

**ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012**  
**COMMITTEE STATEMENT**  
**LB771**

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**Hearing Date:** Tuesday January 17, 2012  
**Committee On:** Agriculture  
**Introducer:** Carlson  
**One Liner:** Change the Nebraska Pure Food Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Bloomfield, Brasch, Carlson, Harr, Karpisek, Larson, Wallman,  
Lathrop

**Nay:**

**Absent:**

**Present Not Voting:**

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**Proponents:**

Rick Leonard  
Kathy Siefken  
Greg Ibach  
George Hanssen  
Jim Partington  
Bob Voss

**Representing:**

Introducer  
Nebraska Grocery Industry Association  
Nebraska Department of Agriculture  
Nebraska Department of Agriculture  
Nebraska Restaurant Association  
B & R Stores, Inc.

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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

LB 771 is brought to update Nebraska Pure Food Act (Section 81-2,239 to 81-2,292) in order to incorporate provisions and concepts contained in the 2009 Food Code. The Nebraska Pure Food Act is the primary body of state law regulating food establishments (groceries, restaurants, 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 for the purpose of mitigating risk of foodborne illness. Nebraska is among the majority of states that incorporate the model provisions of the Food Code, a publication of the U.S. Public 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 Section 81-2,239. Those provisions omitted are listed in Section 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 periodically 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 2005 Food Code.

**SECTION-BY-SECTION SUMMARY:**

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Sec 1: Amends Section 81-2-239 to incorporate Section 7 of the bill into to the Nebraska Pure Food Act (Act).

Sec 2: Amends the definition of "Food Code" in Section 81-2,244 to incorporate by reference the 2009 Recommendations of the United States Public Health Service, Food and Drug Administration excluding listed provisions.

Section 2 revises which sections of the 2009 Code are excluded from incorporation into the Nebraska Pure Food Act as follows:

Previously excluded sections no longer excluded:

Code section 2-102.11 - This provision of the Food Code pertains to demonstration of knowledge by the person in charge of a food establishment of food safety risks and mitigation, and understanding of regulatory requirements. Currently, this section is replaced by section 81-2,272.02 which contains similar requirements but does not enumerate the areas of knowledge the person in charge is expected to be proficient in. Because Code section 2-102.11 is no longer excluded, section 81-2,272.02 is obsolete and outright repealed by section 10 of the bill.

Code section 2-103.11(H) - This provision contains a duty of the person in charge to assure compliance with a requirement elsewhere in the Food Code for providing a consumer advisory regarding risks of consuming raw or undercooked meat. This section is currently excluded because it contains an internal reference to a section 3-603.11 of the Food Code that is currently excluded. LB 771 would no longer exclude Code section 3-603.11 and therefore exclusion of 2-103.11(H) is no longer necessary.

Code section 3-201.11(E) - This section refers to sourcing of steak cuts ordered by the customer to be served in an undercooked form, requiring that they be acquired from processors that identify the meat as cut from whole-muscle intact source. This section also contains an internal reference to a Code section that is currently excluded. The referenced provision would no longer be excluded by LB 771.

Code section 3-301.11(A) - Section 3-301.11 sets forth standards for preventing food contamination by hand contact. Subsection (A) requires employees to wash hands according to procedures specified elsewhere in the Food Code. The remainder of the section limits when bare hand contact with food may occur and specifies a series of training and documentation requirements. Currently, Code section 3-301.11 is replaced by 81-2,272.10 which adopts the handwashing standards and the limitations on bare hand contact. Subsection (A) of this code section does not conflict and would no longer be excluded.

Code section 3-401.11(C)(2) - Code section 3-401.11(C)(2) sets forth time and temperature standards for cooking animal foods. Subsection (C)(2) allows an exemption for steak cuts ordered by the customer in raw or undercooked form provided the cuts are labeled as whole-muscle intact steak cuts in compliance with Code section 3-201.11(E). The referenced section is currently excluded from the Nebraska Pure Food Act. LB 771 would no longer excluded the referenced section and it is therefore unnecessary to exclude this section.

Code Section 3-401(D)(2) - This section disallows serving food in raw or undercooked form if it is a "comminuted" meat ordered from a children's menu.

Code section 3-603.11 - This provision of the Food Code provides for a consumer advisory that warns of the food safety risks of consuming raw or undercooked animal foods and specifies the content of the advisory. Currently, this provision is replaced by 81-2,272.17 that adopts the requirement for providing a consumer advisory but provides alternative specifications for the content of the advisory. LB 771 would no longer exclude 3-603.11 and therefore 81-2,272.17 is outright repealed by section 10 of the bill.

Code section 4-204.117 - This Code provision requires new dishwashing equipment installed after adoption of the standard to be equipped to automatically dispense detergents and sanitizers and to verify that such automatic dispensation has occurred. At the time this first appeared as a Food Code recommendation, dishwashing equipment that met this standard was not readily available to the industry.

Code section 4-302.12(B) - This Code provision requires food establishments to deploy specially designed thermometers for accurately measuring the temperature of thin foods (e.g. hamburger patties). At the time this first appeared as a Food Code recommendation, such devices were not readily available to the industry.

Code section 5-103.12 - This section requires food establishments to have water under pressure except temporary food establishments or in cases of interruption of the water supply. Code section 5-104.11 is a companion provision that specifies the means of obtaining water under pressure. 81, 2,272.31 currently replaces 5-103.12 and 5-104.11. Current law requires food establishments, except mobile food units and temporary establishments to have water under pressure by connection to a water main, to have permanent plumbing and at least one toilet. LB 771 would no longer exclude 5-103.12.

Previously Incorporated Food Code Sections excluded by LB 771:

Code Section 3-501.16 - This section specifies both hot and cold holding temperatures for potentially hazardous foods. The 2009 version of this Code requires potentially hazardous foods to be kept at 41 degrees and discarded after 7 days. The 2009 version omits a provision of the 2005 Code that allowed an option of storing foods at 45 degrees but discarding after 4 days. Section 7 of LB 771 would replace Code section 3-501.16 by retaining the option for storing at 45 degrees with the shorter discard period if stored in cooling equipment in use on the effective date of the bill. Section 7 would further specify that installation and use of equipment capable of holding foods at 41 degrees when replacing existing coolers or upon transfer of ownership of a food establishment.

Sec 3: Uses the term "priority items" for what was formerly called "critical violations." Several sections of the Act listed in this section are being repealed. Section 81-2,272.02 was replaced by Section 2-102.11 in the 2009 Code. Section 81-2,272.17 was deleted and replaced by Section 3-603.11 in the 2009 Code. Section 81-2,272.36 was deleted and replaced by Section 4 204.111 in the 2009 Code. Section 81-2,272.31(4) is replaced by Section 5 203.12. Section 5-203.12 is not considered a priority item in the 2009 Code.

Sec 4: Adopts the 2011 version of the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110. The only change from the 1999 version is an address change.

Sec 5: Clarifies that a food operation is not subject to the additional fee, if it has notified the regulatory authority that it is in operation prior to obtaining a permit. Clarifies that the annual fee for an operation is the same regardless of when the initial permit was obtained because they are not prorated.

Section 5 of the bill also revises the statutory maximum annual permit and inspection fees paid by regulated entities, and the additional fee for each additional food preparation area or push cart. LB 771 will continue a fee setting practice inserted into the Nebraska Pure Food Act that allows the Director to establish the fee annually within the statutory maximum. The fee is set annually according to a statutory formula that limits the annual fee revenues estimated to be raised to 107% of the cash fund appropriation and that will result in no greater than a 17% year-end carry over balance in the cash fund (i.e. 2-month reserve) The current fee maximums were set by LB 74 of 2007.

Section 5 also increases the late fee one hundred percent (100%) of the permit and inspection fees due in the first month, rather than over a two month period.

Sec 6: Requires mobile food units and pushcarts to have copies of permits at the location of the mobile food unit or pushcart, in order for the inspectors to know that such a permit exists when the unit or pushcart is being inspected

Sec 7: Replaces Section 3-501.16 of the 2009 Code. The section is modified to allow existing refrigeration equipment to be used even if it is not capable of maintaining 41 degrees but can maintain 45 degrees. Subdivision B requires refrigeration units that cannot maintain 41 degrees to be upgraded upon replacement of the equipment or upon change of ownership of the establishment. Section 81-2,272.24 of the Act, which replaced Food Code section 501.17 in 2007,

allows foods to be kept at 45 degrees for four (4) days rather than the seven (7) days if held at 41 degrees.

Sec 8: Adopts the 2011 version of the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110. The only change from the 1999 version is an address change.

Sec 9: Repeals original sections.

Sec 10: Outright repealed sections.

Sec 11: An emergency clause is added so the new annual inspection and initial permit fees are in law for the fiscal year 2012/2013.

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**Explanation of amendments:**

The committee amendment (AM 1707) strikes the changes to the late fee provisions in section 5 of the bill.

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Tom Carlson, Chairperson