

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 1347 (Ting) – As Amended April 19, 2023

As Proposed to be Amended

SUBJECT: Solid waste: paper waste: proofs of purchase

SYNOPSIS

This bill makes several changes to current law designed to reduce both toxic chemicals and paper waste in the environment. Specifically, the bill bans the use of the chemicals bisphenol A (BPA) and bisphenol S (BPS) in printed receipts. In addition, it prohibits businesses from printing any information on a receipt, other than information strictly related to the transaction. In addition, it requires businesses to offer all customers a choice between an email, text, or paper receipt, or no receipt at all.

The author recently took an amendment to address opposition concerns about the bill. Specifically, instead of requiring customers to proactively ask for a printed receipt, it requires that they be offered the receipt options enumerated above.

In order to reduce the privacy risks associated with requiring the collection of email addresses and telephone numbers, Committee amendments limit the other provisions of the bill only to business that are already covered under the California Consumer Protection Act (CCPA). Committee amendments do not affect the banning of BPA and BPS in receipts, however.

The question before this Committee is whether or not the environmental impact of the proposed policies is worth any erosion of Californians' privacy rights and/or consumer protections that may be required in order to achieve the stated goals of the author. The answer appears, unfortunately, that beyond banning the use of toxic chemicals, it is unclear that this bill makes a significant difference in the amount of paper waste and may, in fact, unintentionally increase electronic waste. Therefore, the bill may result in an expansion in the number of the businesses that collected telephone numbers and email addresses and that does pose some level of privacy risk for customer, with very little, if any benefit.

This bill is sponsored by Californians Against Waste and supported by a large coalition of environmental organizations, including Greenpeace USA and Save the Bay. One organization, the National Association of Advertisers, opposes the bill. Finally, a large number of business organizations, including the California Chamber of Commerce, and the California Restaurants, Retailers, and Grocers Associations, have an "oppose unless amended position." "They have all agreed to remove their opposition if the scope of this bill is confined to removing BPA and BPS by January 1, 2025.

This bill previously passed the Assembly Natural Resources Committee on an 8-2-1 vote.

SUMMARY: Beginning January 1, 2024, prohibits the use of bisphenol A (BPA) or bisphenol S (BPS) in printed receipts. Establishes additional receipt requirements for businesses subject to the California Consumer Privacy Act (CCPA). Specifically, **this bill:**

- 1) Defines a “proof of purchase” as a receipt for the retail sale of food, alcohol, or other tangible personal property, or for the provision of services, provided at the point of sale.
- 2) Prohibits proofs of purchase from containing BPA or BPS.
- 3) Requires a business, as defined, to offer customers the following options for a proof of purchase:
 - a) An email proof of purchase.
 - b) A text message proof of purchase.
 - c) A paper proof of purchase.
 - d) No proof of purchase
- 4) Prohibits paper receipts from containing any information that is not essential to the transaction, including coupons or advertisements.
- 5) Prohibits a business from printing a receipt if the customer opts not to receive a paper receipt, unless otherwise required by state or federal law.
- 6) Establishes civil penalties for violations of this statute in the amount of \$25 for each day a business is in violation of the law, up to a maximum of \$300 per year.
- 7) Defines a “business” that is subject to this statute as a person that accepts payment through cash, credit or debit transactions and has a gross annual revenue of at least \$25 million and is subject to the CCPA.
- 8) Establishes that “items nonessential to the transaction” include, but are not limited to, coupons or advertisements.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)
- 2) Requires, except in specified situations, that retailers making sales of tangible personal property shall collect the tax from the purchaser and give the purchaser a receipt, as specified. (Rev. & Tax Code Sec. 6203.)
- 3) Establishes the California Consumer Privacy Act (CCPA). (Civ. Code §§ 1798.100-1798.199.100.)
- 4) Provides that the CCPA applies to any for-profit entity that collects consumers’ personal information, does business in California, and meets one or more of the following criteria:
 - a) It had gross annual revenue of over \$25 million in the previous calendar year.
 - b) It buys, receives, or sells the personal information of 100,000 or more California residents, households, or devices annually.

- c) It derives 50% or more of its annual revenue from selling California residents' personal information. (Civ. Code § 1798.140(d).)
- 5) Defines "consumer" as a natural person who is a California resident. (Civ. Code § 1798.140(i).)
 - 6) Provides a consumer, subject to exemptions and qualifications, various rights, including the following:
 - a) The right to know the business or commercial purpose for collecting, selling, or sharing personal information and the categories of persons to whom the business discloses personal information. (Civ. Code § 1798.110.)
 - b) The right to request that a business disclose the specific pieces of information the business has collected about the consumer, and the categories of third parties to whom the personal information was disclosed. (Civ. Code § 1798.110.)
 - c) The right to request deletion of personal information that a business has collected from the consumer. (Civ. Code § 1798.105.)
 - d) The right to opt-out of the sale of the consumer's personal information if the consumer is over 16 years of age. (Sale of the personal information of a consumer below the age of 16 is barred unless the minor opts-in to its sale.) (Civ. Code § 1798.120.)
 - e) The right to equal service and price, despite the consumer's exercise of any of these rights, unless the difference in price is reasonably related to the value of the customer's data. (Civ. Code § 1798.125.)
 - 7) Defines "personal information" as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information includes such information as:
 - a) Name, alias, postal address, unique personal identifier, online identifier, IP address, email address, account name, social security number, driver's license number, passport number, or other identifier.
 - b) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
 - c) Biometric information.
 - d) Internet activity information, including browsing history and search history.
 - e) Geolocation data.
 - f) Professional or employment-related information. (Civ. Code § 1798.140(v).)

- 8) Establishes administrative penalties for CCPA violations, to be recovered through administrative enforcement actions brought by the California Privacy Protection Agency (Privacy Agency). (Civ. Code § 1798.155.)
- 9) Provides five years from the date upon which a violation of the CCPA occurred for the Privacy Agency to bring an administrative enforcement action. (Civ. Code § 1798.199.70.)
- 10) Establishes civil penalties for CCPA violations, to be recovered through a civil action brought on behalf of the people of the state of California by the Attorney General. (Civ. Code § 1798.199.90(a).)
- 11) Prohibits the Attorney General from filing a civil action under the CCPA after the Privacy Agency has issued a decision or an order against that person for the same violation. (Civ. Code § 1798.199.90(d).)
- 12) Pursuant to the Integrated Waste Management Act (Pub. Reso. Code § 40000 et seq.):
 - a) Requires that local governments divert at least 50% of solid waste from landfill disposal and establishes a statewide goal that 75% of solid waste be diverted from landfill disposal by 2020.
 - b) Requires commercial waste generators, including multi-family dwellings, to arrange for recycling services and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste from businesses.
 - c) Requires generators of specified amounts of organic waste to arrange for recycling services for that material.

FISCAL EFFECT: As currently in print this bill is keyed fiscal

COMMENTS:

1) **Purpose.** This bill would ban the use of the chemicals bisphenol A (BPA) and bisphenol S (BPS) in printed consumer receipts by January 1, 2024. Additionally, this bill seeks to reduce paper waste in California by requiring businesses to offer customers the option between an electronic receipt, paper receipt and no receipt. Finally, the author also proposes to reduce paper waste by prohibiting businesses from printing any extraneous information on a receipt.

2) **Author's statement.** According to the author:

With the increasing adoption of e-receipts, paper receipts have become unnecessary and antiquated. Yet many businesses are still providing paper receipts, many of which are coated with toxic chemicals that makes them harmful to human health and nearly impossible to recycle. According to Green America's Skip the Slip report, over 3 million trees and 10 billion gallons of water in the United States are used to create proof of purchase receipts. That's a lot of environmental impact for something that we generally don't need, especially if you're just buying a pack of gum or getting a cup of coffee to-go. This bill would reduce waste and ensure that we don't expend valuable resources by simply requiring businesses to only provide a receipt upon the request of the customer. Printed receipts would have to be BPA/BPS free and not be longer than necessary.

3) **What this bill does.** In an effort to address the environmental concerns related to paper receipts, this bill, as proposed to be amended, would do the following:

1. Eliminate the use of BPA and BPS in all receipts.
2. For a business that is subject to the CCPA (essentially, one that makes over \$25 million in gross revenue per year), impose the following restrictions:
 - A. Require that the business offer its customers a choice in how they obtain a receipt. The customer can continue to receive a paper receipt, opt for an e-receipt delivered over text or email, or can opt out of receiving a receipt all together. These choices are already commonplace in many businesses and should be familiar to customers.
 - B. Prohibit the business from printing anything that is not essential to the transaction on a paper receipt.
 - C. Prohibit the printing of a paper receipt if the customer opts not to receive one. In other words, their systems can not automatically print a receipt that the business then throws in the trash.
 - D. Establish a modest civil penalty. Under this bill, a business would receive a warning for the first and second violations, and be liable for \$25 each day thereafter that the business is in violation, but not to exceed \$300 annually. (To underscore how modest these penalties are, staff notes that businesses found to be in violation of the CCPA may be liable for up to \$2,500 per violation, or up to \$7,500 per intentional violation, in an action brought by the Attorney General.)

4) **The California Consumer Protection Act (CCPA).** In 2018, the Legislature enacted the California Consumer Privacy Act (AB 375 (Chau, Chap. 55, Stats. 2018)), which gives consumers certain rights regarding their personal information, such as: (1) the right to know what personal information that is collected and sold about them; (2) the right to request the categories and specific pieces of personal information the business collects about them; and (3) the right to opt-out of the sale of their personal information, or opt-in, in the case of minors under 16 years of age. The CCPA was the byproduct of compromises made between business interests on one side, and consumer and privacy interests on the other, to provide a legislative alternative to a ballot initiative on the same subject.

Subsequently, in 2020, California voters passed Proposition 24, the California Privacy Rights Act (CPRA), which established additional privacy rights for Californians. With the passage of the CCPA and the CPRA, California now has the most comprehensive laws in the country when it comes to protecting consumers' rights to privacy.

In addition, Proposition 24 created the California Privacy Protection Agency (Privacy Agency) in California, vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA and the CPRA. The Agency's responsibilities include updating existing regulations, and adopting new regulations.

A violation of the CCPA is punishable either through administrative penalties, to be recovered through administrative enforcement actions brought by the Privacy Agency, or civil penalties

recovered through a civil action brought on behalf of the people of the state of California by the Attorney General.

5) **Receipts.** According to the Natural Resources Committee’s analysis of this bill:

Point-of-sale receipts in California are generally printed on white thermal paper, which is very thin, lightweight paper coated with a material that changes color when heated. Generally, this coating contains significant amounts of either BPA or BPS. According to the American Forest and Paper Association (AFPA), receipt paper used in California almost exclusively uses BPS. Because thermal paper is so thin, it generally contains no recycled content, and thermal paper is generally not recyclable.

While paper is 15.5% of the state’s disposed waste stream, receipts make up a small percentage of the total paper disposed in California. Estimates vary on the amount of receipt paper used in the US. According to the AFPA, the US annually uses approximately 180,000 tons of paper receipts. Grand View Research, which provides market information, estimates that around 280,000 tons of thermal paper is used in the US each year for receipts. California-specific data is not available.

6) **Bisphenols.** Also according to the Natural Resources Committee analysis:

Bisphenols, including BPA, BPS, and other forms like bisphenol F, are endocrine disrupters that are associated with possible cancer and reproductive risks. According to the United States Environmental Protection Agency (US EPA), BPA is a reproductive, developmental, and systemic toxicant in animal studies and is weakly estrogenic, leading to questions about its potential impact on children’s health and development. The US EPA notes that exposure to BPA (and BPS) may occur during manufacture and use of thermal paper and at its end-of-life. In one 2010 study, BPA was detected at levels between 0.8% and 2.8% of the total weight of the receipts tested. Moreover, the amount of BPA that is absorbed through the skin increases if hand sanitizer or hand cream had been applied prior to handling the receipt. Once touched, BPA can also be transferred by a cashier or consumer’s hands to other surfaces, like food.

7) **Committee amendments.** In order to protect the privacy rights of consumers by not requiring smaller businesses to begin collecting and storing customers’ personal information in order to provide the option of electronic receipts, Committee amendments limit the businesses that are subject to the provisions of this bill to those already bound by the privacy protections included in the CCPA. The amendments to the definition of a “business” will be crafted by Legislative Counsel but in essence should be similar to the following:

(a) (1) “Business” means a person that accepts payment through cash, credit, or debit transactions *and is otherwise subject to the California Consumer Protection Act (Civil Code §§ 1798.100-1798.199.100.)*.

~~(2) “Business” does not include either of the following:~~

~~(A) A health care provider, as defined in Section 123105 of the Health and Safety Code.~~

~~(B) An entity organized as a nonprofit institution that has annual gross sale receipts of less than two million dollars (\$2,000,000).~~

The ban on BPA and BPS however, will continue to apply to all paper receipts in the state.

8) **Analysis.** The question before this Committee is whether or not the environmental impact of the proposed policies is worth any erosion of Californians' privacy rights and/or consumer protections that may be required to achieve the stated goals of the author.

Requiring the removal of toxins from receipts is clearly an important policy. For almost two decades the Legislature has worked to remove bisphenols from all sorts of products, including baby bottles and toys, plastic packaging and cosmetics, to name a few. This bill furthers that work by insuring that something as ubiquitous as paper receipts no longer contain these toxins, which can lead to cancer or inflict reproductive damage on people who come into contact with them.

Committee amendments take care of the remaining privacy concerns. While the proposed Committee amendments take care of the bulk of the privacy concerns, it is important to note that any potential expansion of the businesses that collected telephone numbers and email addresses does pose some level of privacy risk for customers. On a larger scale, anything that fosters the unnecessary collection of new email and cell phone data places retailers and customers at increased risk of being part of a data breach event.

On a more individual level, generally speaking, e-receipts could potentially compromise the privacy of an individual living in the same household as their family. It could have the **unintended consequence** of releasing information that customers might like to keep private. For example, if a teenager purchases a sensitive item, like a pregnancy test or a book about sexuality, the electronic receipt could be visible to other family members who share the same account. Perhaps more crucially, an electronic receipt containing information about any product related to reproductive health or any purchases that may inadvertently disclose someone's gender identity (e.g., a transgender teenage girl still publicly presenting as a boy purchasing make-up or clothing that is traditionally worn by girls) could have serious real world implications if inadvertently disclosed to someone in their household or family. However, under this bill, a customer would retain the right to decline a receipt or get a paper receipt. The Legislature is actively working on multiple fronts to insure that this type of sensitive personal information is strictly controlled and protected.

It remains unclear how much the other policies in the bill will impact the environment. Along with eliminating bisphenols, the bill prohibits paper receipts from containing any information that is not directly related to the transaction, including coupons and advertisements. However, nothing in this bill will prohibit businesses from printing coupons and other information separate from receipts for their customers. The likely approach retailers will take is to stop printing coupons and other information on the actual receipt itself and instead printing it on a secondary slip, either using the same receipt printer or adding a second printer to their systems, thus resulting in no net decrease to paper usage. Specifically, coupons that are currently printed on the backs of receipts will now be required to be printed on a separate piece of paper. So, while the author's stated goal of shortening receipts will technically be achieved, the goal of reducing paper waste will not.

9) **Related legislation.** AB 161 (Ting, 2019) was substantially similar to this bill. It was held in the Senate Appropriations Committee.

ARGUMENTS IN SUPPORT. The sponsors of the bill, Californians Against Waste, argue:

AB 1347, which would reduce waste, conserve valuable resources, and limit exposure to toxic chemicals by simply requiring businesses to give consumers the choice between a printed, digital, or no receipt. Despite rising consumer popularity and expanded availability of e-receipts, many businesses still provide paper receipts. In 2021, the United States used 284,000 metric tons of receipts that are effectively impossible to recycle due to toxic coatings in thermal receipt paper.

In 2021, receipts generated 334,000,000 pounds of waste. In a survey from Green America regarding consumer receipt preferences, respondents said they threw away or lost 49 percent of paper receipts they received, even if they intended to keep the receipt. This outdated technology simply does not match current consumer lifestyles. In a survey from Green America, 86 percent of respondents want retailers to offer digital receipts as an option due to environmental concerns and for easier storage. AB 1347 would give consumers the option to choose between a printed, digital, or no receipt, which matches what consumers already prefer.

93% of receipts are coated in Bisphenol-A (BPA) or Bisphenol-S (BPS) for text to appear on the receipt. BPA and BPS are easily transferred through surface contact which can contaminate paper collected for recycling. The easy spread of BPA and BPS also poses a risk to human health, as both BPA and BPS can easily be absorbed through the skin and enter the bloodstream. BPA and BPS are endocrine disruptors linked to numerous health concerns including fetal development issues, reproductive impairment, Type 2 diabetes, thyroid conditions and other health concerns. AB 1347 would require all printed receipts to be free of BPA and BPS, limiting consumers' exposure to these toxic substances and eliminate the chance of contamination in recycling facilities.

In addition to echoing the concerns outlined by the sponsor, a large coalition of environmental groups supporting the bill adds:

Over 3.5 million trees and 10 billion gallons of water were used to manufacture receipts every year in the United States. This is a tremendous investment in resources for an item that the average person throws away. As we continue to mitigate the effects of climate change, it is imperative that we also minimize the waste of valuable resources to manufacture a product that can readily be replaced through available technology.

ARGUMENTS IN OPPOSITION. While only one organization has expressed outright opposition to the bill, a large number of groups have an “oppose unless amended” position. A coalition of organizations, including the California Chamber of Commerce, the California Restaurant Association, the California Retailers Association, and the California Grocers Association writes:

The bill has several problematic provisions including one which mandates that most businesses providing receipts collect personal information. Specifically, the bill requires businesses offer an electronic receipt if the consumer chooses. It also mandates that businesses give consumers the option to receive a receipt and places limits on the speech that can be included on paper receipts.

However, we would remove our opposition if the above provisions were eliminated and the bill prohibits BPA and BPS in receipts as of January 1, 2025 which is when adequate

supplies of BPA- and BPS-free paper will be available. Without these amendments, this bill is detrimental to consumers and difficult for businesses to comply.

AB 1347 will require businesses to provide consumers with the option not to get a receipt or to receive an electronic receipt. While some businesses do provide this choice, other retailers, grocers and restaurants utilize receipts to decrease theft. A growing number of businesses check receipts as consumers exit their stores which helps to reduce theft. Authorizing a consumer to opt out of receiving any proof of purchase makes it impossible to know who has purchased the products they are walking out with.

Requiring businesses to offer an electronic receipt is also problematic. Not all businesses have point-of-sale (POS) systems that enable them to collect emails and send electronic receipts. In fact, some specifically do not want to collect such consumer information because it may make them subject to the California Privacy Rights Act. CPRA compliance is especially cumbersome and costly for small and medium-sized businesses. Also, in environments like drive throughs, there is generally not a way to have a consumer enter their email from their vehicle.

[. . .]

This bill further prohibits the inclusion of any information that is not essential to the transaction, including but not limited to coupons and advertisements. We believe this provision raises constitutional questions. Restricting what can and cannot be printed on a receipt is a limit of commercial speech. Businesses add information to receipts that cover a wide variety of topics — not simply coupons or advertisements. Under this bill, a business would be prohibited from encouraging customers to vote in an upcoming election or to support a community event or charity.

Additionally, we believe that the provision cited above is anti-consumer. This bill explicitly prohibits a business from providing coupons on paper receipts. This greatly limits California consumers' ability to access coupon-based savings.

We know that millions of customers utilize receipt coupons. Banning this access to cost savings will harm those who use coupons to save money on essential grocery and other items.

REGISTERED SUPPORT / OPPOSITION:

Support

5 Gyres Institute
7th Generation Advisors
Active San Gabriel Valley
Ban Single Use Plastic (SUP)
Breast Cancer Prevention Partners
California Product Stewardship Council
Californians Against Waste (sponsor)
Clean Water Action
Climate Action California
Climate Reality Project, Los Angeles Chapter

Climate Reality Project, San Fernando Valley
Educate. Advocate.
Environmental Working Group
Facts Families Advocating for Chemical and Toxics Safety
Fort Ord Environmental Justice Network
Friends Committee on Legislation of California
Friends of The Earth
Friends of The Earth US
Global Alliance for Incinerator Alternatives (GAIA)
Green America
Greenpeace USA
Heal the Bay
LAANE (Los Angeles Alliance for A New Economy)
National Stewardship Action Council
Natural Resources Defense Council (NRDC)
Northern California Recycling Association
Plastic Free Future
Plastic Oceans International
Plastic Pollution Coalition
Rethinkwaste
Santa Cruz Climate Action Network
Save Our Shores
Sierra Club California
Surfrider Foundation
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education
The Story of Stuff Project
Upstream
Wishtoyo Chumash Foundation
Zero Waste USA

Oppose Unless Amended

American Forest & Paper Association
Auto Care Association
California Automotive Wholesalers' Association
California Chamber of Commerce
California Fuels and Convenience Alliance
California Grocers Association
California Manufacturers and Technology Association
California Restaurant Association
California Retailers Association
Electronic Frontier Foundation
Paper Receipts Converting Association
The Toy Association

Opposition

Association of National Advertisers

Analysis Prepared by: Julie Salley / P. & C.P. / (916) 319-2200