's goals. They say that the law, although intended to restore a balance of power in the relationship between physicians and health plans, makes it too difficult for physicians to enter into joint negotiation. Very few physicians, they say, have been able to use joint negotiation because they are reluctant to disclose information that

could be shared with other physicians and insurers and because it is difficult to obtain information from insurers to demonstrate to the attorney general that joint negotiation is justified.

Only one group of physicians has received approval to use joint negotiation. In August 2001, Attorney General John Cornyn authorized 11 physicians in Rusk County to negotiate fees and contract terms with Blue Cross/Blue Shield. That negotiation never came to fruition, as Blue Cross/Blue Shield refused to negotiate with a physician coalition.

Physicians say the Legislature should amend the joint negotiation statute to make it easier to use. They advocate changes like those contained in HB 3012 by Smithee, which passed the House but died in the Senate Business and Commerce Committee during the 77th Legislature. That bill would have made confidential certain commercial information that physicians give the attorney general or the Texas Department of Insurance (TDI) and would have authorized TDI to collect information from insurers that the agency needed to make certain determinations about the market. The bill also would have extended the expiration date for the regulations concerning physicians' negotiations by two years, to September 1, 2005.

Others oppose changing the statute but agree that it should be extended. They say that joint negotiation can be an important part of Texas' commercial health-care landscape but that the state should wait until more parties have gone through the process before changing it.

Opponents of changing the statute say that it strikes the right balance between the needs of physicians and insurers in a manner that complies with federal law. The key benefits of the current law, as they see it, include the authority for insurers to opt out of joint negotiations and the protection of proprietary information about market share and insurers' businesses. They say the statute was written carefully to prevent conflict with federal antitrust laws and that the difficulty inherent in the approval process is necessary to guarantee the attorney general adequate oversight to comply with the narrow exception to federal law.

— by Kelli Soika

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