

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2244 (Ting)
Version: May 16, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Product safety: proofs of purchase: bisphenols

DIGEST

The bill prohibits a proof of purchase provided to a consumer from containing bisphenol A (BPA), on or after January 1, 2025, or any bisphenols on or after January 1, 2026. A violation of these provisions subjects a business to a civil penalty, as provided. The bill defines various terms for these purposes.

EXECUTIVE SUMMARY

Every year millions of paper receipts are printed by businesses. These receipts can have a detrimental impact on the environment and pose health risks as many paper receipts are coated with bisphenol-A (BPA) or bisphenol-S (BPS), which are known endocrine-disruptors. This bill prohibits receipts from containing any intentionally added BPA on January 1, 2025, and any intentionally added bisphenols on January 1, 2026. A violation of these provisions is punishable by a civil penalty not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for each subsequent violation. The Department of Toxic Substances and Control (DTSC), the Attorney General, a county counsel, a district attorney, or a city attorney is authorized to enforce these provisions. This bill is substantially similar to AB 161 (Ting, 2019) and AB 1347 (Ting, 2023), both of which passed this Committee but ultimately were held in the Senate Appropriations Committee. The bill is author sponsored. The bill is supported by various environmental advocacy organizations, including Breast Cancer Prevention Partners and the Natural Resources Defense Council. The bill was opposed by the American Forest and Paper Association, but they have moved to neutral. The bill passed the Senate Environmental Quality Committee on a vote of 6 to 0. The author agreed to amendments in the Senate Environmental Quality Committee that, due to timing, will be taken in this Committee. They are included in the mock-up at the end of this analysis.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires that local governments divert at least 50 percent of solid waste from landfill disposal, and establishes a statewide goal that 75 percent of solid waste be diverted from landfill disposal by 2020, and annually thereafter. (Pub. Res. Code §§ 41780 & 41780.01.)
- 2) 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. (Pub. Res. Code §§ 42649 et. seq.)
- 3) Requires generators of specified amounts of organic waste to arrange for recycling services for that material. (Pub. Res. Code §§ 42649.8 et. seq.)

This bill:

- 1) Prohibits a paper proof of purchase provided to a consumer by a business from containing BPA on and after January 1, 2025, and from containing any bisphenols on and after January 1, 2026.
- 2) Provides that a violation of 1), above, is punishable by a civil penalty not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for each subsequent violation.
- 3) Authorizes DTSC, the Attorney General, a district attorney, a county counsel, or a city attorney to enforce these provisions. A prevailing plaintiff is entitled to an award of reasonable attorney's fees and costs.
- 4) Authorizes DTSC adopt regulations to implement, interpret, or make specific these provisions, and requires DTSC to post any violation or enforcement action on the department's internet website.
- 5) Defines the following terms:
 - a) "Business" means a person that accepts payment through cash, credit, or debit transactions.
 - b) "Business" does not include any of the following:
 - i. a health care provider, as defined in Section 123105 of the Health and Safety Code;
 - ii. an entity organized as a nonprofit institution that has annual gross sale receipts of less than two million dollars (\$2,000,000); or
 - iii. except for purposes of the prohibition in 4), above, an entity that is not subject to the California Consumer Privacy Act of 2018 (Title

1.81.5 (commencing with Section 1798.100) of Part 4 of Division 3 of the Civil Code).

- c) "Consumer" means a person who purchases, and does not offer for resale, food, alcohol, other tangible personal property, or services.
- d) "Manufacturer" means the person that makes the paper for the paper proof of purchase from raw materials or machinery.
- e) "Person" includes any individual, firm, association, organization, partnership, limited liability company, business trust, corporation, or company.
- f) "Proof of purchase" means 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, but does not include an invoice.

COMMENTS

1. Stated need for the bill

The author writes:

Receipts generate millions of pounds of waste and billions of pounds of carbon dioxide emissions per year. This non-recyclable receipt waste contaminates recyclable paper materials and is extremely harmful to human health. Handling receipts on a day to day basis is known to pose high exposure to BPA and BPS- two chemicals linked to cancer and other major health-related issues.

This bill would prohibit the use of all intentionally added bisphenol chemicals in paper receipts, which will further protect the general public by eliminating toxic contamination in paper waste and will maximize our ability to recycle paper products. It's critical that both businesses and manufacturers make the switch to safer alternatives of paper receipts to help better protect our cashiers and consumers.

2. Bisphenols in paper receipts pose health risks to the public

Paper receipts are a ubiquitous part of our economy, with some estimates finding that "cashiers, waiters, banks, and many other employees handle as many as 30 receipts per hour."¹ Most receipts are printed on thermal paper and "because of the way the ink develops, BPA and BPS are added in their free form without being bound to the paper or polymerized[,]" which leads to the chemicals transferring easily to anything the

¹ Ecology Center, *Receipt Paper Study 2018 Findings Overview*, available at <https://www.ecocenter.org/our-work/healthy-stuff-lab/reports/more-you-bargained-receipt-paper-study-2018/receipt-paper-study>.

thermal paper touches.² In 2016, the European Union banned the use of BPA in thermal receipts to take effect in 2020, and classified BPA as a “substance that has toxic effects on our ability to reproduce.”³ In the United States, Connecticut became the first state to ban the manufacture, sale, or distribution of thermal receipt paper or cash register receipt paper containing BPA, with similar bans being enacted by Illinois and Washington.⁴

Proposition 65, a state initiative measure, was approved on November 4, 1986, and became effective on January 1, 1987. It enacted the Safe Drinking Water and Toxic Enforcement Act of 1986 (“the Act”), (Health and Saf. Code § 25249.5 et seq.). The Act places two main requirements on businesses. The first is a prohibition on knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity (hereinafter “chemical”) into water or onto land where the chemical has a certain likelihood of passing into a source of drinking water. The second is the more well-known warning requirement. It prohibits any person, in the course of doing business, to knowingly and intentionally expose any individual to a chemical without first giving clear and reasonable warning to such individual. Both have exemptions enumerated in the Act and neither applies to persons employing fewer than 10 employees in the person’s business or to most governmental entities. The Act is administered by the Office of Environmental Health Hazard Assessment (OEHHA).

In May 2015, OEHHA listed BPA on the Proposition 65 list for causing reproductive toxicity and in December 2020 for causing developmental toxicity. BPS was listed in December 2023 for causing reproductive toxicity. OEHHA considered, but did not ultimately list BPA as a carcinogen. Additionally, in 2011 AB 1319 (Butler, Ch. 467) was enacted and banned the use of BPA in any bottle or cup designed for children three years of age or younger. A year later, the United States Food and Drug Administration followed suite and banned the use of BPA in baby bottles and cups.

In light of the negative impacts posed by bisphenols, the bill prohibits a receipt provided to a consumer by a business from containing BPA on and after January 1, 2025, or any bisphenols on and after January 1, 2026. The bill defines “business” as a person that accepts payment through cash, credit, or debit transactions, and specifies that a business does not include a health care provider or an entity organized as a nonprofit institution that has annual gross sale receipts of less than \$2 million. The bill also provides that a business does not include an entity that is not subject to the CCPA, except as specified. BPA and bisphenols are defined as either BPA or bisphenols that were intentionally added by a manufacturer or that are an intentional breakdown

² Safer Chemicals Healthy Families, *New report: 9 out of 10 receipts contain toxic BPA or BPS* (Jan, 17, 2018), available at <https://saferchemicals.org/2018/01/17/new-report-9-out-of-10-receipts-contain-toxic-bpa-or-bps/>.

³ ECHA, *Bisphenols* available at <https://www.echa.europa.eu/hot-topics/bisphenols>.

⁴ C.G.S.A. § 21a-12e; 415 ILCS 5/22.59; 70A.335 RCW.

products of an added chemical that also has a functional or technical effect in the product.

A violation of the bill is punishable by a civil penalty not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for each subsequent violation. DTSC, the Attorney General, a district attorney, and a city attorney are authorized to enforce these provisions. The bill provides a prevailing plaintiff is entitled to attorney fees and costs. DTSC is required to post any violation or enforcement action of these provisions on its website, and authorizes it to adopt regulations.

3. Senate Environmental Quality Committee amendments to the definition of bisphenol A and bisphenols

The author agreed to amendments in the Senate Environmental Quality Committee that, due to timing, will be taken in this Committee. The amendments clarify the bill to ban “intentionally added bisphenol A” and “intentionally added bisphenol” and instead define those terms. These amendments are included in the mock-up at the end of the analysis.

4. Proposed Committee amendments

As noted above, this bill is substantially similar to AB 1347 (Ting, 2023), which included requirements that businesses provide a consumer the option of not receiving a paper receipt, in addition to the ban on bisphenols. Because of these provisions, AB 1347 was referred to the Assembly Committee on Privacy and Consumer Protection and an amendment was taken to exempt businesses that were not subject to the California Consumer Privacy Act (CCPA) from the bill, except for the ban on bisphenols. Additionally, the bill provided that a proof of purchase did not include an invoice. As this bill does not contain the option to opt out of receiving a paper receipt, these provisions are no longer necessary and; therefore, the author has agreed to remove them from this bill. These amendments are included in the mock-up at the end of the analysis.

5. Statements in support

The Breast Cancer Prevention Partners, Californians Against Waste, Clean Water Action, Cleaneearth4kids.org, Environmental Working Group, and the Natural Resources Defense Council write in support, stating:

Our exposure to bisphenols is ubiquitous and continuous. According to CDC data, approximately 90% of Americans have BPA and BPS in our bodies. They disrupt the very sensitive balance of our hormones and have profoundly negative impacts at very low levels. BPA and BPS are structurally very similar to each other – and to estrogen, hence their designation as “estrogen mimickers.” Early life exposures are

particularly concerning because this developmental period is when endocrine disrupting chemicals have their biggest and longest-lasting impacts. [...] Bisphenols have been linked to numerous health harms, including low birth weight, fertility problems, obesity, and an increased risk of breast and other cancers. Both BPA and BPS are listed on California’s Prop 65 list of chemicals known to the state to cause reproductive harm. In a clear case of what is referred to as “regrettable substitution,” the more historical use of BPA in thermal receipt paper has almost completely been replaced by BPS. As documented in a report released early last year, Receipt Deceit: Toxic Chemicals in Receipt Paper, testing conducted by the Ecology Center found that only about 1% of the over 350 receipts tested contained BPA; however, nearly 80% contained BPS. This shift from one Prop 65 chemical to another shows the need to deal with bisphenols as a class, to prevent future toxic substitutions. The good news from the 2023 study is that the use of non-bisphenol receipt paper alternatives increased from 2% in 2017 to 20% in 2023, showing that a shift away from bisphenols is doable.

6. Opposition is now neutral

The American Forest and Paper Association was opposed to the bill, but they have moved to neutral based on recent amendments to the bill.

SUPPORT

A Voice for Choice Advocacy
Breast Cancer Prevention Partners
Californians Against Waste
Clean Water Action
Cleaneearth4kids.org
Environmental Working Group
Green America
Natural Resources Defense Council

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1347 (Ting, 2023) *see* Executive Summary and Comment 4.

AB 161 (Ting, 2019) *see* Executive Summary.

PRIOR VOTES

Senate Environmental Quality Committee (6 Ayes, 0 Noes)

Assembly Floor (Ayes 55, Noes 16)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Judiciary Committee (Ayes 9, Noes 3)

Assembly Environmental Safety and Toxic Materials Committee (Ayes 5, Noes 2)

MOCK-UP OF AMENDMENTS TO AB 2244 (TING)⁵

Chapter 12.3 (commencing with Section 108943) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 12.3. Proof of Purchase

108943. For purposes of this chapter, the following definitions apply:

(a) ~~“Bisphenol”~~ *“Intentionally added bisphenol A”* means ~~either of the following:~~

~~(1) Bisphenol bisphenol A that a manufacturer has intentionally added to a product and that has a functional or technical effect in the product.~~

~~(2) Bisphenol product, including bisphenol A that is an intentional breakdown product of an added chemical that also has a functional or technical effect in the product.~~

(b) ~~“Bisphenols”~~ *“Intentionally added bisphenols”* means ~~either of the following:~~

~~(1) Bisphenols bisphenols that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product.~~

~~(2) Bisphenols product, including bisphenols that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product.~~

(c) (1) *“Business”* means a person that accepts payment through cash, credit, or debit transactions.

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

(A) A health care provider, as defined in Section 123105.

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

~~(C) Except for purposes of subdivision (b) of Section 108943.1, an entity that is not subject to the California Consumer Privacy Act of 2018 (Title 1.81.5 (commencing with Section 1798.100) of Part 4 of Division 3 of the Civil Code).~~

(d) *“Consumer”* means a person who purchases, and does not offer for resale, food, alcohol, other tangible personal property, or services.

⁵ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Manufacturer" means the person that makes the paper for the paper proof of purchase from raw materials or machinery.

(g) "Person" means any individual, firm, association, organization, partnership, limited liability company, business trust, corporation, or company.

(h) "Proof of purchase" means 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, ~~but does not include an invoice.~~ *sale.*

108943.1. (a) (1) On and after January 1, 2025, a paper proof of purchase provided to a consumer by a business or created by a manufacturer shall not contain *intentionally added* bisphenol A.

(2) On and after January 1, 2026, a paper proof of purchase provided to a consumer by a business or created by a manufacturer shall not contain any *intentionally added* bisphenols.

(b) The department may adopt regulations to implement, interpret, or make specific this chapter.

(c) The department shall post any violation or enforcement action of this chapter on the department's internet website.

(d) The department shall deposit all penalties collected pursuant to this chapter into the Toxic Substances Control Account for the department to use upon appropriation by the Legislature to enforce this chapter.

(e) (1) The department, the Attorney General, a district attorney, a county counsel, or a city attorney may enforce this section. A violation shall be punishable by a civil penalty not to exceed five thousand dollars (\$5,000) for a first violation, and not to exceed ten thousand dollars (\$10,000) for each subsequent violation.

(2) A prevailing plaintiff who establishes a violation of this chapter shall be entitled to an award of reasonable attorney's fees and costs.