

AMENDED IN ASSEMBLY JUNE 28, 2010
AMENDED IN ASSEMBLY FEBRUARY 23, 2010
AMENDED IN ASSEMBLY JULY 6, 2009
AMENDED IN SENATE MAY 28, 2009
AMENDED IN SENATE MAY 20, 2009

SENATE BILL

No. 362

Introduced by Senator Florez

February 25, 2009

An act to add ~~Section 23356.4 to the Business and Professions Code,~~ to add Section 47060 to the Food and Agricultural Code, and to add Sections ~~6075.5, 6363.9, 17158, 24316, and 32177.7~~ *17158 and 24316* to the Revenue and Taxation Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Florez. Agriculture: victory ~~gardens and microvintners garden growers~~: taxes: ~~exemptions~~: *exclusion*.

Existing law provides for the direct marketing of agricultural produce, including through certified farmers' markets, field retail stands, or farm stands, subject to specified conditions.

This bill would authorize a victory garden grower, as defined, that files a notice with, and pays a \$50 filing fee to, the county agricultural commissioner to sell fruits, nuts, or vegetables that he or she grows in his or her garden directly to the public, including at a farmers' market, or to a retailer or distributor or others, within a 15-mile radius from the garden. The license would be effective upon the filing of the notice and payment of the fee and would be renewable annually. A licensed victory garden grower would be exempt from certain state laws and local

ordinances, as specified. Because this bill would impose new duties on local agencies, the bill would impose a state-mandated local program.

A violation of any of these provisions would be a misdemeanor. Because this bill would create a new crime, it would impose a state-mandated local program.

~~The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control.~~

This bill would authorize the issuance of an alcoholic beverage license to a victory microvintner, as defined, authorizing the licensee to engage in the manufacture and sale of wine using victory garden grapes, subject to specified conditions.

~~The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified. Because this bill would create new crimes, the bill would impose a state-mandated local program.~~

~~The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible property sold at retail in this state, or the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and requires every person desiring to engage in or conduct business as a seller within this state to obtain a seller's permit from the State Board of Equalization. That law provides various exemptions from those taxes. The Personal Income Tax Law and the Corporation Tax Law provide for various exclusions from gross income for the purposes of the taxes imposed by those laws. The Alcoholic Beverage Tax Law imposes an excise tax, at specified rates, for the privilege of selling or possessing for sale, beer, wine, sparkling wine, sparkling cider, and distilled spirits. Existing law authorizes cities and counties to license businesses within their jurisdictions.~~

This bill would exempt from sales and use taxes the sale of, or storage, use, or other consumption of, wine sold by a licensed victory microvintner pursuant to that license, and would exempt the licensee from the requirement to obtain a seller's permit or business license or other state and local licenses and permits. This bill would, for purposes of computing personal income and corporation taxes, exclude from gross income any amounts received from the sale of wine made pursuant to the license by a licensed victory microvintner or from the sale of fruits, nuts, or vegetables grown by a licensed victory garden grower

pursuant to the license. ~~This bill would also exempt from the alcoholic beverage excise tax the sale of that wine by a licensed victory microvintner.~~

~~The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law relating to sales and use taxes, not inconsistent with these laws, are incorporated into ordinances imposing these taxes. Existing law requires the state to reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

~~This bill would provide that no appropriation is made and the state shall not reimburse cities and counties for sales and use tax revenues lost by them pursuant to this bill.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 23356.4 is added to the Business and~~
- 2 ~~Professions Code, to read:~~
- 3 ~~23356.4. (a) (1) Notwithstanding any other provision of this~~
- 4 ~~division, the department may issue an alcoholic beverage license~~
- 5 ~~to a victory microvintner pursuant to this section.~~
- 6 ~~(2) For purposes of this section, a “victory microvintner” means~~
- 7 ~~a person that makes wine obtained from grapes or other agricultural~~
- 8 ~~products, but only if 75 percent or more of the grapes or other~~
- 9 ~~agricultural products are grown by a victory garden grower, as~~
- 10 ~~described in Section 47060 of the Food and Agricultural Code. If~~

1 the person is an individual or a partnership in which one or more
2 persons are individuals, those individuals shall be over 21 years
3 of age.

4 (b) A license issued pursuant to this section shall authorize the
5 licensee to do any of the following:

6 (1) Engage in the manufacture of wine. The aggregate amount
7 of wine made per calendar year shall not exceed 200 gallons.

8 (2) Notwithstanding any other provision of this division, engage
9 in the sale of wine to authorized licensees or customers located
10 within a 15-mile radius of the victory microvintner's licensed
11 premises, including sales to authorized licensees or customers at
12 farmers' markets. A victory microvintner, or a retail licensee that
13 is not a victory microvintner, may directly offer samples of the
14 victory microvintner's wine at a farmers' market operating within
15 a 15-mile radius of either the victory microvintner's licensed
16 premises or the victory garden that provides the grapes for the
17 victory microvintner's wine.

18 (c) All applicable labeling requirements, including, but not
19 limited to, the provisions of Article 3 (commencing with Section
20 25235) of Chapter 13, shall apply to wine produced by a licensed
21 victory microvintner. No additional label statement shall be
22 required respecting the 15-mile sale radius applicable to a particular
23 victory microvintner. However, a victory microvintner may add
24 the phrase "Microvintner," "Victory Microvintner," "California
25 Microvintner," or "California Victory Microvintner" to the wine
26 label, and, if such additional designation is added by the victory
27 microvintner, an optional additional geographic statement of origin
28 that reasonably identifies, with customary publicly recognized
29 names, the neighborhood or microlocality of the victory garden
30 from which the wine was made. Any such neighborhood or
31 microlocality shall conform reasonably closely with the 15-mile
32 radius sale area applicable to the victory microvintner as provided
33 in this section.

34 (d) A licensed victory microvintner, or a retail licensee that is
35 not a victory microvintner, may conduct wine tastings on the
36 licensed premises of a victory microvintner. These tastings, if
37 conducted directly by a licensed victory microvintner, shall include
38 only wines produced by that victory microvintner and by other
39 victory microvintners located within the 15-mile radius of the
40 licensed premises where the tasting is conducted.

1 ~~(e) If a license is issued pursuant to this section to a person who~~
2 ~~is a taxpayer, as defined in Section 32005 of the Revenue and~~
3 ~~Taxation Code, that person shall also be deemed to be the taxpayer~~
4 ~~and file an appropriate bond for purposes of Part 14 (commencing~~
5 ~~with Section 32001) of Division 2 of the Revenue and Taxation~~
6 ~~Code.~~

7 ~~(f) (1) A licensed victory microvintner shall be exempt from~~
8 ~~any state law and local county and city ordinance that requires a~~
9 ~~license or permit to conduct the activities of a victory microvintner,~~
10 ~~or that prohibits those activities, including, but not limited to, local~~
11 ~~zoning and business license ordinances. However, a licensed~~
12 ~~victory microvintner shall be subject to all other applicable state~~
13 ~~and local laws relating to, but not limited to, health and safety,~~
14 ~~noise, and prohibited poisons.~~

15 ~~(2) The Legislature finds and declares that the encouragement~~
16 ~~and development of local microvintners to serve their communities~~
17 ~~is a matter of statewide interest and concern. It is, therefore, the~~
18 ~~intent of the Legislature that this section shall supersede all~~
19 ~~conflicting local laws and shall apply in charter cities.~~

20 ~~SEC. 2:~~

21 ~~SECTION 1.~~ Section 47060 is added to the Food and
22 Agricultural Code, to read:

23 47060. (a) Notwithstanding any other law, a person licensed
24 as a victory garden grower may, within a 15-mile radius from the
25 garden, sell fresh fruits, nuts, or vegetables that he or she grows
26 in his or her garden directly to the public, including at a farmers'
27 market, or to a retailer or distributor or others, including, but not
28 limited to, a grocer, market, school, or restaurant.

29 (b) For purposes of this section, a "victory garden grower"
30 means a person in this state who owns or leases a garden of a
31 reasonable size, not exceeding one acre in size, and grows fruits,
32 nuts, or vegetables, or any combination of these foods, in that
33 garden. The county agricultural commissioner may determine rules
34 or guidelines of general applicability addressing what is a
35 reasonable size in his or her county under the circumstances.
36 However, no victory garden grower shall be required to obtain the
37 permission of the county agricultural commissioner as a condition
38 of obtaining or maintaining a victory garden grower license, except
39 for the notice and fee as provided in subdivision (c).

1 (c) (1) In order to be licensed as a victory garden grower, the
2 grower shall file a notice, not exceeding one page in length, and
3 otherwise in a form as prescribed by the county agricultural
4 commissioner, along with a fifty-dollar (\$50) filing fee, with the
5 county agricultural commissioner in the county in which the garden
6 is located. The license shall be effective upon the filing of the
7 notice and payment of the fee, and may be renewed annually by
8 filing another notice and paying the fifty-dollar (\$50) filing fee.

9 (2) A photocopy of the notice, along with proof of payment of
10 the filing fee, which can be a photocopy of a check or money order
11 or other payment form, shall be prima facie evidence of the victory
12 garden grower's licenseholder status pursuant to this section, and
13 all persons shall be entitled to rely on that evidence. However, a
14 county agricultural commissioner may choose to issue, from time
15 to time, receipts or certificates evidencing the victory garden
16 grower's licenseholder status, and that receipt or certificate, if and
17 when issued, shall also be prima facie evidence of the victory
18 garden grower's licenseholder status pursuant to this section.

19 (d) (1) A licensed victory garden grower shall be exempt from
20 any state law and local county and city ordinance that requires a
21 license or permit to conduct the activities of a victory garden
22 grower, or that prohibits these activities, including, but not limited
23 to, local zoning and business license ordinances. However, except
24 as provided in subdivision (e), a licensed victory garden grower
25 shall be subject to all other applicable state and local laws relating
26 to, but not limited to, health and safety, noise, and prohibited
27 poisons.

28 (2) The Legislature finds and declares that the encouragement
29 and development of community-based food gardens to serve their
30 local communities with locally grown foods is a matter of statewide
31 interest and concern. It is, therefore, the intent of the Legislature
32 that this section shall supersede all conflicting local laws and shall
33 apply in charter cities.

34 (e) The agricultural produce sold by a licensed victory garden
35 grower shall be exempt from size, standard pack, container, and
36 labeling requirements of state law. However, a county agricultural
37 commissioner may issue regulations or guidelines of general
38 applicability providing for point-of-sale identification of the
39 produce of a county's victory garden grower as “___ County
40 Victory Garden Produce” or “Victory Garden produce of ___

1 County,” or similar wording, and the identification regulations or
2 guidelines shall not impose any material or unreasonable cost or
3 burden upon a victory garden grower. In addition to the
4 identification, a victory garden grower may add an optional
5 additional geographic statement of origin for any victory garden
6 produce, which reasonably identifies, with customary publicly
7 recognized names, the neighborhood or microlocality of the victory
8 garden. Any such neighborhood or microlocality shall conform
9 reasonably closely with the 15-mile radius sale area applicable to
10 the victory garden grower as provided in this section.

11 ~~SEC. 3. Section 6075.5 is added to the Revenue and Taxation~~
12 ~~Code, to read:~~

13 ~~6075.5. No permit shall be required under this part of any~~
14 ~~person that engages in business in this state as a victory~~
15 ~~microvintner issued a license pursuant to Section 23356.4 of the~~
16 ~~Business and Professions Code, and who engages in no other~~
17 ~~taxable sales of tangible personal property at retail.~~

18 ~~SEC. 4. Section 6363.9 is added to the Revenue and Taxation~~
19 ~~Code, to read:~~

20 ~~6363.9. There are exempted from the taxes imposed by this~~
21 ~~part, the gross receipts from the sale in this state of, and the storage,~~
22 ~~use, or other consumption in this state of, wine made pursuant to~~
23 ~~the license by a person licensed pursuant to Section 23356.4 of~~
24 ~~the Business and Professions Code, that sells or stores, uses, or~~
25 ~~otherwise consumes that wine.~~

26 ~~SEC. 5:~~

27 ~~SEC. 2. Section 17158 is added to the Revenue and Taxation~~
28 ~~Code, to read:~~

29 ~~17158. Gross income shall not include any amount received~~
30 ~~during the taxable year by a person licensed pursuant to Section~~
31 ~~23356.4 of the Business and Professions Code from the sale of~~
32 ~~wine made pursuant to the license, or by a person licensed pursuant~~
33 ~~to Section 47060 of the Food and Agricultural Code from the sale~~
34 ~~of fruits, nuts, or vegetables grown pursuant to the license.~~

35 ~~SEC. 6:~~

36 ~~SEC. 3. Section 24316 is added to the Revenue and Taxation~~
37 ~~Code, to read:~~

38 ~~24316. Gross income shall not include any amount received~~
39 ~~during the taxable year by a person licensed pursuant to Section~~
40 ~~23356.4 of the Business and Professions Code from the sale of~~

1 wine made pursuant to the license, or by a person licensed pursuant
2 to Section 47060 of the Food and Agricultural Code from the sale
3 of fruits, nuts, or vegetables grown pursuant to the license.

4 ~~SEC. 7. Section 32177.7 is added to the Revenue and Taxation
5 Code, to read:~~

6 ~~32177.7. No tax shall be imposed by this part upon any wine
7 sold by a person licensed pursuant to Section 23356.4 of the
8 Business and Professions Code pursuant to the license.~~

9 ~~SEC. 8. Notwithstanding Section 2230 of the Revenue and
10 Taxation Code, no appropriation is made by this act and the state
11 shall not reimburse any local agency for any sales and use tax
12 revenues lost by it under this act.~~

13 ~~SEC. 9.~~

14 ~~SEC. 4. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution for certain
16 costs that may be incurred by a local agency or school district
17 because, in that regard, this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty for a crime
19 or infraction, within the meaning of Section 17556 of the
20 Government Code, or changes the definition of a crime within the
21 meaning of Section 6 of Article XIII B of the California
22 Constitution.~~

23 However, if the Commission on State Mandates determines that
24 this act contains other costs mandated by the state, reimbursement
25 to local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.

O