

June 13, 2019

Chairwoman Hannah-Beth Jackson  
Senate Judiciary Committee  
State Capitol, Room 2187  
Sacramento, California 95814

**RE: Opposed - AB 161 (Point of Sale Receipts)**

Dear Chairwoman Jackson:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on behalf of the payments industry regarding AB 161. **ETA is opposed to AB 161** because it would increase the cost for California merchants to process electronic payments, require that merchants collect more personal information that is currently required, and slow down the ability of merchants to serve customers. This bill will also include a number of privacy provisions which are

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, mobile payment service providers, data aggregators, mobile wallet providers and non-bank online lenders that make commercial loans to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and business lending alternatives.

**Specific Comments**

This bill would require merchants who accept payment through credit or debit card to provide a proof of purchase electronically, unless the consumer requests that the proof of purchase be provided in paper form or the consumer declines to provide the information necessary to provide the consumer with a receipt in electronic form. **We oppose this mandate and instead we respectfully request that the bill instead make it optional for a business to provide an electronic, text or paper receipt.**

**New Equipment Needed**

Many California merchants do not have point of sale equipment or software integration on the backend to handle both accepting personal contact information (email, telephone numbers) and producing an electronic receipt. In order to do so, California merchants would be required to purchase or lease new point of sale equipment and contract for services that could provide electronic receipts.

To understand the significant challenges posed by this legislation it is useful to understand that merchant processing service agreements are typically negotiated between a merchant, acquiring bank, and acquirer processor. In most instances, the agreements are negotiated on an individual merchant basis and the terms are based on characteristics unique to that merchant. Merchant characteristics taken into consideration include goods and services offered, anticipated volume of debit and credit card transactions, and the complexity of the merchant's business model. In many cases this legislation could require these contracts to be altered to provide new services and to purchase or lease new point of sale equipment at the costs of the merchant.

### Personal Information Collection

This bill would require companies to ask for personal information such as emails or phone numbers in order to deliver electronic receipts. This requirement presents a number of challenges for merchants including data security components that come with additional collection and storing of personal information. Additionally, the requirement to ask for contact information in which to supply an electronic receipt may increase the timeframe at check out. The California Consumer Privacy Act requires that businesses make specific disclosures before collecting any personal identifying information, including information like email addresses. At high volume merchants, this added step at checkout would negatively affect the number of customers it could serve or negatively affect the seamless way consumers expect their relationship with merchants to be.

The Song-Beverly Credit Card Act (Song-Beverly) imposes civil penalties for certain practices with respect to capturing and recording personal information in cardholder transactions.<sup>1</sup> AB 161 could provide conflicting requirements with Song-Beverly that could confuse merchants and either slow compliance or make compliance impossible.

### Marketing

The bill would prohibit the use for marketing of personal information collected to provide a cardholder a receipt in electronic form. Many small merchants use emails to send their customers news about events, coupons, or discounts. This bill would make the mandatory collecting of personal information like emails less useful for small businesses to market to existing customers while adding compliance challenges with the California Consumer Privacy Act.

### Private Right of Action

This bill includes a private right of action that could lead to significant costs for compliance including pricing in of the risk of lawsuits which would be passed onto customers. ETA opposes the private right of action introduced by this bill.

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<sup>1</sup> See Cal. Civ. Code § 1747.08

Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at [stalbott@electran.org](mailto:stalbott@electran.org).

Sincerely,



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Cc: Assemblymember Philip Ting  
Members of the Senate Judiciary Committee