

STATE OF NEW YORK

7707

2023-2024 Regular Sessions

IN ASSEMBLY

June 6, 2023

Introduced by M. of A. WALLACE -- read once and referred to the Committee on Agriculture

AN ACT to amend the general business law, in relation to restricting the retail sale of spices which exceed lead level limits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 25-D to read as follows:

ARTICLE 25-D RETAIL SALE OF SPICES

Section 389-u. Definitions.

389-v. Restrictions on the retail sale of spices.

389-w. Enforcement.

389-x. Preemption and severability.

§ 389-u. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Commissioner" shall mean the commissioner of the department of agriculture and markets.

2. "Department" shall mean the department of agriculture and markets.

3. "Lead" shall mean the element of lead.

4. "Retailer" shall mean any person who sells at retail any spice or herb for use as an additive.

5. "Retail sale" or "sale at retail" shall mean a sale to a consumer or to any person for any purpose other than for resale.

6. "Spice" shall mean any dried aromatic vegetable substances in the whole, broken, or ground form, except for those substances which have been traditionally regarded as foods, whose significant function in food is seasoning rather than nutritional, and from which no portion of any volatile oil or other flavoring principle has been removed and includes additional dried plants used as spices such as dehydrated onion and garlic, as well as other dehydrated vegetables used as seasoning.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 § 389-v. Restrictions on the retail sale of spices. 1. No retailer
2 shall offer for sale at retail a spice which exceeds the maximum limits
3 for lead set forth below.

4 2. The presence of any lead in any spice offered for sale at retail
5 shall not exceed 0.60 parts per million (ppm) for fruit spices, 1.5 ppm
6 for root and rhizome spices, 2 ppm for bark spices, 1 ppm for bud spices
7 and flower pistil spices, and 0.9 ppm for seed spices.

8 3. The department shall be authorized to utilize its enforcement
9 authority to recall spices that exceed the levels set forth in subdivi-
10 sion two of this section.

11 § 389-w. Enforcement. Whenever there shall be a violation of subdivi-
12 sion two of section three hundred eighty-nine-v of this article an
13 application may be made by the attorney general in the name of the
14 people of the state of New York to a court or justice having jurisdic-
15 tion by a special proceeding to issue an injunction, and upon notice to
16 the defendant of not less than five days, to enjoin and restrain the
17 continuance of such violation; and if it shall appear to the satisfac-
18 tion of the court or justice that the defendant has, in fact, violated
19 subdivision two of section three hundred eighty-nine-v of this article,
20 an injunction may be issued by the court or justice, enjoining and
21 restraining any further violations, without requiring proof that any
22 person has, in fact, been injured or damaged thereby. In any such
23 proceeding, the court may make allowances to the attorney general as
24 provided in paragraph six of subdivision (a) of section eighty-three
25 hundred three of the civil practice law and rules, and direct restitu-
26 tion. Whenever the court shall determine that a violation of subdivision
27 two of section three hundred eighty-nine-v of this article has occurred,
28 the court may impose a civil penalty of not more than five hundred
29 dollars for each violation. Each retail sale of a spice contaminated
30 with lead in excess of the maximum limits shall constitute a separate
31 violation. In connection with any such proposed application, the attor-
32 ney general is authorized to take proof and make a determination of the
33 relevant facts and to issue subpoenas in accordance with the civil prac-
34 tice law and rules.

35 § 389-x. Preemption and severability. 1. In the event that the federal
36 government whether by statute or regulation has established a maximum
37 limit of lead in spices sold at retail, such limit shall supersede the
38 provisions of this article and shall apply on and after the effective
39 date of such change. Provided, however, that unless and until such
40 adoption, the maximum limit established in this article shall govern,
41 and any provision of any local law, ordinance or any rule or regulation
42 promulgated by the department shall upon the effective date of this
43 section be preempted. Nothing in this section shall be construed to
44 restrict a municipality from enforcing the provisions of this subdivi-
45 sion as it relates to inspection or monitoring of food safety as
46 required by the commissioner or the department.

47 2. If any provision of this article or the application thereof to any
48 person or circumstance is held unconstitutional, such invalidity shall
49 not affect other provisions or applications of this section which can be
50 given effect without the invalid provision or application, and to this
51 end the provisions of this section are severable.

52 § 2. This act shall take effect one year after it shall have become a
53 law. Effective immediately, the addition, amendment and/or repeal of any
54 rule or regulation necessary for the implementation of this act on its
55 effective date are authorized to be made and completed on or before such
56 effective date.