

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 245**

Introduced by DeKay, 40.

Read first time January 14, 2025

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Nebraska Pure Food Act; to amend  
2 sections 81-2,239, 81-2,244.01, 81-2,245.01, 81-2,254, 81-2,257,  
3 81-2,259, 81-2,268, 81-2,270, 81-2,271, 81-2,274, and 81-2,277,  
4 Reissue Revised Statutes of Nebraska; to redefine terms; to change  
5 provisions relating to priority items, the federal Current Good  
6 Manufacturing Practice, design and fabrication requirements, fees,  
7 establishments that are permanently closed, and service of notices  
8 and orders; to eliminate provisions relating to time/temperature  
9 control for safety food, hand washing requirements and food contact  
10 restrictions for food employees, requirements relating to date  
11 marking, sale, consumption, or discard of time/temperature control  
12 for safety food, and fingernail requirements relating to food  
13 employees; to harmonize provisions; to repeal the original sections;  
14 to outright repeal sections 81-2,272.01, 81-2,272.10, 81-2,272.24,  
15 and 81-2,272.32, Reissue Revised Statutes of Nebraska; and to  
16 declare an emergency.  
17 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 and the Current Good Manufacturing Practice ~~In Manufacturing,~~  
5 ~~Packing, or Holding Human Food~~ adopted by reference in sections  
6 81-2,257.01 and 81-2,259, shall be known and may be cited as the Nebraska  
7 Pure Food Act.

8           **Sec. 2.** Section 81-2,244.01, Reissue Revised Statutes of Nebraska,  
9 is amended to read:

10           81-2,244.01 Food Code shall mean the 2022 ~~2017~~ Recommendations of  
11 the United States Public Health Service, Food and Drug Administration,  
12 except the definitions of adulterated food and food establishment, person  
13 in charge, regulatory authority, and sections ~~2-102.12, 2-102.20(B),~~  
14 ~~2-103.11(I) and (M), 3-301.11(B), (C), (D), and (E), 3-501.16,~~  
15 ~~4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C),~~ 8-101, 8-102,  
16 8-201.11, 8-201.12, 8-202.10 through 8-304.20, 8-401.10(B)(2), 8-402.20  
17 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B). The term  
18 Food Code does not include the annexes of such federal recommendations.

19           **Sec. 3.** Section 81-2,245.01, Reissue Revised Statutes of Nebraska,  
20 is amended to read:

21           81-2,245.01 Food establishment shall mean an operation that stores,  
22 prepares, packages, serves, sells, vends, ~~delivers,~~ or otherwise provides  
23 food for human consumption. The term does not include:

24           (1) An establishment or vending machine operation that offers only  
25 prepackaged soft drinks, carbonated or noncarbonated; canned or bottled  
26 fruit and vegetable juices; prepackaged ice; candy; chewing gum; potato  
27 or corn chips; pretzels; cheese puffs and curls; crackers; popped  
28 popcorn; nuts and edible seeds; and cookies, cakes, pies, and other  
29 pastries, that are not time/temperature control for safety foods;

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

1 (3) A food processing plant;

2 (4) A salvage operation;

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

7 (6) A private home or other area where food that is not time/  
8 temperature control for safety food is prepared for sale or service at a  
9 religious, charitable, or fraternal organization's bake sale or similar  
10 function;

11 (7) A private home where a producer of food that meets the  
12 requirements of section 81-2,280 is prepared for sale directly to the  
13 consumer including, but not limited to, at a farmers market, fair,  
14 festival, craft show, or other public event or for pick up at or delivery  
15 from such private home;

16 (8) A private home or other area where food is prepared for  
17 distribution at a fundraising event for a charitable purpose if the  
18 consumer is informed by a clearly visible placard at the serving location  
19 that the food was prepared in a kitchen that is not subject to regulation  
20 and inspection by the regulatory authority. This subdivision does not  
21 apply to a caterer or other establishment providing food for the event if  
22 the caterer or establishment receives compensation for providing the  
23 food;

24 (9) The location where food prepared by a caterer is served so long  
25 as the caterer only minimally handles the food at the serving location;

26 (10) Educational institutions, health care facilities, nursing  
27 homes, and governmental organizations which are inspected by a state  
28 agency or a political subdivision other than the regulatory authority for  
29 sanitation in the food preparation areas;

30 (11) A pharmacy as defined in section 71-425 if the pharmacy only  
31 sells prepackaged pharmaceutical, medicinal, or health supplement foods

1 that are not time/temperature control for safety or foods described in  
2 subdivision (1) of this section; and

3 (12) An establishment which is not a commercial food establishment  
4 and which sells only commercially packaged foods that are not time/  
5 temperature control for safety foods.

6 **Sec. 4.** Section 81-2,254, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 81-2,254 Single event food vendor shall mean a temporary food  
9 establishment that operates at no more than one event per calendar year  
10 for a period of no more than four ~~two~~ days.

11 **Sec. 5.** Section 81-2,257, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 81-2,257 Priority items are designated in the Food Code ~~and sections~~  
14 ~~81-2,272.01, 81-2,272.10, and 81-2,272.24.~~ Priority foundation items are  
15 designated in the Food Code.

16 **Sec. 6.** Section 81-2,259, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18 81-2,259 The Legislature hereby adopts by reference the federal  
19 Current Good Manufacturing Practice In Manufacturing, Packing, or Holding  
20 Human Food found in 21 C.F.R. parts 117.4 and 117.10 to 117.110 as they  
21 ~~part 110 as it~~ existed on April 1, 2024 ~~2015~~.

22 **Sec. 7.** Section 81-2,268, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 81-2,268 (1) Food establishment, food processing plant, or salvage  
25 operation facilities and equipment in use or new facilities and equipment  
26 for which contractual obligations are incurred before September 13, 1997,  
27 and which do not meet fully all the design and fabrication requirements  
28 of the Nebraska Pure Food Act shall be acceptable if:

29 (a) They meet food temperature requirements;

30 (b) They ~~they~~ are in good repair and capable of being maintained in  
31 a sanitary condition; and

1       (c) ~~The~~ the food-contact surfaces are of safe materials. A food  
2 establishment, food processing plant, or salvage operation which has a  
3 change of ownership or extensive remodeling after September 13, 1997,  
4 shall comply with all applicable facility and equipment requirements of  
5 the act.

6       **Sec. 8.** Section 81-2,270, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8       81-2,270 (1) No person shall operate without a valid permit:

9       (a) A food establishment conducting those food handling activities  
10 authorized by such permit;

11       (b) A food processing plant; or

12       (c) A salvage operation.

13       (2) Application for a permit shall be made to the director on forms  
14 prescribed and furnished by the department. Such application shall  
15 include (a) the applicant's full name and mailing address and the names  
16 and addresses of any partners, members, or corporate officers, (b)  
17 whether the applicant is an individual, partnership, limited liability  
18 company, corporation, or other legal entity, (c) the location and type of  
19 proposed establishment or operation, and (d) the signature of the  
20 applicant. Application for a permit shall be made prior to the operation  
21 of a food establishment, food processing plant, or salvage operation. The  
22 application shall be accompanied by an initial permit fee and an initial  
23 ~~inspection~~ fee in the same amount as the annual ~~inspection~~ fee if  
24 inspections are required to be done by the department. If any food  
25 establishment, food processing plant, or salvage operation is operating  
26 without a valid permit, such establishment, plant, or operation shall pay  
27 an additional fee of sixty dollars prior to the issuance of a valid  
28 permit.

29       (3) Payment of the initial permit fee, the initial annual ~~inspection~~  
30 fee, and the fee for operating without a valid permit shall not preclude  
31 payment of the annual ~~inspection~~ fees due on August 1 of each year.

1 Except as provided in subsections (7) through (10) of this section and  
2 subsection (2) of section 81-2,281, a permit holder shall pay annual  
3 ~~inspection~~ fees on or before August 1 of each year regardless of when the  
4 initial permit was obtained.

5 (4)(a) The director shall set the initial permit fee and the annual  
6 ~~inspection~~ fees on or before July 1 of each fiscal year to meet the  
7 criteria in this subsection. The director may raise or lower the fees  
8 each year, but the fees shall not exceed the maximum fees listed in  
9 subdivision (4)(b) of this section. The director shall determine the fees  
10 based on estimated annual revenue and fiscal year-end cash fund balance  
11 as follows:

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

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

18 (iii) All fee increases or decreases shall be equally distributed  
19 between all categories to the nearest dollar.

20 (b) The maximum fees are:

21				Secondary	
22				or	
23				Additional	
24				Food	Secondary
25				Preparation	Unit
26				Area	Or
27			Base	Annual	Units
28		Initial	Annual	<del>Inspection</del>	Annual
29		Permit	<del>Inspection</del>	Fee	<del>Inspection</del>
30	Permit Type	Fee	Fee	(per area)	Fee
31	Limited Retail				

1	<u>Food Establishment</u>	<u>\$200.00</u>	<u>\$200.00</u>	<u>\$100.00</u>	<u>N/A</u>
2	<del>Food Establishment</del>	<del>\$86.19</del>	<del>\$86.19</del>	<del>\$43.09</del>	<del>N/A</del>
3	<u>Itinerant Food Vendor</u>	<u>\$200.00</u>	<u>\$200.00</u>	<u>\$100.00</u>	<u>N/A</u>
4	<del>Itinerant Food Vendor</del>	<del>\$86.19</del>	<del>\$86.19</del>	<del>\$43.09</del>	<del>N/A</del>
5	Limited Food Service				
6	<u>Establishment</u>	<u>\$200.00</u>	<u>\$200.00</u>	<u>\$100.00</u>	<u>N/A</u>
7	<del>Establishment</del>	<del>\$86.19</del>	<del>\$86.19</del>	<del>\$43.09</del>	<del>N/A</del>
8	Mobile Food Unit				
9	<u>(for each unit)</u>	<u>\$200.00</u>	<u>N/A</u>	<u>N/A</u>	<u>\$100.00</u>
10	<del>(for each unit)</del>	<del>\$86.19</del>	<del>N/A</del>	<del>N/A</del>	<del>\$43.09</del>
11	<u>Pushcart (for each unit)</u>	<u>\$200.00</u>	<u>N/A</u>	<u>N/A</u>	<u>\$40.00</u>
12	<del>Pushcart (for each unit)</del>	<del>\$86.19</del>	<del>N/A</del>	<del>N/A</del>	<del>\$17.23</del>
13	Vending Machine				
14	<u>Operations:</u>	<u>\$200.00</u>			
15	<del>Operations:</del>	<del>\$86.19</del>			
16	<u>One to ten units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$40.00</u>
17	<del>One to ten units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$17.23</del>
18	<u>Eleven to twenty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$80.00</u>
19	<del>Eleven to twenty units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$34.46</del>
20	Twenty-one to thirty				
21	<u>units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$120.00</u>
22	<del>units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$51.69</del>
23	Thirty-one to forty				
24	<u>units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$160.00</u>
25	<del>units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$68.92</del>
26	<u>Over forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$200.00</u>
27	<del>Over forty units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$86.15</del>
28	<u>Food Processing Plant</u>	<u>\$200.00</u>	<u>\$280.00</u>	<u>\$100.00</u>	<u>N/A</u>
29	<del>Food Processing Plant</del>	<del>\$86.19</del>	<del>\$120.64</del>	<del>\$43.09</del>	<del>N/A</del>
30	<u>Salvage Operation</u>	<u>\$200.00</u>	<u>\$280.00</u>	<u>\$100.00</u>	<u>N/A</u>

1	<del>Salvage Operation</del>	<del>\$86.19</del>	<del>\$120.64</del>	<del>\$43.09</del>	N/A
2	<u>Commissary</u>	<u>\$200.00</u>	<u>\$280.00</u>	<u>\$100.00</u>	N/A
3	<del>Commissary</del>	<del>\$86.19</del>	<del>\$120.64</del>	<del>\$43.09</del>	N/A
4	All Other Food				
5	<u>Establishment</u>	<u>\$200.00</u>	<u>\$280.00</u>	<u>\$100.00</u>	N/A
6	<del>Establishment</del>	<del>\$86.19</del>	<del>\$120.64</del>	<del>\$43.09</del>	N/A

7           (5) For a food establishment, a base annual inspection fee includes  
8 one food preparation area and one food handling activity based upon the  
9 primary food handling activity conducted within the food establishment as  
10 determined by the department. The annual inspection fee shall also  
11 include any fees assessed for each additional food preparation area  
12 within the primary establishment and any applicable secondary food  
13 handling activity as determined by the department. Any mobile food  
14 establishment that does not return to a commissary each day shall obtain  
15 a separate permit and pay the annual base inspection fee for the mobile  
16 food establishment.

17           (6) If a person fails to pay any fee due under this section the  
18 ~~inspection fee~~ for more than one month after the fee is due, such person  
19 shall pay a late fee equal to fifty percent of the total fee for the  
20 first month that the fee is late and one hundred percent for the second  
21 month that the fee is late. The purpose of the late fee is to cover the  
22 administrative costs associated with collecting fees. All money collected  
23 as a late fee shall be remitted to the State Treasurer for credit to the  
24 Pure Food Cash Fund. If the total fees due remain unpaid ninety days  
25 after the original due date, the permit shall no longer be valid.

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

31           (i) Any educational institution;

- 1        (ii) Any health care facility;
- 2        (iii) Any nursing home; or
- 3        (iv) Any governmental organization.

4        (b) If any entity described in subdivision (a) of this subsection  
5 utilizes an outside food service provider, such outside food service  
6 provider shall pay any applicable fee regardless of if the entity  
7 described in subdivision (a) of this subsection is listed as the owner on  
8 the permit.

9        (8) A food establishment which produces eggs and only stores,  
10 packages, sells, delivers, or otherwise provides for human consumption  
11 the eggs it produces, or only stores, packages, sells, delivers, or  
12 otherwise provides for human consumption eggs produced from no more than  
13 four producers at the same time, is exempt from the requirements of  
14 subsections (1) through (6) of this section.

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

18        (10) A single event food vendor or a religious, charitable, or  
19 fraternal organization operating any type of temporary food  
20 establishment, mobile food unit, or pushcart is exempt from the  
21 requirements of subsections (1) through (6) of this section. Any such  
22 organization operating any nontemporary food establishment prior to July  
23 1, 1985, is exempt from the requirements of subsection (2) of this  
24 section.

25        (11) A permitholder may sell food prepared by the permitholder at  
26 the location of another permitholder without obtaining a separate permit  
27 at such location so long as the permitholder preparing the food is not a  
28 food processing plant. Both the permitholder preparing the food and the  
29 permitholder selling the food are responsible for compliance with the  
30 Nebraska Pure Food Act.

31        **Sec. 9.** Section 81-2,271, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-2,271 (1) The permit required by section 81-2,270 shall be posted  
3 in a conspicuous manner at the food establishment, each location where  
4 food handling activity included under a permit is occurring, the food  
5 processing plant, or the salvage operation. For a food establishment that  
6 does not have a permanent location, the permit location shall be a  
7 permanent address where the permitholder may be contacted.

8 (2) The permit is not transferable to any other person or location.  
9 Any permit issued lapses automatically upon a change of ownership or  
10 location except as provided in subsection (3) of this section. The  
11 permitholder shall notify the department in writing at least thirty days  
12 prior to any change in ownership, name, or address. ~~When an establishment~~  
13 ~~is to be permanently closed, the permitholder shall return the permit to~~  
14 ~~the department within one week after the closing.~~

15 (3) A permitholder shall provide information regarding the current  
16 location of any food handling activity included under the permitholder's  
17 permit to the regulatory authority upon request.

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

21 **Sec. 10.** Section 81-2,274, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 81-2,274 (1) Any notice or order provided for in the Nebraska Pure  
24 Food Act shall be ~~personally~~ served on the permitholder at ~~or on the~~  
25 ~~person authorized by the permitholder to receive notices and orders of~~  
26 ~~the department or shall be sent by certified mail, return receipt~~  
27 ~~requested,~~ to the last-known address of the permitholder or at the  
28 permitted location ~~the person authorized to receive such notices and~~  
29 ~~orders.~~ A copy of the notice and the order shall be filed in the records  
30 of the department.

31 (2) A notice to comply provided for in section 81-2,273 shall set

1 forth the acts or omissions with which the permitholder is charged.

2 (3) A notice of the permitholder's right to a hearing provided for  
3 in the act shall set forth the time and place of the hearing except as  
4 provided in subsection (4) of section 81-2,273. A notice of the  
5 permitholder's right to such hearing shall include notice that a  
6 permitholder's right to a hearing may be waived pursuant to subsection  
7 (5) of this section. A notice of the permitholder's right to a hearing to  
8 show cause why the permit should not be revoked shall include notice to  
9 the permitholder that the permit may be revoked or suspended, that the  
10 permitholder may be subject to an order of probation, or that the permit  
11 may be suspended and the permitholder subject to an order of probation,  
12 if the director determines such action is more appropriate. A notice of  
13 the permitholder's right to a hearing to show cause why the permit should  
14 not be suspended shall include notice to the permitholder that the permit  
15 may be suspended or that the permitholder may also be subject to an order  
16 of probation if the director determines such action is more appropriate.

17 (4) The hearings provided for in the act shall be conducted by the  
18 director at the time and place he or she designates. The director shall  
19 make a final finding based upon the complete hearing record and issue an  
20 order. If the director has suspended a permit pursuant to subsection (4)  
21 of section 81-2,273, the director shall sustain, modify, or rescind the  
22 order. All hearings shall be in accordance with the Administrative  
23 Procedure Act.

24 (5) A permitholder shall be deemed to waive the right to a hearing  
25 if such permitholder does not come to the hearing at the time and place  
26 set forth in the notice described in subsection (3) of this section  
27 without requesting the director at least two days before the designated  
28 time to change the time and place for the hearing, except that before an  
29 order of the director becomes final, the director may designate a  
30 different time and place for the hearing if the permitholder shows the  
31 director that the permitholder had a justifiable reason for not coming to

1 the hearing and not timely requesting a change in the time and place for  
2 such hearing. If the permitholder waives the right to a hearing, the  
3 director shall make a final finding based upon the available information  
4 and issue an order. If the director has suspended a permit pursuant to  
5 subsection (4) of section 81-2,273, the director shall sustain, modify,  
6 or rescind the order.

7 (6) Any person aggrieved by the finding of the director shall have  
8 ten days from the entry of the director's order to request a new hearing  
9 if such person can show that a mistake of fact has been made which  
10 affected the director's determination. Any order of the director shall  
11 become final upon the expiration of ten days after its entry if no  
12 request for a new hearing is made.

13 **Sec. 11.** Section 81-2,277, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 81-2,277 Food processing plants and salvage operations shall comply  
16 with the federal Current Good Manufacturing Practice ~~In Manufacturing,~~  
17 ~~Packing, or Holding Human Food~~ adopted in section 81-2,259.

18 **Sec. 12.** Original sections 81-2,239, 81-2,244.01, 81-2,245.01,  
19 81-2,254, 81-2,257, 81-2,259, 81-2,268, 81-2,270, 81-2,271, 81-2,274, and  
20 81-2,277, Reissue Revised Statutes of Nebraska, are repealed.

21 **Sec. 13.** The following sections are outright repealed: Sections  
22 81-2,272.01, 81-2,272.10, 81-2,272.24, and 81-2,272.32, Reissue Revised  
23 Statutes of Nebraska.

24 **Sec. 14.** Since an emergency exists, this act takes effect when  
25 passed and approved according to law.