

E AND R AMENDMENTS TO LB 835

Introduced by Slama, 1, Chairman Enrollment and Review

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

3 Section 1. Section 81-2,244.01, Revised Statutes Cumulative
4 Supplement, 2018, is amended to read:

5 81-2,244.01 Food Code shall mean the 2017 ~~2013~~ Recommendations of
6 the United States Public Health Service, Food and Drug Administration,
7 except the definitions of adulterated food and food establishment, person
8 in charge, regulatory authority, and sections 2-102.12, 2-102.20(B),
9 2-103.11(I) and (M) ~~2-103.11(L)~~, ~~2-501.11~~, 3-301.11(B), (C), (D), and
10 (E), 3-501.16, 4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C),
11 5-104.11, ~~6-301.14~~, 8-101, 8-102, 8-201.11, 8-201.12, 8-202.10 ~~8-202~~
12 through 8-304.20 ~~8-304~~, 8-401.10(B)(2), 8-402.20 through 8-403.20,
13 8-403.50 through 8-404.12, and 8-405.20(B). The term Food Code does not
14 include the annexes of such federal recommendations.

15 Sec. 2. Section 81-2,257, Revised Statutes Cumulative Supplement,
16 2018, is amended to read:

17 81-2,257 Priority items are designated in the Food Code and sections
18 81-2,272.01, 81-2,272.10, and 81-2,272.24. Priority foundation items are
19 designated in the Food Code.

20 Sec. 3. Section 81-2,270, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

22 81-2,270 (1) No person shall operate: (a) A food establishment; (b)
23 a food processing plant; or (c) a salvage operation, without a valid
24 permit which sets forth the types of operation occurring within the
25 establishment.

26 (2) Application for a permit shall be made to the director on forms
27 prescribed and furnished by the department. Such application shall

1 include the applicant's full name and mailing address, the names and
2 addresses of any partners, members, or corporate officers, the name and
3 address of the person authorized by the applicant to receive the notices
4 and orders of the department as provided in the Nebraska Pure Food Act,
5 whether the applicant is an individual, partnership, limited liability
6 company, corporation, or other legal entity, the location and type of
7 proposed establishment or operation, and the signature of the applicant.
8 Application for a permit shall be made prior to the operation of a food
9 establishment, food processing plant, or salvage operation. The
10 application shall be accompanied by an initial permit fee and an initial
11 inspection fee in the same amount as the annual inspection fee if
12 inspections are required to be done by the department. If the food
13 establishment, food processing plant, or salvage operation has been in
14 operation prior to applying for a permit or notifying the regulatory
15 authority, the applicant shall pay an additional fee of sixty dollars.

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

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

30 (i) The estimated annual revenue shall not be greater than one
31 hundred seven percent of program cash fund appropriations allocated for

1 the Nebraska Pure Food Act;

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

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

7 (b) The maximum fees are:

				No Food	
				Additional	Preparation
				Food	Area,
				Preparation	Unit
				Area	Or
				Annual	Units
Food	Initial	Annual	Inspection	Annual	
Handling	Permit	Inspection	Fee	Inspection	
Activity	Fee	Fee	(per area)	Fee	
17 Convenience Store	\$86.19	\$86.19	\$43.09	N/A	
18 Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A	
19 Licensed Beverage					
20 Establishment	\$86.19	\$86.19	\$43.09	N/A	
21 Limited Food Service					
22 Establishment	\$86.19	\$86.19	\$43.09	N/A	
23 Temporary Food					
24 Establishment	\$86.19	\$86.19	\$43.09	N/A	
25 Food Delivery Service	\$86.19	N/A	N/A	\$17.23	
26 Mobile Food Unit					
27 (for each unit)	\$86.19	N/A	N/A	\$43.09	
28 Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23	
29 Vending Machine					

1	Operations:	\$86.19			
2	One to ten units		N/A	N/A	\$17.23
3	Eleven to twenty units		N/A	N/A	\$34.46
4	Twenty-one to thirty				
5	units		N/A	N/A	\$51.69
6	Thirty-one to forty				
7	units		N/A	N/A	\$68.92
8	Over forty units		N/A	N/A	\$86.15
9	Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
10	Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
11	Commissary	\$86.19	\$120.64	\$43.09	N/A
12	All Other Food				
13	Establishments	\$86.19	\$120.64	\$43.09	N/A

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

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

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

1 (8) A food establishment which produces eggs and only stores,
2 packages, sells, delivers, or otherwise provides for human consumption
3 the eggs it produces, or only stores, packages, sells, delivers, or
4 otherwise provides for human consumption eggs produced from no more than
5 four producers at the same time, is exempt from the requirements of
6 subsections (1) through (6) of this section. ~~Any food establishment with
7 a valid egg handler license and for which all fees have been paid prior
8 to August 24, 2017, is exempt from the permit and inspection fee
9 requirements of the Nebraska Pure Food Act until August 1, 2018.~~

10 (9) A food establishment or food processing plant holding a permit
11 under the Nebraska Milk Act is exempt from the requirements of
12 subsections (1) through (6) of this section.

13 (10) A single event food vendor or a religious, charitable, or
14 fraternal organization operating any type of temporary food
15 establishment, mobile food unit, or pushcart is exempt from the
16 requirements of subsections (1) through (6) of this section. Any such
17 organization operating any nontemporary food establishment prior to July
18 1, 1985, is exempt from the requirements of subsection (2) of this
19 section.

20 Sec. 4. Section 81-2,288.01, Reissue Revised Statutes of Nebraska,
21 is amended to read:

22 81-2,288.01 (1) The regulatory authority shall document on an
23 inspection report form:

24 (a) Administrative information about the food establishment's legal
25 identity, street and mailing addresses, type of establishment and
26 operation, inspection date, status of the permit, and personnel
27 certificates that may be required;

28 (b) Specific factual observations of violative conditions,
29 omissions, or other deviations from the requirements of the Nebraska Pure
30 Food Act that require correction by the permitholder; and

31 (c) Whether the violations listed are priority items, priority

1 foundation items, critical or repeated.

2 (2) The regulatory authority shall specify on the inspection report
3 form the timeframe for correction of the violations as specified in the
4 Nebraska Pure Food Act.

5 (3) All procedures and requirements related to the inspection of
6 food establishments in the act apply to food processing plants and
7 salvage operations.

8 (4) The completed inspection report form is a public document that
9 shall be made available for public disclosure to any person who requests
10 it according to law.

11 Sec. 5. Section 89-186, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 89-186 (1) The Legislature hereby adopts by reference the following:

14 (a) The standards of the National Conference on Weights and Measures
15 published in National Institute of Standards and Technology Handbook 44
16 entitled Specifications, Tolerances, and Other Technical Requirements for
17 Weighing and Measuring Devices as it existed on January 1, 2019 ~~2003~~,
18 except Section 3.31. Vehicle - Tank meters. UR.2.2. Ticket Printer,
19 ~~Printers~~; Customer Ticket, Section 2.20. Scales, N.3. Minimum Test
20 Weights and Test Loads; and Table 4, are not adopted. In addition to the
21 language found in Section 3.30. Liquid-Measuring Devices, S.1.6.4.,
22 S.1.6.5., UR.3.2., and UR.3.3. of such handbook, any computing device in
23 which a product or grade is offered for sale at more than one unit price
24 may also compute at the lowest possible unit price for such transaction.
25 All prices shall still be displayed or posted on the face of the
26 dispenser. Such handbook shall govern all commercial and law enforcement
27 weighing and measuring devices in the state;

28 (b) The Uniform Regulation for the Method of Sale of Commodities of
29 the National Conference on Weights and Measures published in National
30 Institute of Standards and Technology Handbook 130 entitled Uniform Laws
31 and Regulations in the Areas of Legal Metrology and Engine Fuel Quality

1 as it existed on January 1, 2019 ~~2003~~. Such handbook shall be used to
2 determine the proper units of measurement to be used in the keeping for
3 sale or sale of commodities;

4 (c) The Uniform Packaging and Labeling Regulation of the National
5 Conference on Weights and Measures published in National Institute of
6 Standards and Technology Handbook 130 entitled Uniform Laws and
7 Regulations in the Areas of Legal Metrology and Engine Fuel Quality as it
8 existed on January 1, 2019 ~~2003~~. Such handbook shall govern the packaging
9 and labeling by weight, measure, or count of commodities kept for sale or
10 sold in this state; and

11 (d) The procedures designated in National Institute of Standards and
12 Technology Handbook 133 entitled Checking the Net Contents of Packaged
13 Goods as it existed on January 1, 2019 ~~2003~~.

14 (2) Copies of the handbooks adopted by reference in this section
15 shall be filed with the Secretary of State, Clerk of the Legislature, and
16 Department of Agriculture. Copies filed with the Clerk of the Legislature
17 shall be filed electronically.

18 (3) Whenever there exists an inconsistency between the provisions of
19 the Weights and Measures Act other than this section and any of the
20 handbooks adopted by reference, the requirements of such provisions of
21 the act shall control.

22 Sec. 6. Section 89-187, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

24 89-187 For purposes of administering and enforcing the Weights and
25 Measures Act, the director is authorized to ~~The director shall:~~

26 (1) Maintain traceability of the primary standards to the National
27 Institute of Standards and Technology;

28 (2) Enforce the provisions of the Weights and Measures Act;

29 (3) Adopt and promulgate reasonable rules and regulations for the
30 enforcement of the act including the following:

31 (a) Requirements for the voluntary registration of sales and repair

1 personnel for commercial weighing and measuring devices including:

2 (i) Registration fees for such personnel which shall not exceed the
3 actual cost to defray the operation of the voluntary registration
4 program;

5 (ii)(A) Qualifications for registration, which may include
6 examinations, (B) performance standards to maintain registration, (C)
7 types of equipment necessary for the work to be performed by the
8 personnel, (D) responsibilities and privileges of registration, and (E)
9 revocation and suspension of such registration and probation of the
10 registrant; and

11 (iii) Minimum standards for the installation and maintenance of
12 commercial weighing and measuring devices;

13 (b) Additional standards not specifically provided for in the act;

14 (c) Standards for (i) attachments or parts entering into the
15 construction or installation of commercial weighing and measuring devices
16 which shall tend to secure correct results in the use of such devices and
17 (ii) the setting of laboratory fees which shall not exceed the actual
18 cost for testing, correcting, calibrating, and verifying secondary
19 standards and the establishment of standard laboratory operating
20 procedures;

21 (d) Requirements for the suitable use of commercial weighing and
22 measuring devices; and

23 (e) Guidelines for the appropriate method of weighing or measuring
24 whenever the director determines that such guidelines would further the
25 purpose of the act;

26 (4) Establish standards of weight, measure, or count, reasonable
27 standards of fill, and standards for the presentation of cost-per-unit
28 information for any commodity;

29 (5) Upon an application filed with the department by the applicant,
30 grant exemptions, including specific exemptions for single-use commercial
31 weighing and measuring devices, from the provisions of the act or the

1 rules and regulations when the applicant on such application provides
2 assurances, acceptable to the director, that such exemption is
3 appropriate to the maintenance of good commercial practices within the
4 state. Notwithstanding any other provision of the act, meters used by a
5 public utility system for the measurement of electricity, natural or
6 manufactured gas, water, or the usage of communication services, the
7 appliances or accessories associated with such meters, and all weighing
8 and measuring devices inspected or tested by the Public Service
9 Commission shall be exempt from the registration, inspection, and testing
10 requirements of the act, except that this exemption shall not apply to
11 meters which determine the weight or measurement of motor fuel;

12 (6) Conduct investigations to insure compliance with the act;

13 (7) Delegate to appropriate personnel any of these responsibilities
14 for the proper administration of the director's office;

15 (8) In his or her discretion, inspect and test weighing and
16 measuring devices kept for sale or sold;

17 (9) Inspect and test annually and from time to time, as in the
18 director's judgment seems necessary, to ascertain whether commercial
19 weighing and measuring devices are correct;

20 (10) Register and test as far as practical all commercial weighing
21 and measuring devices used in checking the receipt or disbursement of
22 supplies in every institution for which funds are appropriated by the
23 Legislature;

24 (11) Test annually and at the request of the Nebraska State Patrol
25 all weighing and measuring devices used for the enforcement of sections
26 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such
27 weighing and measuring devices shall pay the department for the actual
28 cost of such tests. The department shall bill test fees to such agency
29 upon completion of the test;

30 (12) Approve for use and may mark commercial weighing and measuring
31 devices which the director finds to be correct and shall reject and mark

1 or tag as rejected such commercial weighing and measuring devices which
2 the director finds to be not correct or not registered and inspected in
3 accordance with the Weights and Measures Act. Commercial weighing and
4 measuring devices that have been rejected may be seized if not made
5 correct within the time specified or if used or disposed of in a manner
6 not specifically authorized. The director shall condemn and may seize
7 commercial weighing and measuring devices which are found not to be
8 correct and not capable of being made correct;

9 (13) Weigh, measure, or inspect commodities kept for sale, sold, or
10 in the process of delivery to determine whether they contain the amounts
11 represented and whether they are kept for sale or sold in accordance with
12 the act or the rules and regulations. When commodities are found not to
13 contain the amounts represented or are found to be kept for sale, sold,
14 or in the process of delivery in violation of the act, the director may
15 issue stop-sale, hold, or removal orders and may mark or tag such
16 commodities as being in violation of the act. In carrying out the
17 provisions of this section, the director shall employ recognized
18 procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

19 (14) Provide for the weights and measures training of inspection
20 personnel and adopt and promulgate by rule and regulation minimum
21 training requirements which shall be met by all inspection personnel;

22 (15) Adopt and promulgate rules and regulations prescribing the
23 appropriate term or unit of measurement to be used whenever the director
24 determines in the case of a specific commodity that an existing practice
25 of declaring the quantity by weight, measure, numerical count, or
26 combination thereof does not facilitate value comparisons by consumers or
27 offers an opportunity for consumer confusion;

28 (16) Allow reasonable variations from the stated quantity of
29 contents which shall include those caused by loss or gain of moisture
30 during the course of good distribution practice or by unavoidable
31 deviations in good manufacturing practice only after the commodity has

1 entered intrastate commerce;

2 (17) Verify advertised prices, price representations, and point-of-
3 sale systems, as deemed necessary, to determine: (a) The accuracy of
4 prices, quantity, and computations; (b) the correct use of the equipment;
5 and (c) if such systems utilize scanning or coding means in lieu of
6 manual entry, the accuracy of prices and quantity printed or recalled
7 from a data base;

8 (18) On or before July 1 of each year, notify all persons who have
9 registered any commercial weighing or measuring device of the amount of
10 fees which are due and that the fees are due on August 1 and shall be
11 delinquent after such date;

12 (19) Require all persons who operate a weighing and measuring
13 establishment to obtain a permit to operate such establishment pursuant
14 to section 89-187.01 and to pay to the department an application permit
15 fee pursuant to section 89-187.02;

16 (20) Require all persons who operate a weighing and measuring
17 establishment to, on or before August 1 of each year:

18 (a) Register each commercial weighing and measuring device with the
19 department upon forms furnished by the director;

20 (b) Pay to the department a registration fee of four dollars; and

21 (c) Pay to the department a device inspection fee.

22 ~~(i) The device inspection fee due August 1, 2003, shall be the~~
23 ~~amount in column A of subdivision (20)(c)(iii) of this section.~~

24 (i) (ii) The device inspection fee shall be due August 1, 2004, and
25 each August 1 and thereafter shall be set by the director on or before
26 July 1 of each year. The director may raise or lower the device
27 inspection fees each year to meet the criteria in this subdivision, but
28 the fee shall not be greater than the amount in column B of subdivision
29 (20)(c)(ii) ~~(20)(c)(iii)~~ of this section. The same percentage shall be
30 applied to each device category for all device inspection fee increases
31 or decreases. The director shall use the amounts in column A of

1 ~~subdivision (20)(c)(ii) of this section device inspection fees set for~~
2 ~~the fees due August 1, 2003,~~ as a base for future fee increases or
3 decreases. The director shall determine the fees based on estimated
4 annual revenue and fiscal year-end cash fund balances as follows:

5 (A) The estimated annual revenue shall not be greater than one
6 hundred seven percent of program cash fund appropriations allocated for
7 the Weights and Measures Act; and

8 (B) The estimated fiscal year-end cash fund balance shall not be
9 greater than seventeen percent of program cash fund appropriations
10 allocated for the act.

11 (ii) ~~(iii)~~

12 Scales:	A	B
13 Up through 35 pounds capacity	7.96	14.34
14 Multiunit Scales	51.00	80.37
15 Over 35 through 1,000 pounds capacity	15.13	25.35
16 Over 1,000 through 4,000 pounds capacity	31.87	51.03
17 Over 4,000 through 50,000 pounds capacity	36.65	58.36
18 Over 50,000 through 150,000 pounds capacity	39.04	62.03
19 Over 150,000 pounds capacity	86.87	135.40
20 Length Measuring Devices:		
21 Cordage or fabric	16.56	27.55
22 Pumps:		
23 Service Station Dispensers – per		
24 measuring element	5.09	9.94
25 High-capacity service station		
26 dispensers over 20 gallons per		
27 minute – per dispensing element	17.52	29.02
28 Compressed natural gas – per		
29 dispensing element	91.65	142.74
30 Meters:		

1	Vehicle tank meters	14.17	23.88
2	Loading rack meters	31.87	51.03
3	Liquid petroleum gas meters	40.00	63.50
4	Liquid fertilizer and herbicide meters	36.65	58.36
5	Liquid feed meters	36.65	58.36
6	Cryogenic	53.39	84.04
7	Mass Flow Metering Systems:		
8	Mass flow meters (all liquid)	78.26	122.19;
9	and		

10 (21) Require persons delinquent under subdivision (20) of this
11 section to pay an administrative fee of twenty-five percent of the annual
12 fees due for each month any such fees are delinquent not to exceed one
13 hundred percent of such fees. Such administrative fees paid shall be in
14 addition to the annual fees due. The purpose of the additional
15 administrative fee is to cover the administrative costs associated with
16 collecting fees. All money collected as an additional administrative fee
17 shall be remitted to the State Treasurer for credit to the Weights and
18 Measures Administrative Fund.

19 Sec. 7. Section 89-187.01, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 89-187.01 ~~A On and after August 1, 1992,~~ a person shall not operate
22 a weighing and measuring establishment in the State of Nebraska unless
23 such person holds a valid permit from the department. If the permit holder
24 has more than one location with commercial weighing and measuring
25 devices, he or she shall have a permit for each location.

26 Sec. 8. Section 89-187.02, Revised Statutes Cumulative Supplement,
27 2018, is amended to read:

28 89-187.02 Application for a permit to operate a weighing and
29 measuring establishment shall be made to the director on forms prescribed
30 and furnished by the department. Such application shall include the full

1 name and mailing address of the applicant; the names and addresses of any
2 partners, members, or corporate officers; the name and address of the
3 person authorized by the applicant to receive notices and orders of the
4 department as provided in the Weights and Measures Act; whether the
5 applicant is an individual, partnership, limited liability company,
6 corporation, or other legal entity; and the location and type of all
7 commercial weighing and measuring devices; ~~and the signature of the~~
8 ~~applicant~~. An application for a permit shall be made prior to the
9 operation of a weighing and measuring establishment. The application
10 shall be accompanied by a one-time permit fee of five dollars and the
11 annual device registration and inspection fees required in section
12 89-187. The full annual device registration and inspection fees are
13 required regardless of when during the year the device is put into
14 operation.

15 Sec. 9. Original sections 81-2,288.01, 89-186, and 89-187.01,
16 Reissue Revised Statutes of Nebraska, and sections 81-2,244.01, 81-2,257,
17 81-2,270, 89-187, and 89-187.02, Revised Statutes Cumulative Supplement,
18 2018, are repealed.

19 Sec. 10. The following section is outright repealed: Section
20 81-2,243.01, Revised Statutes Cumulative Supplement, 2018.

21 2. On page 1, strike beginning with "Nebraska" in line 1 through
22 line 9 and insert "Department of Agriculture; to amend sections
23 81-2,288.01, 89-186, and 89-187.01, Reissue Revised Statutes of Nebraska,
24 and sections 81-2,244.01, 81-2,257, 81-2,270, 89-187, and 89-187.02,
25 Revised Statutes Cumulative Supplement, 2018; to change the Nebraska Pure
26 Food Act by changing and eliminating definitions, providing a priority
27 item designation, eliminating obsolete references, and changing
28 regulatory authority inspection reporting requirements; to change the
29 Weights and Measures Act by updating certain standards and regulations,
30 changing provisions relating to department device inspection fees,
31 removing obsolete provisions, and eliminating a signature requirement on

1 a permit application; to repeal the original sections; and to outright
2 repeal section 81-2,243.01, Revised Statutes Cumulative Supplement,
3 2018."