

1-1-2006

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Recommended Citation

Kevin D. Hull, *Chapter 323: Taking "Pocket Bikes" off the Roads, Sidewalks, and Everywhere Else*, 37 MCGEORGE L. REV. 351 (2006).
Available at: <https://scholarlycommons.pacific.edu/mlr/vol37/iss2/24>

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Chapter 323: Taking “Pocket Bikes” off the Roads, Sidewalks, and Everywhere Else

Kevin D. Hull

Code Sections Affected

Vehicle Code §§ 473, 9955, 21720, 21721 (new).
AB 1051 (Benoit & Umberg); 2005 STAT. Ch. 323.

I. INTRODUCTION

“Yes, it may be small, but it kicks,” said one owner about his pocket bike before he zipped across a street.¹ Pocket bikes are miniature motorcycles that usually stand less than two feet tall and are light enough to be picked up and carried under one’s arm.² Although the bikes are small, they are capable of reaching speeds of around forty miles per hour and some can be modified to reach speeds as high as sixty miles per hour.³ Pocket bikes have been available for purchase in the United States for several years; however, until recently, the bikes were only made by specialty manufacturers and were relatively expensive, costing several thousand dollars each.⁴ As the demand for pocket bikes increased, cheaper imports became widely available and pocket bikes can now be purchased for as little as a few hundred dollars.⁵

Many owners of pocket bikes do not realize that it is illegal to operate the bikes on public streets and trails and they often do not find out until they receive a ticket from a police officer.⁶ The bikes cannot be operated on public streets and trails because they do not meet federal safety and emissions guidelines and thus cannot be registered through the Department of Motor Vehicles (DMV).⁷ By design, pocket bikes are only intended for operation on private tracks because they are too small to be easily seen by motorists and they create a hazard for

1. David Sheff, *Unfazed by the Law, Pocket-Bikers Roll On*, N.Y. TIMES, June 27, 2004 at 91 (quoting a fourteen-year-old pocket bike rider).

2. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 29, 2005).

3. Dipesh Gadher, *Big Danger in Little Machines*, SUNDAY TIMES, Aug. 29, 2004, at F5.

4. See Sheff, *supra* note 1 (describing the increase in imported pocket bikes and noting that the costs range from a couple hundred dollars to several thousand dollars).

5. See James Vlahos, *Gentlemen, Start Your [Tiny] Engines*, POPULAR MECHANICS, Oct. 12, 2004, available at <http://popularmechanics.com/outdoors/1278186.html> (on file with the *McGeorge Law Review*) (discussing the increased popularity and availability of pocket bikes).

6. SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005) (stating that many people who are cited for riding pocket bikes on public roads, trails, and sidewalks are unaware that it is illegal to do so).

7. ‘Pocket’ Motorcycles Too Small for Streets, OAKLAND TRIB., July 16, 2004.

everyone on the road.⁸ Aside from their small size, reckless use of the bikes, such as cutting between cars on the streets, driving on the wrong side of the road, and ignoring traffic signals, adds to the potential danger posed by the bikes.⁹

Despite what seem to be flagrant violations of traffic laws, uncertainty as to what laws apply to pocket bikes often lead police officers to cite illegal operators with safety violations, such as failure to wear a helmet, or with equipment violations, such as inadequate brakes or excessive noise.¹⁰ Many times, however, courts dismiss such citations because they are not specific to pocket bikes.¹¹

To address the problems caused by lack of awareness or restrictions for enforcement of the operation of pocket bikes, Assembly Members Benoit and Umberg introduced Assembly Bill 1051, now Chapter 323.¹² Chapter 323 seeks to increase awareness of the illegal uses of pocket bikes and provide statutory guidance to enforcement officials involved with pocket bike violations.¹³

II. LEGAL BACKGROUND

The California Vehicle Code (CVC) states that vehicles operated on public streets or highways must be registered with the DMV by their owners.¹⁴ The CVC also requires vehicles intended for use only on public lands and trails, not for operation on public streets or highways, to acquire an “off-highway vehicle” (OHV) indicia from the DMV.¹⁵ To either register a vehicle with the DMV or receive an OHV indicia, a vehicle must meet federal motor vehicle safety and air quality standards. Therefore, if a motorized vehicle does not meet these standards, it may not be licensed to operate on public streets and highways or on public lands and trails, limiting its use to private property.¹⁶

A law enacted in 2004 permits the operation of motorized scooters meeting federal safety and air quality standards on approved bike lanes and in residential areas.¹⁷ A “motorized scooter” is defined as any two-wheeled device equipped

8. *Id.*

9. See Sheff, *supra* note 1 (discussing how the use of pocket bikes on streets by children has led to a string of accidents in the San Francisco area).

10. Jake Henshaw, *In California, Assembly Bill Clarifies Law*, VISALIA TIMES-DELTA (Visalia, Cal.), May 11, 2005, at 5A (on file with the *McGeorge Law Review*).

11. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4 (June 29, 2005).

12. AB 1051, 2005-2006 Leg., Reg. Sess. (Cal. 2005) (adding Assembly Member Umberg as Co-author on June 13, 2005); see also SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005) (discussing suggested amendments to add authors).

13. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4-5 (June 29, 2005); SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005).

14. CAL. VEH. CODE § 4000 (West 2003); SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005).

15. CAL. VEH. CODE § 38010.

16. SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4 (June 3, 2005).

17. 2004 Cal. Stat. Ch. 755

with handlebars, a floorboard designed to stand upon when riding, and an electric motor.¹⁸ To legally operate such motorized scooters, operators must be at least sixteen years of age and must have a valid driver's license.¹⁹

Prior law did not address pocket bikes. Although the bikes meet the legal definition of a motorcycle, they do not meet required federal standards and thus cannot be licensed to operate on public highways and cannot receive an OHV indicia.²⁰ Consumers are often unaware that pocket bikes may be used only on private property, and thus, sometimes operate them illegally in public.²¹

III. CHAPTER 323

To address the safety, awareness, and enforcement issues that have arisen due to the increased pocket bike operation in many California communities, the Legislature passed Chapter 323.²² Specifically, Chapter 323 defines pocket bikes, establishes prohibited uses, requires notice of prohibited uses be distributed to consumers, and creates consequences for the prohibited use of a pocket bike.²³

A. *Vehicle Code Section 473—What is a “Pocket Bike?”*

Chapter 323 adds section 473 to the California Vehicle Code, defining a pocket bike as “a two-wheeled motorized device that has a seat or saddle for the use of the rider, and that is not designed or manufactured for highway use.”²⁴ Chapter 323 excludes motorcycles from the definition of “off-highway vehicles” as defined by section 436 of the Vehicle Code.²⁵ For purposes of Chapter 323, a vehicle must meet the applicable Federal Motor Vehicle Safety Standards in Title 49 of the Code of Federal Regulations in addition to meeting the requirements imposed by Chapter 323 to be considered “designed for highway use.”²⁶

18. *See id.* at § 1(a) (amending section 407.5 of the Vehicle Code).

19. *See id.* at § 3(a)-(c) (amending section 12500 of the Vehicle Code and describing the licensing requirements of users under Chapter 755).

20. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 29, 2005).

21. *Id.*

22. *See* SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005) (discussing Assembly Member Benoit's purpose for introducing Assembly Bill 1051 (Chapter 323)); *see also* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4 (June 29, 2005) (noting that many communities have experienced a “surge” in pocket bike operations and have had to deal with the problems that correspond to the increased activity).

23. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 2 (June 29, 2005).

24. 2005 CAL. STAT. CH. 323 § 1 (a) (as amended June 13, 2005).

25. *Id.*

26. *Id.* § 1 (b).

B. Vehicle Code Sections 21720 and 9955—Disclosure of Prohibited Uses

Chapter 323 specifies locations where pocket bike operation is prohibited to include sidewalks and roadways, bikeways, bicycle paths or trails, equestrian trails, hiking or recreational trails, and public lands otherwise open to off-highway motor vehicle use.²⁷ Under Chapter 323, manufacturers are required to affix a sticker to each pocket bike containing a disclosure specifying prohibited uses of the bikes.²⁸ The disclosure must be in at least fourteen-point font and the sticker may contain only the disclosure.²⁹

C. Vehicle Code Section 21721—Consequences of Violations

Upon issuing a citation for a violation of section 21720, Chapter 323 requires a peace officer to seize the pocket bike and hold it for a minimum of forty-eight hours.³⁰ Chapter 323 further allows a city or county to adopt a regulation, ordinance, or resolution to impose fees on a violator.³¹ These charges, however, may not exceed the actual costs incurred by the city or county in removing, seizing, and storing the pocket bike.³² Before the bike is released, a request for release must be made during normal business hours and either the violator or owner of the pocket bike must make payment of the applicable fees associated with the violation.³³

IV. ANALYSIS OF CHAPTER 323

In recent years, California has experienced a surge in the use of pocket bikes.³⁴ As this use has increased, communities have been faced with increased hazards, especially with the use of the bikes on sidewalks and public roadways.³⁵ Chapter 323 has been called “a common sense approach dealing with the safety concerns surrounding [pocket bikes].”³⁶

27. *Id.* § 3.

28. Specifically, the disclosure must state the following: “THE *POCKET BIKE* YOU HAVE PURCHASED OR OBTAINED IS STRICTLY PROHIBITED FROM BEING OPERATED ON A SIDEWALK, ROADWAY, OR ANY OTHER PART OF A HIGHWAY, OR ON A BIKEWAY, BICYCLE PATH OR TRAIL, OR ON PUBLIC LANDS OPEN TO OFF-HIGHWAY VEHICLE USE. A VIOLATION OF THIS REGULATION MAY RESULT IN PROSECUTION AND SEIZURE OF THIS DEVICE.” *Id.* § 2 (b)(2).

29. *Id.* § (b)(1).

30. *Id.* § 4 (a). A peace officer is defined in Chapter 4.5 of Title 3 of Part 2 of the California Penal Code. *Id.*

31. *Id.* § 4 (c).

32. *Id.*

33. *Id.* § 4 (d)(1)-(2).

34. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4 (June 29, 2005).

35. *Id.* at 3.

36. Letter from Bob Doyle, Sheriff-Coroner, Riverside County Sheriff’s Dep’t, to Assembly Member Jenny Oropoza, Cal. State Assembly (Apr. 4, 2005) (on file with the *McGeorge Law Review*).

A. Increasing Consumer Awareness

As the use of pocket bikes increased, public perception persisted that use of the bikes on public highways and sidewalks was legal.³⁷ Many riders were unaware of the illegal uses of the bikes until they were cited.³⁸ Before Chapter 323, there were no measures in place to ensure that purchasers of pocket bikes were aware of the restrictions on their use.³⁹ By requiring manufacturers to affix a sticker specifying the illegal uses of pocket bikes, Chapter 323 serves to ensure that purchasers of the bikes are made aware of the illegal uses of the bikes.⁴⁰

Supporters of Chapter 323 urge that the statute will protect consumers by providing safety information on the operation of pocket bikes and by eliminating the public's perception that it is legal to operate the bikes on public highways and sidewalks.⁴¹ Although there is no registered opposition to Chapter 323, there are indications that the warning affixed to each bike may not be as effective as hoped. For instance, many of the purchasers of the bikes are adolescences who, even when made aware of the illegality of the bikes, may choose to ignore the warnings.⁴²

B. Clarifying the CVC

Prior to Chapter 323, no law specifically addressed pocket bikes or indicated that the bikes are considered "off-highway vehicles."⁴³ Enforcement of violations related to pocket bikes were complicated because, although the bikes were technically illegal, "[t]here [was] no clear-cut violation in the vehicle code" for the operation of a pocket bike.⁴⁴ While some communities cracked down on pocket bike use,⁴⁵ the courts often dismissed issued citations because they were not pocket bike specific.⁴⁶ By defining pocket bikes and specifying that they are off-highway vehicles in the CVC, Chapter 323 intends to provide statutory

37. Letter from Timothy Yaryan, Legis. Counsel & Advoc., Riverside Sheriff's Ass'n, to Assembly Member John Benoit, Cal. State Assembly (Mar. 29, 2005) (on file with the *McGeorge Law Review*).

38. SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005).

39. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4 (June 29, 2005) (stating that prior law did "not adequately address the operation of pocket bikes on public highways, roadways, and sidewalks").

40. SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005).

41. Letter from Bob Doyle to Assembly Member Jenny Oropeza, *supra* note 36; Letter from Timothy Yaryan to Assembly Member John Benoit, *supra* note 37.

42. See, e.g., Sheff, *supra* note 1 (quoting a dealer, who stated, "[w]hen I tell kids they aren't for the streets, they sort of smirk").

43. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4 (June 29, 2005).

44. Henshaw, *supra* note 10.

45. Sheff, *supra* note 1.

46. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 4 (June 29, 2005).

guidance and legal authority to law enforcement in their effort to mitigate the dangers created by the illegal use of the bikes.⁴⁷ By granting law enforcement the authority to give citations and impound the bikes, Chapter 323 hopes to decrease the number of repeat offenders by physically removing the bikes from violators for at least forty-eight hours.⁴⁸

Supporters of Chapter 323 urge that the statutory clarification and differentiation of pocket bikes from other motor vehicles is important for the safety of all drivers.⁴⁹ On the other hand, some think the ban is unnecessary, analogizing the safety argument against pocket bikes to that of skateboards, claiming it is “just a mode of transportation for an awkward-age kid.”⁵⁰

V. CONCLUSION

Chapter 323 addresses important safety issues that have arisen with the increased use of pocket bikes.⁵¹ Requiring manufacturers to affix a sticker warning of prohibited uses will ensure consumer awareness.⁵² Additionally, distinguishing pocket bikes from other vehicles and specifying penalties for violations provides law enforcement with the guidance and authority needed to combat the safety hazards associated with the bikes.⁵³

47. ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 1051, at 2 (May 5, 2005); Letter from Michael Ross, Consumer Advoc., Cal. Alliance For Consumer Prot., to Assembly Member John Benoit, Cal. State Assembly (Mar. 28, 2005) (on file with the *McGeorge Law Review*).

48. *Id.*

49. Letter from Bob Doyle to Assembly Member Jenny Oropeza, *supra* note 36.

50. Steve Timko, *Carson City Puts Breaks on Pocket Bikes, Scooters*, RENO GAZETTE, Sept. 2, 2004 at 1C.

51. Letter from Michael Ross to Assembly Member John Benoit, *supra* note 47.

52. SENATE TRANSPORTATION & HOUSING COMMITTEE, COMMITTEE ANALYSIS OF AB 1051, at 3 (June 3, 2005).

53. Letter from Timothy Yaryan to Assembly Member John Benoit, *supra* note 37.