STATE OF NEW YORK

7036--A

2023-2024 Regular Sessions

IN SENATE

May 17, 2023

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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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. Spices shall be further defined by the following types:

(a) "Fruit and berry spices" shall mean spices derived from the flesh of a fruit or berry of a plant and include but are not limited to: (i) capsicums, which include, but are not limited to, chili and paprika; (ii) peppercorns, which include, but are not limited to, white, pink, black, green or other varieties; and (iii) allspice;

(b) "Root and rhizome spices" shall mean spices derived from material forming the roots, bulbs or rhizomes of a plant and include, but are not limited to, turmeric, ginger, onion and garlic;

(c) "Bark spices" shall mean spices derived from the hard outer covering of a tree or bush and include, but are not limited to, cinnamon;

(d) "Bud spices" shall mean spices derived from the buds of plants and include, but are not limited to, cloves;

(e) "Leaf spices or herbs" shall mean spices derived from the dried leaves or needles of perennial, biennial, or annual plants and include, but are not limited to, sage, rosemary, thyme, oregano, bay leaves and basil;

(f) "Flower pistil spices" shall mean spices derived from the pistil of a flower and include, but are not limited to, saffron; and

(g) "Seed and aril spices" shall mean spices derived from the seeds or a hard outer covering or aril around a seed and include, but are not limited to, cumin, mustard, celery, fennel, anise, nutmeg and mace.

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

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

3. The department shall be authorized to utilize its enforcement authority to recall spices that exceed the levels set forth in subdivision two of this section.

§ 389-w. Enforcement. Whenever there shall be a violation of subdivision two of section three hundred eighty-nine-v of this article an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated subdivision two of section three hundred eighty-nine-v of this article, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of subdivision two of section three hundred eighty-nine-v of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. Each retail sale of a spice contaminated with lead in excess of the maximum limits shall constitute a separate

violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

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

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

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