



**Hundredth Legislature - First Session - 2007  
Committee Statement  
LB 74**

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**Hearing Date:** January 23, 2007  
**Committee On:** Agriculture

**Introducer(s):** (Erdman, 47)  
**Title:** Change the Nebraska Pure Food Act

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**Roll Call Vote – Final Committee Action:**

- X Advanced to General File
  - Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

- 8 Yes                                      Senators Dubas, Wallman, Chambers, Preister, Karpisek, McDonald, Dierks, Erdman
  - 0 No
  - 0 Present, not voting
  - 0 Absent
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**Proponents:**

Rick Leonard  
  
Neil Moseman  
George Hanssen  
Chris Shubert  
Kathy Sietken  
Jim Partington  
Robert Voss

**Representing:**

Introducer, Research Analyst, Agriculture Committee  
Nebraska Department of Agriculture  
Nebraska Department of Agriculture  
Nebraska Department of Agriculture  
Nebraska Grocery Industry Association  
Nebraska Restaurant Association  
Nebraska Grocery Industry Association

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

**Summary of purpose and/or changes:**

LB 74 is brought to update Nebraska Pure Food Act (§§81-2,239 to 81-2,292) in order to incorporate provisions and concepts contained in the 2005 Food Code. The Nebraska Pure Food Act is the primary body of state law regulating food establishments (groceries, restaurants, institutional food providers, etc.) where food is prepared for and/or delivered to a final consumer. The Pure Food Act establishes standards for sanitation, preparation, storage and accurate presentation of food items. Nebraska is among the majority of states that incorporate the model provisions of the Food Code, a publication of the U.S. Public

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Health Service, Food & Drug Administration. While most provisions of the Food Code are incorporated by reference directly, some provisions are adopted in modified form as set forth in sections of the Nebraska Pure Food Act, and some provisions may be omitted. Incorporation of the Food Code and related documents is accomplished under §81-2,239. Those provisions omitted are listed in §81-2,244.

The Food Code provides a uniform system of regulation to ensure that food at retail is safe and properly protected and presented. It is updated every 4 years to incorporate regulatory experience and advancements in understanding means of mitigating risk factors for food borne illness. The Nebraska Pure Food Act currently incorporates the provisions of the 2001 Food Code

#### SECTION-BY-SECTION SUMMARY:

Sec. 1: Amends citation section to incorporate section 3 of the bill within the Nebraska Pure Food Act.

Sec. 2: Defines the Food Code incorporated within the Nebraska Pure Food Act under §81-2,239 as the 2005 Recommendations of the United States Public Health Service, Food and Drug Administration (2005 Food Code) except as excluding the definitions of “adulterated food” and “food establishment” (these terms are defined by state statutory provision within the Nebraska Pure Food Act) and excluding listed sections of the 2005 Food Code.

Sec. 3: Adds a definition for “itinerant food vendor.” Itinerant food vendor is defined to mean persons selling prepackaged, potentially hazardous foods from approved sources as non-permanent locations. Food establishments that fall within the definition of an itinerant food vendor are currently defined as convenience stores.

Sec. 4: Amends §81-2,257 by correcting citation to critical violations due to changes elsewhere in the act.

Sec. 5: Amends §81-2,270 to revise permit and inspection fees imposed under the Nebraska Pure Food Act. All existing permit and inspection fee categories are retained except that a new fee category for “itinerant food vendor” as defined by section 3 of the bill is added. Itinerant food vendors are currently included within food establishments defined as convenience stores for purposes of fees established under current law. The revisions to fee amounts shown are revisions to the statutory maximum fee. Current provisions governing annual fee setting parameters are not affected by the bill and therefore actual fees are set annually by the Director to achieve fee revenues no greater than 108% of the annual cash fund appropriation and to end with a cash fund carry over balance of no greater than 17% (2 month reserve) of the cash fund appropriation.

Charges for late payment of fees imposed under Subsection (6) of §81-2,270 are clarified to be for charges for purposes of recovering additional administrative expense incurred to collect fees not timely paid and to specify that late fees are to be deposited in the Pure Food Cash Fund. Current law does not expressly distinguish late fees under this section from administrative fine or penalty which disposition is directed to the support of the common schools in conformity with Article VII, Section 5 of the state constitution.

Sec. 6: Amends §81-2,270.10 to modify provisions relating to hand washing and bare hand contact with foods in food preparation and serving. Current law allows only minimal hand contact only after hand washing. The revision to this section more specifically reference hand washing standards specified elsewhere in the Nebraska Pure Food Act and limits hand contact to ready-to-eat foods

excluding serving highly susceptible populations. Note-this section substitutes for excluded provisions of the 2005 Food Code which are more restrictive of bare hand contact.

Sec. 7: Amends §81-2,272.17 by removing an internal citation to a statutory section of the Nebraska Pure Food Act outright repealed under Section 12 of the bill. The stricken text references a provision that currently allows exception to a notification to consumers required under this section pertaining to raw and undercooked foods of animal origin. The section currently referenced exempts steak cuts specifically ordered by a customer in an undercooked state provided the item has at minimum been surface seared. The repealed statutory section substitutes for an excluded provision of the 2001 Food Code. LB74 would incorporate the corresponding 2005 Food Code recommendation which is now identical to existing state law.

Secs 8-9: Amends §81-2,274.24 and §81-2,274.24 to modify provisions relating to how long food may be kept in a food establishment before consumption or discarding and how the food must be dated after opening or preparation. As modified, these sections would continue existing modification of excluded provisions of the 2001 Food Code that are carried forth into to the 2005 Food Code. Existing Nebraska law and as provided under LB 74 differs from both 2001 and 2005 Food Code recommendations that required food establishments to have capability to hold foods at 41° within 5 years. Existing Nebraska Pure Food Act provisions do allow longer holding times provided under the Food Code holding standards when establishments are equipped with suitable equipment, but adopts shorter holding times before foods must be discarded when cooling equipment is not capable of meeting the 41° cold holding temperature.

LB74 revisions utilize terminology consistent with the 2005 Food code for referring to potentially hazardous foods requiring time and temperature controls for safety, and by incorporating exceptions for specific types of foods as specified in the 2005 Food Code. That foods must be consumed or sold before exceeding the time and temperature controls or discarded is made an express requirement.

Sec. 10: Provides for an operative date of July 1, 2007 to apply the new fee schedule imposed pursuant to section 5 of the bill beginning in FY 07-08.

Sec. 11: Repealer section

Sec. 12: Sections outright repealed.

Sec. 13: Emergency Clause

**Explanation of amendments, if any:**

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**Senator Philip Erdman, Chairperson**