Bill No: SB 926       Hearing Date: May 18, 2020
Author: Hill         Fiscal: Yes
Version: May 13, 2020
Urgency: No
Consultant: Dana Shaker

Subject: Business: retail locations: cash payments

SUMMARY: Requires businesses to accept cash for the sale of goods or services, with specific exceptions, and enforces penalties if they do not do so.

Existing law:

1) Establishes the Department of Justice (DOJ) within the Executive Branch. DOJ is under the direction and control of the Attorney General (AG). (Government Code (GC) § 15000)

2) States that the AG is in charge, as attorney, of all legal matters in which the State is interested, except in the business of The Regents of the University of California and of other boards or officers as are by law authorized to employ attorneys. (Gov. Code § 12511)

3) Establishes the Public Rights Law Enforcement Special Fund within the State Treasury, administered by the Department of Justice (DOJ), to support the Attorney General in investigating and prosecuting any matter within the authority of the DOJ’s Public Rights Division. (Gov. Code § 12530)

4) Establishes that coins are legal tender for all debts, public charges, taxes, and dues in the United States. (31 USC § 5103)

This bill:

1) Requires that, for a transaction not exceeding $5,000, a retail location in the state must accept cash when offered by a consumer at that specific retail location for any sale of goods or services.

2) Defines a retail location as one that operates at a fixed location and has a permanent address.

3) Allows a retail location to not accept cash at every point of sale at that retail location. However, retail locations must make every effort to have as many points of sale that accept cash as those that do not.

4) Requires retail locations to ensure the points of sale that accept cash are as accessible as points of sale that do not accept cash.
5) Exempts the following from the requirement to accept cash:

a) A transaction completed online, by mail, via telephone, through a catalogue, or at any location other than the defined retail location, as long as the transaction is completed at any location other than the retail location and where the transaction is complete when the purchaser has received goods, services, or both;

b) A retail location that only sells or leases goods or services via mail, telephone, online, through a catalogue, or at any location other than a retail location;

c) A transaction for the rental of goods, services, or accommodations for which posting of collateral or security is typically required;

d) A retail location that cannot accept cash payment due to any other law;

e) All transactions, including membership fees, at wholesale clubs that sell consumer goods and services exclusively through a membership model;

f) Any consumer good or service provided exclusively to employees and others: i) authorized to be on the employer’s premise, ii) where consumer goods or services are provided at a facility whose overwhelmingly predominant purpose is to provide those goods or services to employees and others authorized to be on the employer’s premises, and iii) when the possibility of purchases by nonemployees or others not authorized to be on the employer’s premises is at most incidental to that predominant purpose.

6) Authorizes the Attorney General and District Attorneys to enforce the bill’s provisions. A violation is punishable by a civil penalty of no less than $25 and no more than $500, as determined by the Attorney General. Requires any civil penalty collected to be deposited in the Public Rights Law Enforcement Special Fund for the Attorney General’s use in enforcing this part.

7) Requires that, during a state of emergency, cash acceptance will continue unless inconsistent with public health directives from the State Department of Public Health.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1. Purpose. The Author is the Sponsor of this bill. The Author’s intention is to specifically provide relief for low-income, undocumented, unbanked, and underbanked communities that may not be able to easily access credit due to socioeconomic and other factors. The Author states, “with benefits such as quicker transaction times, businesses that do not accept cash have become a growing trend, which raises concerns about privacy, discrimination, and elitism. Cashless systems require access to a bank account, to systems that load cash to a cash card, or to electronic payment apps, which creates barriers to consumers and requires them to
pay fees and surcharges for these payment products. However, a large population of Californians are unbanked (about 7%), and underbanked/unbanked rates are even higher among people of color, (20.5% black and 14.5% Hispanic Californians are unbanked) the low-income, (27.4% of households earning under $15k/year are unbanked) and disabled (up to 23.7% are underbanked). Hurdles to access a bank account such as proof of residence, social security number etc. also mean that homeless and undocumented populations have higher rates of being unbanked.”

The Author argues this problem is exacerbated by COVID-19: “[i]n light of COVID-19… [b]usinesses are even more so refusing to accept cash and are instead using mobile payment or doorstep delivery, which limit homeless, undocumented, and low-income populations’ access to basic goods. There is also substantial proof that the same populations that tend to be unbanked are also severely impacted by COVID-19. Essential workers are more likely to be living at or below the poverty line, therefore more likely to be unbanked, an estimated 56,000 healthcare workers are also undocumented, and COVID-19 case and death rates tend to be higher in populations of color and homeless population.”

2. **Background.** There have been several laws at the state and local levels in the past to address similar issues. Massachusetts first passed its cashless ban state law in 1978 when credit cards were in their infancy. Without exception, the law prohibits a retail establishment that offers goods and services from denying cash when offered to purchase goods and service, thereby prohibiting discriminating against cash buyers. (Mass. Chapter 255D Section 10A)

Last year, San Francisco, Philadelphia, Berkeley, and New Jersey all passed cashless ban laws, with other places like New York City set to join them. San Francisco’s ordinance requires brick and mortar businesses within the city to accept payment in cash, if offered, for any transaction regarding purchase of goods or services other than professional services, if: a) the business would accept one or more forms of payment, and b) the customer is physically present at the place of business. (San Francisco Ordinance No. 100-19, Sections 5500-5506) Philadelphia’s ordinance prohibits most retail locations from refusing to take cash or charging cash-paying customers a higher price. (Philadelphia Code, Chapter 9-1132) Berkeley’s Ordinance is meant to “ensure Berkeley’s economy is inclusionary and accessible to everyone, including those who lack access to non-cash forms of payment.” (Berkeley Ordinance 7, 681-N.S.) New Jersey’s law requires accepting cash for the purchase of goods and services, with some exceptions for airports, parking facilities, businesses renting motor vehicles, and transactions not conducted in person (telephone, mail, or internet-based transactions). (New Jersey Chapter 56: 8-2.33) The New York City Council voted to ban cashless stores earlier this year, with Mayor Bill De Blasio expected to sign the bill. Each of these new laws attempt to deal with the problem of social and economic inequities for financially vulnerable communities.

California has low-income, undocumented, unbanked, and underbanked populations as well. According to the Public Policy Institute of California, four out of ten Californians were poor or near poor in 2017 and currently 2.53-2.6 million (or around 6% of the state’s population) are undocumented. In 2017, the Federal Deposit Insurance Corporation (FDIC) reported that 7.4% of all California households were
unbanked and 17.6\% are underbanked. Black and Hispanic households were anywhere from 5-7x more disproportionately affected than white households in the unbanked numbers above, and over twice as proportionately affected as white households in the above underbanked numbers.

Proper enforcement authority for this bill lies with the Attorney General and District Attorneys, as the bill acknowledges.

3. **Arguments in Support.** The ACLU of California writes in support, “Though moving towards cashless transactions seems like the mark of an advanced society, it excludes people from access to the marketplace and prevents consumers from asserting privacy interests they may wish to protect in the transaction.”

The California Low-Income Consumer Coalition writes in support, “SB 926 would require retail stores in California to accept cash when offered as payment by a consumer for any transaction involving the sale or lease of goods or services, or both. This would apply to all retail stores unless they meet specific exceptions, like online-only spaces with no physical retail space in California. Though moving towards cashless transactions seems like the mark of an advanced society, it excludes people from access to the marketplace and prevents consumers from asserting privacy interests they may wish to protect in the transaction. Some people, including many of the clients of CLICC’s member legal services organizations, do not have the option of resorting to a cashless transaction. Cashless transactions disproportionately exclude groups like the homeless, the elderly, those who are undocumented, and those who do not have easy access to credit. According to Federal Reserve data, thirteen million Americans were completely “unbanked” in 2018, and rates were notably higher for people of color and low-income households.”

Cardtronics writes in support, “All levels of government are working assiduously to ensure that consumers have the right to choose cash because unlike other forms of payment, cash is an equal opportunity payment option: meaning anyone, regardless of age, race, or income can access cash. Conversely, retail cashless payment acceptance policies are non-inclusive. When merchants mandate cashless payment policies for whatever reason, they are picking and choosing which ‘type’ of customers they want to serve, effectively engaging in payment discrimination…. This practice is particularly harmful to marginalized groups, including vulnerable unbanked and underbanked Americans.”

The Consumer Attorneys of California write in support, “Although technology and consumer preferences have trended toward increasingly cashless systems, business that do not take cash for goods have the effect of excluding unbanked and underbanked individuals who often belong to low-income communities of color. Cashless systems require customers to have access to a bank account, to systems that load cash to a card, or to electronic payment apps, which create barriers to consumers unable to pay fees and surcharges these payment options require. Because in-person purchases tend to be for basic necessities, such as food, clothing, and toiletries, businesses should not be allowed to deny cash as a valid payment method. SB 926 will ensure California businesses are accessible to all people.”
The Consumer Federation of California writes in support, "An increasing number of new cashless stores and restaurants are opening across California, with many established businesses also testing or transitioning to a no cash policy. Basing these new policies on the cost of handling cash, these businesses have excluded significant portions of the population, including some of the state’s most vulnerable. There are many Californians who are unbanked due to a variety of circumstances. The largest percentage of the unbanked are lower-income, with no college education, who may be enduring prolonged economic hardship. Cashless stores deny this population access to these goods and services. The ability to use cash is extremely important given their limited access to debt/credit cards, checks, and online payment systems. Many Californians also choose to use cash because it ensures privacy and anonymity in a way that other financial services cannot, especially in an age of data collection and targeted advertising."

Oakland Privacy writes in support, "This legislation provides privacy for those who prefer not to have their every purchase tracked and made available to commercial and governmental entities. Not everyone wishes for Amazon, Apple, American Express, the NSA, and/or some 120+ ‘data broker companies’ to know what, where, and when they purchased all of what they acquire….It is with these privacy considerations in mind – along with the well-understood problems a cashless society would pose for the unbanked, the underbanked, the homeless and the undocumented – that Oakland Privacy urges you to approve of this legislation."

Strike Debt Bay Area writes in support, "[M]ore and more businesses have defaulted to accepting only credit and debit cards. This is actively detrimental to the large number of Californians who are unbanked and underbanked. At the end of 2018, this combined percentage was calculated at a staggering 25% of the state’s population. Of course, this includes undocumented people who cannot legally get bank accounts, or who have been intimidated from trying, as well as the migrant workers we depend on for our food supply, and the poor and underemployed."

The American Petroleum and Convenience Store Association writes in support, "Many of our stores already are required to accept cash for California Lottery Sales, which goes to support our States Educational System, and we agree that a business environment that does not solely have to pay credit card surcharges is good for Retailers & Customers. Not only in terms of Business environment but many of our customers in different socio-economic neighborhoods use solely cash to purchase food, toiletries and other things necessary for basic quality of living. Businesses should not be allowed to deny cash as a valid payment method. California should ensure its economy is accessible and that all people can benefit from and participate in it."

The United Food & Commercial Workers Union writes in support, "It is hard enough, daunting enough, dispiriting enough, to be poor. To suffer the inconvenience, indignity, and peril of not being able to buy necessities for yourself and your children, and to have to travel long hours on public transit just to buy what you and your children need, even though you have earned money in your wallet, even though there are stores visibly close by, is not only oppressively cruel. It is yet another
practical barrier that keeps working families from clawing their way out of poverty and into safety, security, and prosperity, something we all benefit from.”

4. **Arguments in Opposition.** The California Bankers Association is opposed to this bill unless it is amended, noting “[w]hile we believe your measure is a laudable attempt to ensure retail customers are treated equally regardless of their chosen payment method, this measure will make it more difficult for financial institutions to comply with federal banking law. Specifically, your measure defines “retailer” to include any business with a permanent address and that operates in a fixed location, which presently includes a bank or similar financial institutions. As we expressed to your office earlier this year, banks have strict anti-money laundering rules they must follow to ensure compliance with the Bank Secrecy Act. Banks employ a variety of anti-money laundering safeguards which include prohibiting the use of cash for certain types of transactions. As written, your measure will allow individuals, who are not customers of the bank, to exchange currency (small bills into large bills), to purchase foreign currency or to purchase financial instruments such as traveler’s checks and money orders (bank products) with cash. These type of cash conversions often give rise to suspicion of money laundering; therefore, many banks will only process these transactions for their customers, with whom they have an established account relationship.”

The Southern California Gas Company (SoCalGas) writes with concerns, “While SoCalGas recognizes the challenges and disparities this bill attempts to address in terms of access to traditional banking and lending institutions, as well as debit or credit card access, the bill as currently written, does not exempt retail locations for which an in-person attendant is not required….SoCalGas’s RNG fueling dispensers are operated without a designated employee, because our customers are accustomed to using credit or debit cards as payment. As such, this has allowed SoCalGas the ability to support the State’s ambitious clean energy future in the most cost-effective manner.”

The Western Propane Gas Association, Clean Energy, Natural Gas Vehicles of America, Trillium, California Waste Haulers Council, and California Natural Gas Vehicle Coalition writes requesting an amendment, “Our organizations support the intent of the bill, however, we do not believe the definition of ‘retail location’ is meant to include our businesses…Our alternative fuel fueling stations are located throughout California, including in disadvantaged communities and near ports where air pollution is at its worst, and where low NOx vehicles are most beneficial….Because these stations do not accept cash transactions, without the requested exemption to SB 926, our businesses would incur catastrophic financial harm, the conducting of business would be adversely impacted, hundreds of stations would permanently close, over $300 million in investments would be at risk, hundreds of jobs would be at stake, the bill would result in negative environmental and clean air impacts, our customers would be harmed by depriving them of fuel, route assurance, confidence and ease of payment, and it would negatively impact organizational brands by harming relationships with customers.”
5. **Drafting Questions and Policy Concerns.**

*Protecting Low Income Communities.* Given the statistics, it is important to ensure Californians who do not have access to credit or other card services may continue to use cash as a valid form of legal tender. However, it may also hurt those in the same low-income, undocumented, un- and underbanked communities who run small businesses, or sell goods at local farmers markets and on street corners who might prefer to use credit or non-cash as a form of payment for safety, convenience, or other reasons. While the definition of retail location seems to exclude vendors on streets and at farmers markets presuming there is no fixed location or permanent address, other small businesses with similar concerns will no longer have this option.

*Why Only for Transactions Not Over $5,000?* The bill states that this requirement to accept cash is only for transactions not exceeding $5,000. However, this limitation creates an unequal policy. It is not clear why businesses should be allowed to deny cash payments at $5,000 or above, nor is it clear what negative effects this could have on low income, un- or underbanked, or undocumented communities that are only able to provide cash, even in larger quantities. Could, for example, a buyer with cash only for a down payment on a house or a car be unable to provide payment in some instances?

*Justifications for Some Exceptions Are Inconsistent with Bill Purpose.* As with most rules, there are exceptions. Some of SB 926’s exceptions are consistent from a policy and pragmatic perspective. Sections 18102 (a) and (b) are examples. In Section 18102(a), the bill provides that transactions completed online, by mail, via telephone, through a catalogue, or at any other location other than the retail location, as defined, are exempt. This makes sense because it is impossible to accept cash in an online or telephonic transaction. It is also understandable from a safety perspective why both customer and business would prefer that someone not send money through the mail, just as it is for a farmers market or street food vendor to prefer operating card-only. By adding a line that confirms a transaction is complete when the purchaser has received goods, services, or both, the language even contemplates situations where one could place an order in an online terminal inside of a retail location, and that online terminal would be exempt unless the customer immediately received the good or service after ordering it.

However, Sections 18102 (c), (e), and (f) are less consistent in their policy rationales. Section 18102 (c), for example, exempts renting goods, services, or accommodations for which posting collateral or security is typically required from having to accept cash. The author’s office has indicated that rental services need a way to document consumers after payment. The thought is that businesses that are not provided with essential documents, such as ID, personal references, and/or proof of residence, should not be expected to take cash because there is no way to contact the customer in the event that person does not pay their rental fee. While this reason is understandable, it creates an effect (denying a good or service because a consumer preferred to use cash in a transaction) that is in direct contrast with the intent of the bill (to ensure that consumers, and particularly low-income and vulnerable consumers, are able to pay cash when receiving a good or service). Given its intention, shouldn’t the bill advocate for allowing cash payment for any
portion of rent, even without documentation? What if the vulnerable community members the bill is designed to protect are unable to provide the kind of documentation a landlord is looking for and so are denied the opportunity to live in a particular location? What if particular locations decide to only accept debit card? This exception, then, could harm the very populations the bill is designed to protect.

Section 18102 (f) that exempts all transactions, including membership fees, at wholesale clubs that sell consumer goods and services exclusively through a membership model, begs the same question. Why this exemption when the goal of the bill is to ensure that consumers are able to pay in cash for goods and services? The author’s office shared the rationale here is that a membership-based business is not intended to provide goods and services to any consumer, but only to members of that specific business. By joining the membership program, consumers are taking themselves out of the pool of the “average consumer” and agree to the terms the business choose to impose on the program. This is a curious argument to make because a person who joins the membership will still have the same access to cash and card (or lack thereof) as they did before they joined the member group. In other words, this exemption would make it that much harder for those vulnerable communities that rely more on cash to take advantage of membership benefits, such as discounts and services offered through the programs. Again, by allowing this exception the bill would disadvantage cash-payers, some of whom are in the very low-income and vulnerable groups the bill is trying to protect, in the name of allowing business freedom of choice to require card-only service, the very thing the bill is trying to prevent.

Finally, Section 18102 (g) in essence allows employees, independent contractors, and those authorized to be on the employer’s premise to purchase a good or service that otherwise would not be readily available to the public. If the rationale behind this is the same as Section 18102(f) above, then the same rebuttal applies. A person’s work status does not automatically change their access or lack of access to cash, credit, or other currency. Therefore, unless every worker was given a company gift card that allowed cash to be loaded onto the card to be used in these situations, the bill would disadvantage those with less access to cards in the work environment in favor of those with more access to cards.

*Privacy Concerns.* In today’s digital age, using a credit card, Apple Pay, or other card or online payment services can lead to companies acquiring personal information about a consumer. Those who choose to use these services agree to sharing that information. However, not everyone is comfortable doing this, and using cash as a form of currency allows those concerned about privacy to maintain it. This bill therefore upholds the option for privacy, though it is equally important to note that those exceptions listed above do not provide the option for consumer privacy moving forward.

*COVID-19.* COVID-19 has dramatically shifted policy priorities at the local, state, federal, and global levels. Concerns about the cleanliness of cash vs. other forms of payment have led some business owners to opt for card-only methods of payment during the pandemic. While every business should take necessary steps to ensure it meets social and physical distancing and safety requirements, not accepting cash as a valid form of payment from those who do not have easy access to other forms of
legal tender is not the answer. The bill requires that cash be accepted unless inconsistent with a directive from the California Department of Public Health (CDPH). This is certainly one solution, but if CDPH were to ban cash, it would leave those reliant on cash without many options. Another solution to address this larger problem in the future might be for businesses to install a station that converts cash to gift cards that could be used at card-only stations, or for banks to offer similar cash to gift card machines if businesses have concerns about the safety of such stations. Something like this would avoid the problem of handling a less cleanly version of currency during a pandemic while still providing those who would prefer to use cash the option to do so.

_Lack of a Sunset Date_. The bill does not contain a sunset date. Interested parties have requested that this law have a set date by which it expires in order to evaluate evolutions in technology and payment, as well as the opportunity to revisit the bill in a few years to take into account the changed landscape of the payment world. However, until the time when cash is no longer accepted as valid form of currency, the bill has relevance.

**SUPPORT AND OPPOSITION:**

**Support:**

ACLU of California  
The California Low-Income Consumer Coalition  
Cardtronics  
Consumer Attorneys of California  
The Consumer Federation of California  
Katie Harrison, Berkeley City Councilmember  
Oakland Privacy  
Strike Debt Bay Area  
The American Petroleum and Convenience Store Association  
The United Food & Commercial Workers Union

**Opposition:**

The California Bankers Association  
The Southern California Gas Company  
The Western Propane Gas Association, Clean Energy, Natural Gas Vehicles of America, Trillium, California Waste Haulers Council, and California Natural Gas Vehicle Coalition

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