

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 798

FINAL READING

Introduced by Johnson, 23.

Read first time January 07, 2016

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Nebraska Pure Food Act; to amend
2 sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,248,
3 81-2,251.01, 81-2,251.06, 81-2,257, 81-2,259, 81-2,272.01,
4 81-2,272.24, and 81-2,277, Reissue Revised Statutes of Nebraska; to
5 redefine terms and eliminate definitions; to update references to
6 federal law; to change provisions relating to potentially hazardous
7 food; to provide compliance requirements for salvage operations; to
8 repeal adoption of and eliminate references to the Food Salvage
9 Code; to eliminate provisions relating to a reduced oxygen packaging
10 method and the use of linens and cloth napkins; to harmonize
11 provisions; to repeal the original sections; and to outright repeal
12 sections 81-2,246.01, 81-2,247, 81-2,254.01, 81-2,258, 81-2,272.25,
13 81-2,272.27, and 81-2,272.34, Reissue Revised Statutes of Nebraska.
14 Be it enacted by the people of the State of Nebraska,

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

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

8 Sec. 2. Section 81-2,240, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 81-2,240 For purposes of the Nebraska Pure Food Act, unless the
11 context otherwise requires, the definitions found in sections 81-2,241 to
12 ~~81-2,254~~ 81-2,254.01 shall be used. In addition, the definitions found in
13 the codes and practice adopted by reference in sections 81-2,257.01 to
14 81-2,259 shall be used.

15 Sec. 3. Section 81-2,244.01, Reissue Revised Statutes of Nebraska,
16 is amended to read:

17 81-2,244.01 Food Code shall mean the 2013 ~~2009~~ Recommendations of
18 the United States Public Health Service, Food and Drug Administration,
19 except the definitions of adulterated food and food establishment, person
20 in charge, regulatory authority, and sections 2-102.12, 2-102.20(B),
21 2-103.11(L K), 2-501.11, 3-301.11(B), (C), and (D), and (E) ~~3-304.13,~~
22 ~~3-501.16, 3-501.17, 3-501.18, 3-502.11, 3-502.12,~~ 4-301.12(C)(5), (D),
23 and (E), 4-603.16(C), 4-802.11(C), 5-104.11, 6-301.14, 8-101, 8-102,
24 8-201.11, 8-201.12, ~~8-201.13(A)(2) and (3) and (B), 8-201.14(C),~~ 8-202
25 through 8-304, 8-401.10(B)(2), 8-402.20 through 8-403.20, 8-403.50
26 through 8-404.12, and 8-405.20(B). The term Food Code does not include
27 the annexes of such federal recommendations.

28 Sec. 4. Section 81-2,245.01, Reissue Revised Statutes of Nebraska,
29 is amended to read:

30 81-2,245.01 Food establishment shall mean an operation that stores,
31 prepares, packages, serves, sells, vends, delivers, or otherwise provides

1 food for human consumption. The term does not include:

2 (1) An establishment or vending machine operation that offers only
3 prepackaged soft drinks, carbonated or noncarbonated; canned or bottled
4 fruit and vegetable juices; prepackaged ice; candy; chewing gum; potato
5 or corn chips; pretzels; cheese puffs and curls; crackers; popped
6 popcorn; nuts and edible seeds; and cookies, cakes, pies, and other
7 pastries, that are not time/temperature control for safety ~~potentially~~
8 ~~hazardous~~ foods;

9 (2) A produce stand that only offers whole, uncut fresh fruits and
10 vegetables;

11 (3) A food processing plant;

12 (4) A salvage operation;

13 (5) A private home where food is prepared or served for personal
14 use, a small day care in the home, or a hunting lodge, guest ranch, or
15 other operation where no more than ten paying guests eat meals in the
16 home;

17 (6) A private home or other area where food that is not time/
18 temperature control for safety ~~potentially hazardous~~ food is prepared:

19 (a) For sale or service at a religious, charitable, or fraternal
20 organization's bake sale or similar function; or (b) for sale directly to
21 the consumer at a farmers market if the consumer is informed by a clearly
22 visible placard at the sale location that the food was prepared in a
23 kitchen that is not subject to regulation and inspection by the
24 regulatory authority;

25 (7) A private home or other area where food is prepared for
26 distribution at a fundraising event for a charitable purpose if the
27 consumer is informed by a clearly visible placard at the serving location
28 that the food was prepared in a kitchen that is not subject to regulation
29 and inspection by the regulatory authority. This subdivision does not
30 apply to a caterer or other establishment providing food for the event if
31 the caterer or establishment receives compensation for providing the

1 food;

2 (8) The location where food prepared by a caterer is served so long
3 as the caterer only minimally handles the food at the serving location;

4 (9) Educational institutions, health care facilities, nursing homes,
5 and governmental organizations which are inspected by a state agency or a
6 political subdivision other than the regulatory authority for sanitation
7 in the food preparation areas;

8 (10) A pharmacy as defined in section 71-425 if the pharmacy only
9 sells prepackaged pharmaceutical, medicinal, or health supplement foods
10 that are not time/temperature control for safety ~~potentially hazardous~~ or
11 foods described in subdivision (1) of this section; and

12 (11) An establishment which is not a commercial food establishment
13 and which sells only commercially packaged foods that are not time/
14 temperature control for safety ~~potentially hazardous~~ foods.

15 Sec. 5. Section 81-2,248, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 81-2,248 Itinerant food vendor shall mean a person that sells
18 prepackaged, time/temperature control for safety ~~potentially hazardous~~
19 food from an approved source at a nonpermanent location such as a farmers
20 market, craft show, or county fair.

21 Sec. 6. Section 81-2,251.01, Reissue Revised Statutes of Nebraska,
22 is amended to read:

23 81-2,251.01 Limited food vending machine shall mean a vending
24 machine which does not dispense time/temperature control for safety
25 ~~potentially hazardous~~ food.

26 Sec. 7. Section 81-2,251.06, Reissue Revised Statutes of Nebraska,
27 is amended to read:

28 81-2,251.06 Pushcart shall mean a non-self-propelled vehicle limited
29 to serving food which is not time/temperature control for safety
30 ~~potentially hazardous~~ or commissary wrapped food maintained at
31 temperatures in compliance with the Nebraska Pure Food Act or limited to

1 the preparation and serving of frankfurters.

2 Sec. 8. Section 81-2,257, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 81-2,257 Priority items are designated in the Food Code and sections
5 81-2,272.10 and ~~7~~ 81-2,272.24, ~~81-2,272.25,~~ and ~~81-2,272.27.~~ Priority
6 foundation items are designated in the Food Code.

7 Sec. 9. Section 81-2,259, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 81-2,259 The Legislature hereby adopts by reference the Current Good
10 Manufacturing Practice In Manufacturing, Packing, or Holding Human Food
11 found in 21 C.F.R. part 110 as it existed on April 1, 2015 ~~2011~~.

12 Sec. 10. Section 81-2,272.01, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 81-2,272.01 (1) Except during preparation, cooking, or cooling or
15 when time is used as the public health control as specified under the
16 Nebraska Pure Food Act and except as specified under subsection (2) of
17 this section, time/temperature control for safety ~~potentially hazardous~~
18 ~~food (time and temperature control for safety food)~~ shall be maintained:

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

24 (b) At:

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

26 (ii) Forty-five degrees Fahrenheit (seven degrees Celsius) or
27 between forty-one degrees Fahrenheit (five degrees Celsius) and forty-
28 five degrees Fahrenheit (seven degrees Celsius) in existing refrigeration
29 equipment that is not capable of maintaining the food at forty-one
30 degrees Fahrenheit (five degrees Celsius) or less if:

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

1 and

2 (B) Refrigeration equipment that is not capable of meeting a cold
3 holding temperature of forty-one degrees Fahrenheit (five degrees
4 Celsius) that is in use on March 8, 2012, shall, upon replacement of the
5 equipment or at a change of ownership of the food establishment, be
6 replaced with equipment that is capable of maintaining foods at forty-one
7 degrees Fahrenheit (five degrees Celsius) or below.

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

12 (3) Time/temperature control for safety ~~Potentially hazardous food~~
13 ~~(time and temperature control for safety food)~~ in a homogenous liquid
14 form may be maintained outside of the temperature control requirements,
15 as specified under subsection (1) of this section, while contained within
16 specially designed equipment that complies with the design and
17 construction requirements as specified in the act.

18 Sec. 11. Section 81-2,272.24, Reissue Revised Statutes of Nebraska,
19 is amended to read:

20 81-2,272.24 In addition to the provisions of sections 3-501.17 and
21 3-501.18 of the Food Code which apply to food held at a temperature of
22 forty-one degrees Fahrenheit (five degrees Celsius) or below, food held
23 in refrigeration between forty-five degrees Fahrenheit (seven degrees
24 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius) shall
25 meet the following requirements:

26 (1) Except when packaging food using a reduced oxygen packaging
27 method as specified in section 3-502.12 of the Food Code ~~section~~
28 ~~81-2,272.27~~ and except as specified in this section 3-501.17 of the Food
29 Code, refrigerated, ready-to-eat, time/temperature control for safety
30 potentially hazardous food ~~(time and temperature control for safety food)~~
31 prepared and held in a food establishment for more than twenty-four hours

1 shall be clearly marked to indicate the date of preparation. The food
2 shall be sold, consumed on the premises, or discarded within four
3 calendar days or less; ÷

4 ~~(a) Seven calendar days or less if the food is held refrigerated at~~
5 ~~forty-one degrees Fahrenheit (five degrees Celsius) or below; or~~

6 ~~(b) Four calendar days or less if the food is held refrigerated~~
7 ~~between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-~~
8 ~~one degrees Fahrenheit (five degrees Celsius).~~

9 (2) Except as specified in this section 3-501.17 of the Food Code,
10 refrigerated, ready-to-eat, time/temperature control for safety
11 potentially hazardous food (time and temperature control for safety food)
12 prepared and packaged by a food processing plant and held refrigerated at
13 such food establishment, shall be clearly marked, at the time the
14 original container is opened in a food establishment, to indicate the
15 date the food container was opened. The food shall be sold, consumed on
16 the premises, or discarded within four calendar days or less; and ÷

17 (3) A food specified under this section shall be discarded if such
18 food:

19 (a) Exceeds the temperature and time combinations specified in
20 subdivision (1) of this section, except time that the food is frozen;

21 (b) Is in a container or package that does not bear a date or day;

22 (c) Is appropriately marked with a date or day that exceeds the
23 temperature and time combination as specified in subdivision (1) of this
24 section; or

25 (d) Is prepared in a food establishment and dispensed through a
26 vending machine with an automatic shut-off control if it exceeds the
27 temperature and time combination as specified in subdivision (1) of this
28 section.

29 ~~(a) Seven calendar days or less if the food is held refrigerated at~~
30 ~~forty-one degrees Fahrenheit (five degrees Celsius) or below; or~~

31 ~~(b) Four calendar days or less if the food is held refrigerated~~

1 ~~between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-~~
2 ~~one degrees Fahrenheit (five degrees Celsius).~~

3 ~~This subsection does not apply to fermented sausages which retain an~~
4 ~~original casing or shelf stable salt-cured products produced in a~~
5 ~~federally inspected food processing plant that are not labeled "Keep~~
6 ~~Refrigerated" or to shelf stable, dry, fermented sausages when the face~~
7 ~~has been cut, but the remaining portion is whole and intact.~~

8 ~~(3) A refrigerated, ready to eat, potentially hazardous food (time~~
9 ~~and temperature control for safety food) ingredient or a portion of a~~
10 ~~refrigerated, ready to eat, potentially hazardous food (time and~~
11 ~~temperature control for safety food) that is subsequently combined with~~
12 ~~additional ingredients or portions of food shall retain the date marking~~
13 ~~of the earliest-prepared or first-prepared ingredient.~~

14 ~~(4) A date marking system that meets the criteria stated in~~
15 ~~subsections (1) and (2) of this section may include:~~

16 ~~(a) Using a method approved by the regulatory authority for~~
17 ~~refrigerated, ready to eat, potentially hazardous food (time and~~
18 ~~temperature control for safety food) that is frequently rewrapped, such~~
19 ~~as lunchmeat or a roast, or for which date marking is impractical, such~~
20 ~~as soft serve mix or milk in a dispensing machine;~~

21 ~~(b) Marking the date or day of preparation, with a procedure to~~
22 ~~discard the food on or before the last date or day by which the food must~~
23 ~~be consumed on the premises, sold, or discarded as specified under~~
24 ~~subsection (1) of this section;~~

25 ~~(c) Marking the date or day the original container is opened in a~~
26 ~~food establishment, with a procedure to discard the food on or before the~~
27 ~~last date or day by which the food must be consumed on the premises,~~
28 ~~sold, or discarded as specified under subsection (2) of this section; or~~

29 ~~(d) Using calendar dates, days of the week, color coded marks, or~~
30 ~~other effective marking methods, if the marking system is disclosed to~~
31 ~~the regulatory authority upon request.~~

1 ~~(5) Subsections (1) and (2) of this section do not apply to~~
2 ~~individual meal portions served or repackaged for sale from a bulk~~
3 ~~container upon a consumer's request.~~

4 ~~(6) Subsection (2) of this section does not apply to the following~~
5 ~~foods prepared and packaged by a food processing plant inspected by a~~
6 ~~regulatory authority:~~

7 ~~(a) Deli salads, such as ham salad, seafood salad, chicken salad,~~
8 ~~egg salad, pasta salad, potato salad, and macaroni salad manufactured in~~
9 ~~accordance with 21 C.F.R. part 110, Current Good Manufacturing Practice~~
10 ~~In Manufacturing, Packing, or Holding Human Food, as such part existed on~~
11 ~~January 1, 2007;~~

12 ~~(b) Hard cheeses containing not more than thirty-nine percent~~
13 ~~moisture as defined in 21 C.F.R. part 133, Cheeses and related cheese~~
14 ~~products, as such part existed on January 1, 2007, such as cheddar,~~
15 ~~gruyere, parmesan and reggiano, and romano;~~

16 ~~(c) Semi-soft cheeses containing more than thirty-nine percent~~
17 ~~moisture, but not more than fifty percent moisture, as defined in 21~~
18 ~~C.F.R. part 133, Cheeses and related cheese products, as such part~~
19 ~~existed on January 1, 2007, such as blue, edam, gorgonzola, gouda, and~~
20 ~~monterey jack;~~

21 ~~(d) Cultured dairy products as defined in 21 C.F.R. part 131, Milk~~
22 ~~and cream, as such part existed on January 1, 2007, such as yogurt, sour~~
23 ~~cream, and buttermilk;~~

24 ~~(e) Preserved fish products, such as pickled herring and dried or~~
25 ~~salted cod and other acidified fish products, as defined in 21 C.F.R.~~
26 ~~part 114, Acidified foods, as such part existed on January 1, 2007;~~

27 ~~(f) Shelf stable, dry fermented sausages, such as pepperoni and~~
28 ~~Genoa salami that are not labeled "Keep Refrigerated" as specified in 9~~
29 ~~C.F.R. part 317, Labeling, marking devices, and containers, as such part~~
30 ~~existed on January 1, 2007, and which retain the original casing on the~~
31 ~~product; and~~

1 ~~(g) Shelf stable salt-cured products such as prosciutto and Parma~~
2 ~~(ham) that are not labeled "Keep Refrigerated" as specified in 9 C.F.R.~~
3 ~~part 317, Labeling, marking devices, and containers, as such part existed~~
4 ~~on January 1, 2007.~~

5 Sec. 12. Section 81-2,277, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 81-2,277 Food processing plants and salvage operations shall comply
8 with the federal Current Good Manufacturing Practice In Manufacturing,
9 Packing, or Holding Human Food adopted in section 81-2,259 ~~found in 21~~
10 ~~C.F.R. part 110 as it existed on April 1, 2011.~~

11 Sec. 13. Original sections 81-2,239, 81-2,240, 81-2,244.01,
12 81-2,245.01, 81-2,248, 81-2,251.01, 81-2,251.06, 81-2,257, 81-2,259,
13 81-2,272.01, 81-2,272.24, and 81-2,277, Reissue Revised Statutes of
14 Nebraska, are repealed.

15 Sec. 14. The following sections are outright repealed: Sections
16 81-2,246.01, 81-2,247, 81-2,254.01, 81-2,258, 81-2,272.25, 81-2,272.27,
17 and 81-2,272.34, Reissue Revised Statutes of Nebraska.