

# 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:

1 Section 1. The general business law is amended by adding a new article  
2 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.

9 § 389-u. Definitions. As used in this article, the following terms  
10 shall have the following meanings:

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

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

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

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

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

19 6. "Spice" shall mean any dried aromatic vegetable substances in the  
20 whole, broken, or ground form, except for those substances which have  
21 been traditionally regarded as foods, whose significant function in food  
22 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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1 volatile oil or other flavoring principle has been removed and includes  
2 additional dried plants used as spices such as dehydrated onion and  
3 garlic, as well as other dehydrated vegetables used as seasoning. Spices  
4 shall be further defined by the following types:

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

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

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

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

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

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

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

26 § 389-v. Restrictions on the retail sale of spices. 1. No retailer  
27 shall offer for sale at retail a spice which exceeds the maximum limits  
28 for lead set forth below.

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

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

37 § 389-w. Enforcement. Whenever there shall be a violation of subdivi-  
38 sion two of section three hundred eighty-nine-v of this article an  
39 application may be made by the attorney general in the name of the  
40 people of the state of New York to a court or justice having jurisdic-  
41 tion by a special proceeding to issue an injunction, and upon notice to  
42 the defendant of not less than five days, to enjoin and restrain the  
43 continuance of such violation; and if it shall appear to the satisfac-  
44 tion of the court or justice that the defendant has, in fact, violated  
45 subdivision two of section three hundred eighty-nine-v of this article,  
46 an injunction may be issued by the court or justice, enjoining and  
47 restraining any further violations, without requiring proof that any  
48 person has, in fact, been injured or damaged thereby. In any such  
49 proceeding, the court may make allowances to the attorney general as  
50 provided in paragraph six of subdivision (a) of section eighty-three  
51 hundred three of the civil practice law and rules, and direct restitu-  
52 tion. Whenever the court shall determine that a violation of subdivision  
53 two of section three hundred eighty-nine-v of this article has occurred,  
54 the court may impose a civil penalty of not more than five hundred  
55 dollars for each violation. Each retail sale of a spice contaminated  
56 with lead in excess of the maximum limits shall constitute a separate

1 violation. In connection with any such proposed application, the attor-  
2 ney general is authorized to take proof and make a determination of the  
3 relevant facts and to issue subpoenas in accordance with the civil prac-  
4 tice law and rules.

5 § 389-x. Preemption and severability. 1. In the event that the federal  
6 government whether by statute or regulation has established a maximum  
7 limit of lead in spices sold at retail, such limit shall supersede the  
8 provisions of this article and shall apply on and after the effective  
9 date of such change. Provided, however, that unless and until such  
10 adoption, the maximum limit established in this article shall govern,  
11 and any provision of any local law, ordinance or any rule or regulation  
12 promulgated by the department shall upon the effective date of this  
13 section be preempted. Nothing in this section shall be construed to  
14 restrict a municipality from enforcing the provisions of this subdivi-  
15 sion as it relates to inspection or monitoring of food safety as  
16 required by the commissioner or the department.

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

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