



## Legislative Background

### Assembly Bill 161

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<u>Name of Bill:</u>	Solid waste: paper waste: electronic proofs of purchase ( <a href="#">AB 161</a> )
<u>Sponsor(s):</u>	Assembly members Phil Ting, David Chiu, and Senator Wiener
<u>Date Introduced:</u>	January 7, 2019 - Amended in Assembly 5 times Last amendment is May 17, 2019

### **Legislation Overview:**

This bill, on and after January 1, 2022, would prohibit stores from providing paper receipts *except* upon consumer request. Beginning January 1, 2024, the bill **would require a business to provide a receipt, requested by the customer, in electronic or paper form**, unless otherwise required by state or federal law. A business is not required to provide an electronic proof of purchase if, due to limited internet connectivity, a power outage, or other unexpected technical difficulties, the business is incapable of sending an electronic proof of purchase.

The bill would specify that the first and second violations of any of those provisions would result in a notice of violation and any subsequent violation would be punishable by a civil penalty of \$25 for each day the business is in violation, but not to exceed an annual total of \$300. The bill would authorize the Attorney General, a district attorney, or a city attorney to enforce those provisions.

The bill specifies that existing law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the customer to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, subject to specified exceptions. As such, nothing in the bill is intended to narrow privacy protections in the California Consumer Privacy Act of 2018.

For the purposes of this bill, a **business** is defined as a company that accepts credit or debit transactions, thereby exempting cash-only businesses. A business **is not:**

- A business that provides proofs of purchase that do not contain bisphenol A (BPA) or bisphenol S (BPS)<sup>1</sup> and the proof of purchase does not include printouts of items nonessential to the transaction, including but not limited to, coupons or advertisements;
- A health care provider, as defined in Section 123105 of the Health and Safety Code; and,
- **A small business**, as defined in Section 11342.610 of the Government Code.

Importantly, the definition of **small business** referenced above is from 2001. Small business does not include retail trade and service businesses with gross received that exceed \$2 million. The \$2 million gross receipts threshold has not been adjusted and may exclude a number of businesses in San Francisco that would otherwise be considered to be small. It may also lead to confusion on the part of the business owner and the customer in terms of who is and is not required to comply.

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<sup>1</sup> Both bisphenol A and bisphenol S, commonly known as BPA and BPS, are known to have possible cancer and reproductive risks.

### **San Francisco Department of Environment Considerations:**

The Department of Environment (DOE) has expressed interest in submitting a unified response to this bill and thus present it to the State Legislative Committee. The DOE has recommended that the bill be supported with the following amendments to Section 42359.1 to read:

- (a) Beginning on and after January 1, 2022 a proof of purchase for the retail sale of food, alcohol, or other tangible personal property, or for the provision of services, provided to a consumer by a business shall **not be printed in paper form** ~~be provided only in electronic form~~, unless the consumer requests that the proof of purchase be provided in paper form.
- (b) **On and after January 1, 2022, Paper proofs of purchase given to consumers upon request shall not contain any chemicals listed in the following authoritative lists:**
  - i. **California Candidate Chemicals list pursuant to paragraph (1) of subdivision (a) of Section 69502.2 of Title 22 of the California Code of Regulations;**
  - ii. **Asthmagens for which the American Conference of Governmental Industrial Hygienists has established threshold limit values for asthma;**
  - iii. **Each designated chemical identified under the California Environmental Contaminant Biomonitoring Program; and**
  - iv. **Each endocrine disrupting chemical identified by the Office of Environmental Health Hazard Assessment.**

~~(b)~~(c) This section shall be enforced by an enforcement officer. The first and second violations of subdivision (a) shall result in a notice of violation, and any subsequent violation shall constitute an infraction punishable by a fine of twenty-five dollars (\$25) for each day the business is in violation, but not to exceed three hundred dollars (\$300) annually.

With these amendments, the requirement that businesses provide an electronic receipt by 2024 would be struck.

### **Staff Recommendations:**

- 1) Agree with supporting proposed amendments to require replacement to non-toxic paper by 2022.
- 2) Strike the bill's requirement that by 2024 a business must provide the option of receipt by email. There are electronic waste considerations that have not been fully considered or analyzed by the sponsor.

### **Direction requested from the Small Business Commission:**

- 1) Should the bill be amended to require that the receipt manufacturers ensure that their machines comply with non-toxic paper described above by 2021? If manufacturers have not produced a machine that can utilize non-toxic paper, then businesses should not be held to account. Machine manufacturers should be.
- 2) Whether to support requiring by 2022, a mandate that the business ask the customer if they want a receipt at the beginning of the transaction? Businesses may need to reprogram their point of sale systems or replace them altogether.
  - Shall the SBC support or not support that amendment? Or,

- Support the amendment with the exception that a business is able to apply for a waiver if their POS system is not able to be programed to print a receipt on command.
- 3) In the event the bill is amended to require that businesses utilize non-toxic paper and require that businesses ask customers if they'd like a receipt by 2022. Should exemption for **small businesses** as defined by the state, be struck.
- Where the state definition of small business is dependent on business revenue, it becomes a challenge for businesses and customers to know if they have to comply or not.
  - The state definition of small business was implemented in 2001 and has not been linked to changes in CPI. Over time, the exemption will apply to fewer and fewer small businesses.
- 4) Consider adding the following statements to the State Legislative Committee:
- A mandate to require electronic receipts is not supported due to the cost for businesses to integrate new technology;
  - While paper receipts may generate significant waste, the state should also consider waste generated via online businesses and shipped orders. For example, how many tons of delivery packaging is generated in a year?
  - The state should also consider paper receipts included in online orders and, should implement a surcharge for online deliveries due to there being more delivery vehicles on the roads;
  - Many businesses do not accept returns without receipts. The state should be mindful of this if, at any future point, state or local government mandates returns without receipts.