

**ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016**  
**COMMITTEE STATEMENT**  
**LB798**

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**Hearing Date:** Tuesday January 19, 2016  
**Committee On:** Agriculture  
**Introducer:** Johnson  
**One Liner:** Change provisions of the Nebraska Pure Food Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File

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**Vote Results:**

<b>Aye:</b>	6	Senators Bloomfield, Harr, Johnson, Kolterman, Riepe, Schilz
<b>Nay:</b>		
<b>Absent:</b>	2	Senators Chambers, Larson
<b>Present Not Voting:</b>		

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**Verbal Testimony:**

**Proponents:**

Rick Leonard  
Bobbie Kriz-Wickham  
Melva Ball  
Kathy Siefken  
Jim Partington  
Robert Voss

**Representing:**

Sen. Jerry Johnson, Introducer  
Nebraska Department of Agriculture  
Nebraska Department of Agriculture  
Nebraska Grocery Industry Association  
Nebraska Restaurant Association  
B&R Stores, Inc.; Nebraska Association of Meat Processors

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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

LB 798 updates provisions of the Nebraska Pure Food Act to incorporate provisions and concepts as contained in the 2013 Food Code and related model food safety regulations.

The Nebraska Pure Food Act (Sec. 81-2,239 to 81-2,292) is the primary body of state law regulating retail 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 and localities that incorporate the model provisions of the Food Code, a publication of the U.S. Public Health Service, Food & Drug Administration as food safety standards. The Food Code is not federal law or federal regulation. However, it provides a uniform system of regulation to ensure that food at retail is safe and properly protected and presented. The Food Code 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 2009 Food Code (LB 771, 2012).

Incorporation of the most recent version of the Food Code is accomplished by amendment of Sec. 81-2,239 by Section 1. While most provisions of the Food Code are incorporated by reference directly, some of its provisions and concepts are adopted in modified form as set forth in sections of the Nebraska Pure Food Act. Those specific provisions of the

Food Code not directly adopted are listed in the definition of the Food Code in Sec. 81-2,244 amended by Section 3 of the bill. LB 798 continues a trend toward the Nebraska Pure Food Act having fewer modifications from the Food Code recommendations.

The changes resulting from LB 798 include the following:

The 2013 Food Code replaces the term "potentially hazardous foods" with the term "time/temperature control for safety food." The 2013 Food Code does not change the definition, but merely adopts a new term to refer to such foods. Various sections of the Nebraska Pure Food Act that utilize the term "potentially hazardous foods" are amended to incorporate the new term.

The Food Salvage Code is excluded from the Nebraska Pure Food Act. The Food Salvage Code is a model code similar to the Food Code that sets forth standards specific to operations that salvage food items for resale or donation. There have been few updates to the Food Salvage Code since 1984 and it is increasingly archaic and difficult to apply as a regulatory standard. The more relevant and updated standards, which currently apply expressly to food manufacturing operations but are also utilized in regulating food salvage operations, are the Current Good Practice in Manufacturing, Packing, or Holding Human Food regulations as set forth in 21 CFR 110. LB 798 adopts the most recent version of 21 CFR 110 and expressly provides that this regulation applies to food salvage operations. Because of this change, sections 81-2,247 and 81-2,258 of the Nebraska Pure Food Act are obsolete and outright repealed.

A Nebraska Pure Food Act variation from the Food Code for potentially hazardous foods (time/temperature control for safety foods) held at temperatures above 41 and 45 degrees is continued. Sections 3-501.17 and 3-501.18 of the Food Code does requires packages of potentially hazardous foods that are not kept frozen to be refrigerated below 41 degrees and to be discarded within 7 days after opening. These sections of the Food Code further set out standards for date marking such food items to assist in complying with discarding dates and lists exceptions the general rule. The Nebraska Pure Food Act allows potentially hazardous foods to be held between 41 degrees and 45 degrees but requires disposal after four days. The Nebraska Pure Food Act currently excludes 3-501.17 and 3-501.18 but sets out the variation described above in Sec. 81-2,272.24 in a form identical to these sections except as modified to allow the higher holding temperature. Section 11 of LB 798 directly incorporates 3-501.17 and 3-501.18 by reference and applying to foods held at 41 degrees or less, and retaining only the language applying to foods held between 41 and 45 degrees. There is no substantive change in existing Nebraska Pure Food Act standards. Because of these changes, section 81-2,272.25 is obsolete and is outright repealed.

The Nebraska Pure Food Act would no longer exclude Food Code sections 3-502.11 and 3-502.12. Food Code section 3-502.11 requires food establishments to obtain a variance from the applicable regulatory authority when utilizing smoking, curing, food additives as a food preservation measure, when utilizing reduced oxygen packaging except when implemented in a manner compliant with 3-502.12 which does not require a variance, or when processing animals for personal consumption. Sec. 3-502.12 provides standards for use of reduced oxygen packaging that does not require a variance, including following a HACCP plan. Sec. 81-2,272.27 currently does not require a HACCP plan but incorporates most of the Food Code restrictions and requirements for use of reduced oxygen packaging. Because LB 798 no longer excludes 3-502.11 and 3-502.12, section 81-2,272.27 is obsolete and is outright repealed.

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Jerry Johnson, Chairperson