

E AND R AMENDMENTS TO LB 134

Introduced by Wishart, 27, Chairman Enrollment and Review

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 81-2,239, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

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

10 Sec. 2. Section 81-2,240, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 81-2,240 For purposes of the Nebraska Pure Food Act, unless the
13 context otherwise requires, the definitions found in sections 81-2,241 to
14 81-2,254 and sections 3 and 4 of this act shall be used. In addition, the
15 definitions found in the code codes and practice adopted by reference in
16 sections 81-2,257.01 and ~~to~~ 81-2,259 shall be used.

17 Sec. 3. Egg handler shall mean any person who engages in any
18 business in commerce which involves buying or selling any shell eggs or
19 processing any shell egg products and who is not a producer with
20 production from a flock of three thousand hens or less. Egg handler shall
21 include persons who assemble, collect, break, process, grade, package, or
22 wholesale shell eggs. The term does not include a person whose primary
23 food-related business activity is not egg handling.

24 Sec. 4. Food delivery service shall mean an operation that only
25 meets the definition of food establishment by relinquishing possession of
26 food to a consumer through a delivery service including home delivery of
27 grocery orders, restaurant takeout orders, or other delivery services

1 provided by a common or contract carrier.

2 Sec. 5. Section 81-2,262, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 81-2,262 Copies ~~Certified~~ ~~copies~~ of the code ~~codes~~ and practice
5 adopted by reference pursuant to sections 81-2,257.01 and ~~to~~ 81-2,259,
6 shall be filed in the offices of the Secretary of State, Clerk of the
7 Legislature, and department.

8 Sec. 6. Section 81-2,263, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 81-2,263 If there is an inconsistency between sections 81-2,239 to
11 81-2,292 and sections 3, 4, and 8 of this act and any code ~~of the codes~~
12 adopted by reference, the requirements of the sections shall control.

13 Sec. 7. Section 81-2,270, Reissue Revised Statutes of Nebraska, is
14 amended to read:

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

19 (2) Application for a permit shall be made to the director on forms
20 prescribed and furnished by the department. Such application shall
21 include the applicant's full name and mailing address, the names and
22 addresses of any partners, members, or corporate officers, the name and
23 address of the person authorized by the applicant to receive the notices
24 and orders of the department as provided in the Nebraska Pure Food Act,
25 whether the applicant is an individual, partnership, limited liability
26 company, corporation, or other legal entity, the location and type of
27 proposed establishment or operation, and the signature of the applicant.
28 Application for a permit shall be made prior to the operation of a food
29 establishment, food processing plant, or salvage operation. The
30 application shall be accompanied by an initial permit fee and an initial
31 inspection fee in the same amount as the annual inspection fee if

1 inspections are required to be done by the department. If the food
2 establishment, food processing plant, or salvage operation has been in
3 operation prior to applying for a permit or notifying the regulatory
4 authority, the applicant shall pay an additional fee of sixty dollars.

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

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

19 (i) The estimated annual revenue shall not be greater than one
20 hundred seven percent of program cash fund appropriations allocated for
21 the Nebraska Pure Food Act;

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

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

27 (b) The maximum fees are:

28			<u>No Food</u>
29		Additional	<u>Preparation</u>
30	First	Food	<u>Area,</u>

		Food	Preparation	Unit
		Preparation	Area	Or
		Area	Annual	Units
	Food	Initial	Annual	Inspection
	Handling	Permit	Inspection	Fee
	Activity	Fee	Fee	(per area)
	Convenience Store	\$86.19	\$86.19	\$43.09
	Itinerant Food Vendor	\$86.19	\$86.19	\$43.09
	Licensed Beverage			
	Establishment	\$86.19	\$86.19	\$43.09
	Limited Food Service			
	Establishment	\$86.19	\$86.19	\$43.09
	Temporary Food			
	Establishment	\$86.19	\$86.19	\$43.09
	<u>Food Delivery Service</u>	<u>\$86.19</u>	<u>N/A</u>	<u>N/A</u>
	Mobile Food Unit			
	(for each unit)	\$86.19	N/A	N/A
	Pushcart (for each unit)	\$86.19	N/A	N/A
	Vending Machine			
	Operations:	\$86.19		
	One to ten units		N/A	N/A
	Eleven to twenty units		N/A	N/A
	Twenty-one to thirty			
	units		N/A	N/A
	Thirty-one to forty			
	units		N/A	N/A
	Over forty units		N/A	N/A
	Food Processing Plant	\$86.19	\$120.64	\$43.09
	Salvage Operation	\$86.19	\$120.64	\$43.09

1 Commissary \$86.19 \$120.64 \$43.09 N/A

2 All Other Food

3 Establishments \$86.19 \$120.64 \$43.09 N/A

4 (5) If a food establishment is engaged in more than one food
5 handling activity listed in subsection (4) of this section, the
6 inspection fee charged shall be based upon the primary activity conducted
7 within the food establishment as determined by the department and any
8 fees assessed for each additional food preparation area within the
9 primary establishment as determined by the department.

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

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

21 ~~(8) A food establishment which produces eggs and only stores,~~
22 ~~packages, sells, delivers, or otherwise provides for human consumption~~
23 ~~the eggs it produces, or only stores, packages, sells, delivers, or~~
24 ~~otherwise provides for human consumption eggs produced from no more than~~
25 ~~four producers at the same time, is exempt from the requirements of~~
26 ~~subsections (1) through (6) of this section. Any food establishment with~~
27 ~~a valid egg handler license and for which all fees have been paid prior~~
28 ~~to the effective date of this person whose primary food-related business~~
29 ~~activity is determined by the department to be egg handling within the~~
30 ~~meaning of the Nebraska Graded Egg Act and who is validly licensed and~~

1 ~~paying fees pursuant to such~~ act is exempt from the permit and inspection
2 fee requirements of the Nebraska Pure Food Act until August 1, 2018.

3 (9) A food establishment or food processing plant person holding a
4 ~~permit or license and regulated~~ under the Nebraska Milk Act is and an egg
5 ~~handler licensed and regulated under the Nebraska Graded Egg Act~~ are
6 exempt from the requirements of subsections (1) through (6) of this
7 section Nebraska Pure Food Act.

8 (10) A single event food vendor or a religious, charitable, or
9 fraternal organization operating any type of temporary food
10 establishment, mobile food unit, or pushcart is exempt from the
11 requirements of subsections (1) through (6) of this section. Any such
12 organization operating any nontemporary food establishment prior to July
13 1, 1985, is exempt from the requirements of subsection (2) of this
14 section.

15 Sec. 8. Any person who packs and sells, offers for sale, barter,
16 or otherwise provides for the human consumption of eggs shall comply with
17 all applicable requirements set forth in rules and regulations adopted
18 and promulgated by the department, and shall establish the source of the
19 eggs by labeling the eggs with a packer identification number assigned by
20 the department or the United States Department of Agriculture.

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

23 81-2,271 (1) The permit required by section 81-2,270 shall be posted
24 in a location in the food establishment, food processing plant, or
25 salvage operation which is conspicuous to the public. A salvage operation
26 shall also have a copy of the permit in each vehicle. For a food delivery
27 service, the location shall be a permanent address where the permit holder
28 may be contacted.

29 (2) The permit is not transferable to any other person or location.
30 Any permit issued lapses automatically upon a change of ownership or
31 location except as provided in subsection (3) of this section. The

1 permitholder shall notify the department in writing at least thirty days
2 prior to any change in ownership, name, or address. The permitholder
3 shall notify the department in writing before there is a change of the
4 name or address of the person authorized to receive the notices and
5 orders of the department. When an establishment is to be permanently
6 closed, the permitholder shall return the permit to the department within
7 one week after the closing.

8 (3) A mobile food unit, pushcart, or vending machine may be moved if
9 the permitholder is able to provide the location of such unit, pushcart,
10 or machine to the regulatory authority upon request and the person
11 authorized by the permitholder to receive notices and orders of the
12 department maintains a permanent mailing address on file with the
13 department. A food delivery service shall upon request provide the
14 department with information regarding the location of all conveyances it
15 controls.

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

19 Sec. 10. Section 81-2,272.31, Reissue Revised Statutes of Nebraska,
20 is amended to read:

21 81-2,272.31 Except in response to a temporary interruption of a
22 water supply in the food establishment, any food establishment which is
23 not a food delivery service, mobile food unit, or temporary food
24 establishment shall:

25 (1) Have water under pressure provided to all fixtures, equipment,
26 and nonfood equipment that are required to use water;

27 (2) Receive water through the use of an approved water main;

28 (3) Have a permanent plumbing system; and

29 (4) Have at least one toilet which is permanent, convenient, and
30 accessible.

31 Sec. 11. Section 81-2,281, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-2,281 (1) The department shall enforce the Nebraska Pure Food Act
3 and any rule or regulation adopted and promulgated pursuant to such act.

4 The department may:

5 (a) Enter at reasonable times and in a reasonable manner, without
6 being subject to any action for trespass or damages if reasonable care is
7 exercised, any food establishment, food processing plant, or salvage
8 operation to inspect all food, structures, vehicles, equipment, packing
9 materials, containers, records, and labels on such property. The
10 department may inspect and examine all records and property relating to
11 compliance with the Nebraska Pure Food Act. Such records and property
12 shall be made available to the department for review at all reasonable
13 times;

14 (b) In a reasonable manner, hold for inspection and take samples of
15 any food which may not be in compliance with the Nebraska Pure Food Act;

16 (c) Inspect at any time or place food that is being shipped into or
17 through the state and take any enforcement action authorized under the
18 Nebraska Pure Food Act; and

19 (d) Obtain an inspection warrant in the manner prescribed in
20 sections 29-830 to 29-835 from a court of record if any person refuses to
21 allow the department to inspect pursuant to this subsection.

22 (2) In addition to its authority provided in subsection (1) of this
23 section, the ~~The~~ department may contract with any political subdivision
24 or state agency it deems qualified to conduct any or all regulatory
25 functions authorized pursuant to the act except those functions relating
26 to the issuance, suspension, or revocation of permits or any order of
27 probation. Holders of permits issued pursuant to the act who are
28 regularly inspected by political subdivisions under contract with the
29 department shall be exempt from the inspection fees prescribed in section
30 81-2,270 if such holders pay license or inspection fees to the political
31 subdivision performing the inspections.

1 (3) ~~(2)~~ It shall be the responsibility of the regulatory authority
2 to inspect food establishments and food processing plants as often as
3 required by the act. An inspection of a salvage operation shall be
4 performed at least once every three hundred sixty-five days of operation.
5 Additional inspections shall be performed as often as is necessary for
6 the efficient and effective enforcement of the act.

7 (4) ~~(3)~~ All inspections conducted pursuant to the act shall be
8 performed by persons who are provisional environmental health specialists
9 or registered environmental health specialists as defined in section
10 38-1305 or 38-1306.

11 (5) ~~(4)~~ Duly authorized personnel of the regulatory authority after
12 showing proper identification shall have access at all reasonable times
13 to food establishments, food processing plants, or salvage operations
14 required by the act to obtain a permit to perform authorized regulatory
15 functions. Such functions shall include, but not be limited to,
16 inspections, checking records maintained in the establishment or other
17 locations to obtain information pertaining to food and supplies
18 purchased, received, used, sold, or distributed, copying and
19 photographing violative conditions, and examining and sampling food. When
20 samples are taken, the inspectors shall pay or offer to pay for samples
21 taken. The authorized personnel shall also have access to the records of
22 salvage operations pertaining to distressed salvageable and salvaged
23 merchandise purchased, received, used, sold, or distributed.

24 (6) ~~(5)~~ Regulatory activities performed by a political subdivision
25 or state agency under contract shall conform with the provisions of the
26 act and such activities shall have the same effect as those performed by
27 the department. Any interference with the regulatory authority's duty to
28 inspect shall be an interference with the department's duties for the
29 purposes of section 81-2,273.

30 Sec. 12. Section 81-2,288, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 81-2,288 (1) The department may adopt and promulgate rules and
2 regulations to aid in the administration and enforcement of the Nebraska
3 Pure Food Act.

4 (2) The department may adopt and promulgate rules and regulations to
5 provide for source labeling on eggs which are packaged. The department
6 may establish standards, grades, and weight classes for eggs.

7 (3) (2) The department may contract with agencies of the federal
8 government for the performance by the department of inspections and other
9 regulatory functions at food establishments, food processing plants, or
10 salvage operations within the state which are subject to federal
11 jurisdiction and may receive federal funds for work performed under such
12 contracts.

13 (4) (3) Except as provided in subsection (3) (2) of this section,
14 the provisions of the act shall not apply to establishments or specific
15 portions of establishments regularly inspected for proper sanitation by
16 an agency of the federal government.

17 Sec. 13. The State Treasurer shall transfer any money in the Graded
18 Egg Fund to the Pure Food Cash Fund on the effective date of this act.

19 Sec. 14. Original sections 81-2,262, 81-2,263, 81-2,270, 81-2,271,
20 81-2,272.31, 81-2,281, and 81-2,288, Reissue Revised Statutes of
21 Nebraska, and sections 81-2,239 and 81-2,240, Revised Statutes Cumulative
22 Supplement, 2016, are repealed.

23 Sec. 15. The following sections are outright repealed: Sections
24 2-3501, 2-3502, 2-3503, 2-3504, 2-3505, 2-3506, 2-3507, 2-3508, 2-3509,
25 2-3510, 2-3511, 2-3512, 2-3513, 2-3514, 2-3515, 2-3516, 2-3518, 2-3519,
26 2-3520, 2-3521, 2-3522, 2-3523, 2-3524, and 2-3525, Reissue Revised
27 Statutes of Nebraska.

28 2. On page 1, line 2, strike "81-2,288, and" and insert "and
29 81-2,288,"; in line 3 strike "90-538,"; in line 9 after "inspections"
30 insert "and fees"; and line 11 strike "terminate".