

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 835

FINAL READING

Introduced by Halloran, 33; Brandt, 32; Brewer, 43; Gragert, 40; Hansen, B., 16; Moser, 22; Murman, 38; Slama, 1.

Read first time January 08, 2020

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Department of Agriculture; to amend
2 sections 81-2,288.01, 89-186, and 89-187.01, Reissue Revised
3 Statutes of Nebraska, and sections 81-2,244.01, 81-2,257, 81-2,270,
4 89-187, and 89-187.02, Revised Statutes Cumulative Supplement, 2018;
5 to change the Nebraska Pure Food Act by changing and eliminating
6 definitions, providing a priority item designation, eliminating
7 obsolete references, and changing regulatory authority inspection
8 reporting requirements; to change the Weights and Measures Act by
9 updating certain standards and regulations, changing provisions
10 relating to department device inspection fees, removing obsolete
11 provisions, and eliminating a signature requirement on a permit
12 application; to repeal the original sections; and to outright repeal
13 section 81-2,243.01, Revised Statutes Cumulative Supplement, 2018.
14 Be it enacted by the people of the State of Nebraska,

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

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

13 Sec. 2. Section 81-2,257, Revised Statutes Cumulative Supplement,
14 2018, is amended to read:

15 81-2,257 Priority items are designated in the Food Code and sections
16 81-2,272.01, 81-2,272.10, and 81-2,272.24. Priority foundation items are
17 designated in the Food Code.

18 Sec. 3. Section 81-2,270, Revised Statutes Cumulative Supplement,
19 2018, is amended to read:

20 81-2,270 (1) No person shall operate: (a) A food establishment; (b)
21 a food processing plant; or (c) a salvage operation, without a valid
22 permit which sets forth the types of operation occurring within the
23 establishment.

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

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

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

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

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

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

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

1	(b) The maximum fees are:				
2					No Food
3				Additional	Preparation
4		First	Food	Area,	
5		Food	Preparation	Unit	
6		Preparation	Area	Or	
7		Area	Annual	Units	
8	Food	Initial	Annual	Inspection	Annual
9	Handling	Permit	Inspection	Fee	Inspection
10	Activity	Fee	Fee	(per area)	Fee
11	Convenience Store	\$86.19	\$86.19	\$43.09	N/A
12	Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A
13	Licensed Beverage				
14	Establishment	\$86.19	\$86.19	\$43.09	N/A
15	Limited Food Service				
16	Establishment	\$86.19	\$86.19	\$43.09	N/A
17	Temporary Food				
18	Establishment	\$86.19	\$86.19	\$43.09	N/A
19	Food Delivery Service	\$86.19	N/A	N/A	\$17.23
20	Mobile Food Unit				
21	(for each unit)	\$86.19	N/A	N/A	\$43.09
22	Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
23	Vending Machine				
24	Operations:	\$86.19			
25	One to ten units		N/A	N/A	\$17.23
26	Eleven to twenty units		N/A	N/A	\$34.46
27	Twenty-one to thirty				
28	units		N/A	N/A	\$51.69
29	Thirty-one to forty				
30	units		N/A	N/A	\$68.92

1	Over forty units		N/A	N/A	\$86.15
2	Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
3	Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
4	Commissary	\$86.19	\$120.64	\$43.09	N/A
5	All Other Food				
6	Establishments	\$86.19	\$120.64	\$43.09	N/A

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

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

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

24 (8) A food establishment which produces eggs and only stores,
 25 packages, sells, delivers, or otherwise provides for human consumption
 26 the eggs it produces, or only stores, packages, sells, delivers, or
 27 otherwise provides for human consumption eggs produced from no more than
 28 four producers at the same time, is exempt from the requirements of
 29 subsections (1) through (6) of this section. ~~Any food establishment with
 30 a valid egg handler license and for which all fees have been paid prior
 31 to August 24, 2017, is exempt from the permit and inspection fee~~

1 ~~requirements of the Nebraska Pure Food Act until August 1, 2018.~~

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

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

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

14 81-2,288.01 (1) The regulatory authority shall document on an
15 inspection report form:

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

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

23 (c) Whether the violations listed are priority items, priority
24 foundation items, critical or repeated.

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

28 (3) All procedures and requirements related to the inspection of
29 food establishments in the act apply to food processing plants and
30 salvage operations.

31 (4) The completed inspection report form is a public document that

1 shall be made available for public disclosure to any person who requests
2 it according to law.

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

5 89-186 (1) The Legislature hereby adopts by reference the following:

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

20 (b) The Uniform Regulation for the Method of Sale of Commodities of
21 the National Conference on Weights and Measures published in National
22 Institute of Standards and Technology Handbook 130 entitled Uniform Laws
23 and Regulations in the Areas of Legal Metrology and Engine Fuel Quality
24 as it existed on January 1, 2019 ~~2003~~. Such handbook shall be used to
25 determine the proper units of measurement to be used in the keeping for
26 sale or sale of commodities;

27 (c) The Uniform Packaging and Labeling Regulation of the National
28 Conference on Weights and Measures published in National Institute of
29 Standards and Technology Handbook 130 entitled Uniform Laws and
30 Regulations in the Areas of Legal Metrology and Engine Fuel Quality as it
31 existed on January 1, 2019 ~~2003~~. Such handbook shall govern the packaging

1 and labeling by weight, measure, or count of commodities kept for sale or
2 sold in this state; and

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

6 (2) Copies of the handbooks adopted by reference in this section
7 shall be filed with the Secretary of State, Clerk of the Legislature, and
8 Department of Agriculture. Copies filed with the Clerk of the Legislature
9 shall be filed electronically.

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

14 Sec. 6. Section 89-187, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 89-187 For purposes of administering and enforcing the Weights and
17 Measures Act, the director is authorized to ~~The director shall:~~

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

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

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

23 (a) Requirements for the voluntary registration of sales and repair
24 personnel for commercial weighing and measuring devices including:

25 (i) Registration fees for such personnel which shall not exceed the
26 actual cost to defray the operation of the voluntary registration
27 program;

28 (ii)(A) Qualifications for registration, which may include
29 examinations, (B) performance standards to maintain registration, (C)
30 types of equipment necessary for the work to be performed by the
31 personnel, (D) responsibilities and privileges of registration, and (E)

1 revocation and suspension of such registration and probation of the
2 registrant; and

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

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

6 (c) Standards for (i) attachments or parts entering into the
7 construction or installation of commercial weighing and measuring devices
8 which shall tend to secure correct results in the use of such devices and
9 (ii) the setting of laboratory fees which shall not exceed the actual
10 cost for testing, correcting, calibrating, and verifying secondary
11 standards and the establishment of standard laboratory operating
12 procedures;

13 (d) Requirements for the suitable use of commercial weighing and
14 measuring devices; and

15 (e) Guidelines for the appropriate method of weighing or measuring
16 whenever the director determines that such guidelines would further the
17 purpose of the act;

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

21 (5) Upon an application filed with the department by the applicant,
22 grant exemptions, including specific exemptions for single-use commercial
23 weighing and measuring devices, from the provisions of the act or the
24 rules and regulations when the applicant on such application provides
25 assurances, acceptable to the director, that such exemption is
26 appropriate to the maintenance of good commercial practices within the
27 state. Notwithstanding any other provision of the act, meters used by a
28 public utility system for the measurement of electricity, natural or
29 manufactured gas, water, or the usage of communication services, the
30 appliances or accessories associated with such meters, and all weighing
31 and measuring devices inspected or tested by the Public Service

1 Commission shall be exempt from the registration, inspection, and testing
2 requirements of the act, except that this exemption shall not apply to
3 meters which determine the weight or measurement of motor fuel;

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

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

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

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

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

16 (11) Test annually and at the request of the Nebraska State Patrol
17 all weighing and measuring devices used for the enforcement of sections
18 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such
19 weighing and measuring devices shall pay the department for the actual
20 cost of such tests. The department shall bill test fees to such agency
21 upon completion of the test;

22 (12) Approve for use and may mark commercial weighing and measuring
23 devices which the director finds to be correct and shall reject and mark
24 or tag as rejected such commercial weighing and measuring devices which
25 the director finds to be not correct or not registered and inspected in
26 accordance with the Weights and Measures Act. Commercial weighing and
27 measuring devices that have been rejected may be seized if not made
28 correct within the time specified or if used or disposed of in a manner
29 not specifically authorized. The director shall condemn and may seize
30 commercial weighing and measuring devices which are found not to be
31 correct and not capable of being made correct;

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

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

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

20 (16) Allow reasonable variations from the stated quantity of
21 contents which shall include those caused by loss or gain of moisture
22 during the course of good distribution practice or by unavoidable
23 deviations in good manufacturing practice only after the commodity has
24 entered intrastate commerce;

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

31 (18) On or before July 1 of each year, notify all persons who have

1 registered any commercial weighing or measuring device of the amount of
2 fees which are due and that the fees are due on August 1 and shall be
3 delinquent after such date;

4 (19) Require all persons who operate a weighing and measuring
5 establishment to obtain a permit to operate such establishment pursuant
6 to section 89-187.01 and to pay to the department an application permit
7 fee pursuant to section 89-187.02;

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

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

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

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

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

16 ~~(i) (ii) The device inspection fee shall be due August 1, 2004, and~~
17 ~~each August 1 and thereafter shall be set by the director on or before~~
18 ~~July 1 of each year. The director may raise or lower the device~~
19 ~~inspection fees each year to meet the criteria in this subdivision, but~~
20 ~~the fee shall not be greater than the amount in column B of subdivision~~
21 ~~(20)(c)(ii) (20)(c)(iii) of this section. The same percentage shall be~~
22 ~~applied to each device category for all device inspection fee increases~~
23 ~~or decreases. The director shall use the amounts in column A of~~
24 ~~subdivision (20)(c)(ii) of this section device inspection fees set for~~
25 ~~the fees due August 1, 2003, as a base for future fee increases or~~
26 ~~decreases. The director shall determine the fees based on estimated~~
27 ~~annual revenue and fiscal year-end cash fund balances as follows:~~

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

31 (B) The estimated fiscal year-end cash fund balance shall not be

1 greater than seventeen percent of program cash fund appropriations
2 allocated for the act.

3 (ii) ~~(iii)~~

4 Scales:	A	B
5 Up through 35 pounds capacity	7.96	14.34
6 Multiunit Scales	51.00	80.37
7 Over 35 through 1,000 pounds capacity	15.13	25.35
8 Over 1,000 through 4,000 pounds capacity	31.87	51.03
9 Over 4,000 through 50,000 pounds capacity	36.65	58.36
10 Over 50,000 through 150,000 pounds capacity	39.04	62.03
11 Over 150,000 pounds capacity	86.87	135.40
12 Length Measuring Devices:		
13 Cordage or fabric	16.56	27.55
14 Pumps:		
15 Service Station Dispensers – per		
16 measuring element	5.09	9.94
17 High-capacity service station		
18 dispensers over 20 gallons per		
19 minute – per dispensing element	17.52	29.02
20 Compressed natural gas – per		
21 dispensing element	91.65	142.74
22 Meters:		
23 Vehicle tank meters	14.17	23.88
24 Loading rack meters	31.87	51.03
25 Liquid petroleum gas meters	40.00	63.50
26 Liquid fertilizer and herbicide meters	36.65	58.36
27 Liquid feed meters	36.65	58.36
28 Cryogenic	53.39	84.04
29 Mass Flow Metering Systems:		
30 Mass flow meters (all liquid)	78.26	122.19;

1 and

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

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

13 89-187.01 ~~A On and after August 1, 1992,~~ a person shall not operate
14 a weighing and measuring establishment in the State of Nebraska unless
15 such person holds a valid permit from the department. If the permit holder
16 has more than one location with commercial weighing and measuring
17 devices, he or she shall have a permit for each location.

18 Sec. 8. Section 89-187.02, Revised Statutes Cumulative Supplement,
19 2018, is amended to read:

20 89-187.02 Application for a permit to operate a weighing and
21 measuring establishment shall be made to the director on forms prescribed
22 and furnished by the department. Such application shall include the full
23 name and mailing address of the applicant; the names and addresses of any
24 partners, members, or corporate officers; the name and address of the
25 person authorized by the applicant to receive notices and orders of the
26 department as provided in the Weights and Measures Act; whether the
27 applicant is an individual, partnership, limited liability company,
28 corporation, or other legal entity; and the location and type of all
29 commercial weighing and measuring devices; ~~and the signature of the~~
30 ~~applicant.~~ An application for a permit shall be made prior to the
31 operation of a weighing and measuring establishment. The application

1 shall be accompanied by a one-time permit fee of five dollars and the
2 annual device registration and inspection fees required in section
3 89-187. The full annual device registration and inspection fees are
4 required regardless of when during the year the device is put into
5 operation.

6 Sec. 9. Original sections 81-2,288.01, 89-186, and 89-187.01,
7 Reissue Revised Statutes of Nebraska, and sections 81-2,244.01, 81-2,257,
8 81-2,270, 89-187, and 89-187.02, Revised Statutes Cumulative Supplement,
9 2018, are repealed.

10 Sec. 10. The following section is outright repealed: Section
11 81-2,243.01, Revised Statutes Cumulative Supplement, 2018.