

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 771

Introduced by Carlson, 38.

Read first time January 04, 2012

Committee: Agriculture

A BILL

1 FOR AN ACT relating to the Nebraska Pure Food Act; to amend sections
2 81-2,239, 81-2,244.01, 81-2,257, 81-2,259, 81-2,270,
3 81-2,271, and 81-2,277, Reissue Revised Statutes of
4 Nebraska; to change and eliminate food establishment and
5 food safety provisions; to harmonize provisions; to
6 repeal the original sections; to outright repeal sections
7 81-2,272.02, 81-2,272.17, and 81-2,272.36, Reissue
8 Revised Statutes of Nebraska; and to declare an
9 emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,239, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-2,239 Sections 81-2,239 to 81-2,292 and section 7 of
4 this act and the provisions of the Food Code, the Food Salvage Code,
5 and the Current Good Manufacturing Practice In Manufacturing,
6 Packing, or Holding Human Food adopted by reference in sections
7 81-2,257.01 to 81-2,259, shall be known and may be cited as the
8 Nebraska Pure Food Act.

9 Sec. 2. Section 81-2,244.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 81-2,244.01 Food Code shall mean the ~~2005~~—2009
12 Recommendations of the United States Public Health Service, Food and
13 Drug Administration, except the definitions of adulterated food and
14 food establishment and sections ~~2-102.11, 2-103.11(H) and (K),~~
15 ~~3-201.11(E), 2-103.11(K), 3-301.11(B), (C), and (D),~~ 3-304.13,
16 ~~3-401.11(C)(2) and (D)(2), 3-404.11(A), 3-501.16, 3-501.17, 3-501.18,~~
17 ~~3-502.11, 3-502.12, 3-603.11, 4-204.117, 4-301.12(C)(5), (D), and~~
18 ~~(E), 4-302.12(B), 4-603.16(C), 4-802.11(C), 5-103.12, 5-104.11,~~
19 ~~6-301.14, 8-101, 8-102, 8-201.11, 8-201.12, 8-201.13(A)(2) and (3)~~
20 ~~and (B), 8-201.14(C), 8-202 through 8-304, 8-401.10(B)(2), 8-402.20~~
21 ~~through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B).~~ The
22 term Food Code does not include the annexes of such federal
23 recommendations.

24 Sec. 3. Section 81-2,257, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 81-2,257 ~~Critical violations~~ Priority items are
2 designated in the Food Code and sections ~~81-2,272.02, 81-2,272.10,~~
3 ~~81-2,272.17,~~ 81-2,272.24, 81-2,272.25, and 81-2,272.27. ~~, and~~
4 ~~81-2,272.36 and subdivision (4) of section 81-2,272.31.~~

5 Sec. 4. Section 81-2,259, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 81-2,259 The Legislature hereby adopts by reference the
8 Current Good Manufacturing Practice In Manufacturing, Packing, or
9 Holding Human Food found in 21 C.F.R. part 110 as it ~~exists on August~~
10 ~~28, 1999.~~ existed on April 1, 2011.

11 Sec. 5. Section 81-2,270, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 81-2,270 (1) No person shall operate: (a) A food
14 establishment; (b) a food processing plant; or (c) a salvage
15 operation, without a valid permit which sets forth the types of
16 operation occurring within the establishment.

17 (2) Application for a permit shall be made to the
18 director on forms prescribed and furnished by the department. Such
19 application shall include the applicant's full name and mailing
20 address, the names and addresses of any partners, members, or
21 corporate officers, the name and address of the person authorized by
22 the applicant to receive the notices and orders of the department as
23 provided in the Nebraska Pure Food Act, whether the applicant is an
24 individual, partnership, limited liability company, corporation, or
25 other legal entity, the location and type of proposed establishment

1 or operation, and the signature of the applicant. Application for a
2 permit shall be made prior to the operation of a food establishment,
3 food processing plant, or salvage operation. The application shall be
4 accompanied by an initial permit fee and an initial inspection fee in
5 the same amount as the annual inspection fee if inspections are
6 required to be done by the department. If the food establishment,
7 food processing plant, or salvage operation has been in operation
8 prior to applying for a permit or notifying the regulatory authority,
9 the applicant shall pay an additional fee of sixty dollars.

10 (3) Payment of the initial permit fee, the initial
11 inspection fee, and the fee for failing to apply for a permit prior
12 to operation shall not preclude payment of the annual inspection fees
13 due on August 1 of each year. Except as provided in subsections (7)
14 through (10) of this section and subsection (1) of section 81-2,281,
15 a permitholder shall pay annual inspection fees on or before August 1
16 of each year regardless of when the initial permit was obtained.

17 (4)(a) The director shall set the initial permit fee and
18 the annual inspection fees on or before July 1 of each fiscal year to
19 meet the criteria in this subsection. The director may raise or lower
20 the fees each year, but the fees shall not exceed the maximum fees
21 listed in subdivision (4)(b) of this section. The director shall
22 determine the fees based on estimated annual revenue and fiscal year-
23 end cash fund balance as follows:

24 (i) The estimated annual revenue shall not be greater
25 than one hundred seven percent of program cash fund appropriations

1 allocated for the Nebraska Pure Food Act;

2 (ii) The estimated fiscal year-end cash fund balance
 3 shall not be greater than seventeen percent of program cash fund
 4 appropriations allocated for the act; and

5 (iii) All fee increases or decreases shall be equally
 6 distributed between all categories.

7 (b) The maximum fees are:

			Additional	
		First	Food	
		Food	Preparation Unit	
		Preparation Area	Or	
		Area	Annual	Units
Food	Initial Annual	Inspection	Annual	
Handling	Permit	Inspection	Fee	Inspection
Activity	Fee	Fee	(per area)	Fee
16	Convenience Store	\$74.36	\$74.36	\$37.18 N/A
17	<u>Convenience Store</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u> N/A
18	Itinerant Food Vendor	\$74.36	\$74.36	\$37.18 N/A
19	<u>Itinerant Food Vendor</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u> N/A
20	Licensed Beverage			
21	<u>Licensed Beverage</u>			
22	Establishment	\$74.36	\$74.36	\$37.18 N/A

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1	<u>Establishment</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
2	Limited Food Service				
3	<u>Limited Food Service</u>				
4	Establishment	\$74.36	\$74.36	\$37.18	N/A
5	<u>Establishment</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
6	Temporary Food				
7	<u>Temporary Food</u>				
8	Establishment	\$74.36	\$74.36	\$37.18	N/A
9	<u>Establishment</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
10	Mobile Food Unit				
11	<u>Mobile Food Unit</u>				
12	(for each unit)	\$74.36	N/A	N/A	\$37.18
13	<u>(for each unit)</u>	<u>\$86.19</u>	<u>N/A</u>	<u>N/A</u>	<u>\$43.09</u>
14	Pushcart (for each unit)	\$74.36	N/A	N/A	\$14.87
15	<u>Pushcart (for each unit)</u>	<u>\$86.19</u>	<u>N/A</u>	<u>N/A</u>	<u>\$17.23</u>
16	Vending Machine				
17	<u>Vending Machine</u>				
18	Operations:	\$74.36			
19	<u>Operations:</u>	<u>\$86.19</u>			
20	One to ten units		N/A	N/A	\$14.87
21	<u>One to ten units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$17.23</u>

1	Eleven to twenty units		N/A	N/A	\$29.74
2	<u>Eleven to twenty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$34.46</u>
3	Twenty-one to thirty		N/A	N/A	\$44.61
4	units				
5	<u>Twenty-one to thirty</u>		<u>N/A</u>	<u>N/A</u>	<u>\$51.69</u>
6	<u>units</u>				
7	Thirty-one to forty units		N/A	N/A	\$59.48
8	<u>Thirty-one to forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$68.92</u>
9	Over forty units		N/A	N/A	\$74.34
10	<u>Over forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$86.15</u>
11	Food Processing Plant	\$74.36	\$104.12	\$37.18	N/A
12	<u>Food Processing Plant</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>
13	Salvage Operation	\$74.36	\$104.12	\$37.18	N/A
14	<u>Salvage Operation</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>
15	Commissary	\$74.36	\$104.12	\$37.18	N/A
16	<u>Commissary</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>
17	All Other Food				
18	<u>All Other Food</u>				
19	Establishments	\$74.36	\$104.12	\$37.18	N/A
20	<u>Establishments</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>

21 (5) If a food establishment is engaged in more than one
22 food handling activity listed in subsection (4) of this section, the

1 inspection fee charged shall be based upon the primary activity
2 conducted within the food establishment as determined by the
3 department and any fees assessed for each additional food preparation
4 area within the primary establishment as determined by the
5 department.

6 (6) If a person fails to pay the inspection fee for more
7 than one month after the fee is due, such person shall pay a late fee
8 equal to ~~fifty~~ one hundred percent of the total fee. ~~for the first~~
9 ~~month that the fee is late and one hundred percent for the second~~
10 ~~month that the fee is late.~~ The purpose of the late fee is to cover
11 the administrative costs associated with collecting fees. All money
12 collected as a late fee shall be remitted to the State Treasurer for
13 credit to the Pure Food Cash Fund.

14 (7) An educational institution, health care facility,
15 nursing home, or governmental organization operating any type of food
16 establishment, other than a mobile food unit or pushcart, is exempt
17 from the requirements in subsections (1) through (6) of this section.

18 (8) A person whose primary food-related business activity
19 is determined by the department to be egg handling within the meaning
20 of the Nebraska Graded Egg Act and who is validly licensed and paying
21 fees pursuant to such act is exempt from the permit and inspection
22 fee requirements of the Nebraska Pure Food Act.

23 (9) A person holding a permit or license and regulated
24 under the Nebraska Milk Act and an egg handler licensed and regulated
25 under the Nebraska Graded Egg Act are exempt from the Nebraska Pure

1 Food Act.

2 (10) A single event food vendor or a religious,
3 charitable, or fraternal organization operating any type of temporary
4 food establishment, mobile food unit, or pushcart is exempt from the
5 requirements of subsections (1) through (6) of this section. Any such
6 organization operating any nontemporary food establishment prior to
7 July 1, 1985, is exempt from the requirements of subsection (2) of
8 this section.

9 Sec. 6. Section 81-2,271, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 81-2,271 (1) The permit required by section 81-2,270
12 shall be posted in a location in the food establishment, food
13 processing plant, or salvage operation which is conspicuous to the
14 public. A salvage operation shall also have a copy of the permit in
15 each vehicle.

16 (2) The permit is not transferable to any other person or
17 location. Any permit issued lapses automatically upon a change of
18 ownership or location except as provided in subsection (3) of this
19 section. The permitholder shall notify the department in writing at
20 least thirty days prior to any change in ownership, name, or address.
21 The permitholder shall notify the department in writing before there
22 is a change of the name or address of the person authorized to
23 receive the notices and orders of the department. When an
24 establishment is to be permanently closed, the permitholder shall
25 return the permit to the department within one week after the

1 closing.

2 (3) A mobile food unit, pushcart, or vending machine may
3 be moved if the permitholder is able to provide the location of such
4 unit, pushcart, or machine to the regulatory authority upon request
5 and the person authorized by the permitholder to receive notices and
6 orders of the department maintains a permanent mailing address on
7 file with the department.

8 (4) Every mobile food unit or pushcart operator shall
9 have a copy of their permit to operate available at the mobile food
10 unit or pushcart when in operation.

11 Sec. 7. (1) Except during preparation, cooking, or
12 cooling or when time is used as the public health control as
13 specified under the Nebraska Pure Food Act and except as specified
14 under subsection (2) of this section, potentially hazardous food
15 (time and temperature control for safety food) shall be maintained:

16 (a) At one hundred thirty-five degrees Fahrenheit (fifty-
17 seven degrees Celsius) or above, except that roasts cooked to a
18 temperature and for a time specified in the Nebraska Pure Food Act or
19 reheated as specified in the act may be held at a temperature of one
20 hundred thirty degrees Fahrenheit (fifty-four degrees Celsius) or
21 above; or

22 (b) At:

23 (i) Forty-one degrees Fahrenheit (five degrees Celsius)
24 or less; or

25 (ii) Forty-five degrees Fahrenheit (seven degrees

1 Celsius) or between forty-one degrees Fahrenheit (five degrees
2 Celsius) and forty-five degrees Fahrenheit (seven degrees Celsius) in
3 existing refrigeration equipment that is not capable of maintaining
4 the food at forty-one degrees Fahrenheit (five degrees Celsius) or
5 less if:

6 (A) The equipment is in place and in use in the food
7 establishment; and

8 (B) Refrigeration equipment that is not capable of
9 meeting a cold holding temperature of forty-one degrees Fahrenheit
10 (five degrees Celsius) that is in use on the operative date of this
11 act shall, upon replacement of the equipment or at a change of
12 ownership of the food establishment, be replaced with equipment that
13 is capable of maintaining foods at forty-one degrees Fahrenheit (five
14 degrees Celsius) or below.

15 (2) Eggs that have not been treated to destroy all viable
16 Salmonellae shall be stored in refrigerated equipment that maintains
17 an ambient air temperature of forty-five degrees Fahrenheit (seven
18 degrees Celsius) or less.

19 (3) Potentially hazardous food (time and temperature
20 control for safety food) in a homogenous liquid form may be
21 maintained outside of the temperature control requirements, as
22 specified under subsection (1) of this section, while contained
23 within specially designed equipment that complies with the design and
24 construction requirements as specified in the act.

25 Sec. 8. Section 81-2,277, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 81-2,277 Food processing plants shall comply with the
3 federal Current Good Manufacturing Practice In Manufacturing,
4 Packing, or Holding Human Food found in 21 C.F.R. part 110 as it
5 ~~exists on August 28, 1999.~~ existed on April 1, 2011.

6 Sec. 9. Original sections 81-2,239, 81-2,244.01,
7 81-2,257, 81-2,259, 81-2,270, 81-2,271, and 81-2,277, Reissue Revised
8 Statutes of Nebraska, are repealed.

9 Sec. 10. The following sections are outright repealed:
10 Sections 81-2,272.02, 81-2,272.17, and 81-2,272.36, Reissue Revised
11 Statutes of Nebraska.

12 Sec. 11. Since an emergency exists, this act takes effect
13 when passed and approved according to law.