

LEGISLATIVE BILL 547

Approved by the Governor April 20, 1982

Introduced by Agriculture and Environment Committee,
Schmit, 23, Chpn.; Wiitala, 31; R. Maresh,
32; Burrows, 30; Wagner, 41; Remmers, 1

AN ACT relating to public health and welfare; to define terms; to provide for liability of owners of hotels, motels, rooming houses, boarding houses, apartment houses, and restaurants for loss of property of guests as prescribed; to amend sections 81-216.21 and 81-216.31, Revised Statutes Supplement, 1981; to change an exception; to change provisions relating to the false advertisement of food; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 14 of this act, unless the context otherwise requires, the definitions found in sections 2 to 7 of this act shall be used.

Sec. 2. Hotel shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where sleeping and other accommodations are offered for pay, principally to transient guests, in which ten or more persons are accommodated or five or more rooms are used principally for the accommodation of transient guests, with or without one or more dining rooms or cafes where meals or lunches are served to such guests, together with any buildings in connection therewith.

Sec. 3. Motel shall mean a roadside hotel providing both lodging for travelers, whether in individual cabins or not, and garage or parking space for their motor vehicles.

Sec. 4. Rooming house shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests in which five or more rooms are used for the accommodation of such guests, but which does not maintain dining rooms or cafes in connection therewith, and which has not been designated as a hotel or boarding house.

Sec. 5. Boarding house shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where sleeping and other accommodations are furnished for pay to transient or permanent guests in which five or more rooms are used for the accommodation of such guests, which maintains a dining room, cafe, or common kitchen for the use of the guests in connection therewith, and in which social or domestic services may be provided at the request of the guest to assist such guest in daily living activities, and which has not been designated as a hotel, restaurant, or cafe.

Sec. 6. Apartment house shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where accommodations for living rooms, either furnished or unfurnished, single or in suites for light housekeeping, or both, are furnished for permanent guests, but where no dining room or cafe is maintained in the same building or under the same management, and where five or more tenants occupy such buildings, together with any buildings in connection therewith.

Sec. 7. Guests shall mean and include all persons who have registered on a register provided for such purpose by hotels, motels, and rooming houses, whether assigned a room or rooms or not, occupants of apartments, patrons of restaurants, or persons who have signified their intention in writing to become a guest of such hotel, restaurant, apartment house, motel, or rooming house.

Sec. 8. No person, firm, or corporation, operating a hotel, restaurant, apartment house, motel, or rooming house, who (1) constantly has in his, her, or their place of business a metal safe or vault in good order and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage checks or tickets, negotiable or other valuable papers, bullion, or other property of small size belonging to the guests of such hotel, restaurant, apartment house, motel, or rooming house, (2) keeps suitable locks or bolts on the doors of the sleeping rooms used by guests and suitable fastenings on the transoms and windows of such rooms, and (3) constantly and conspicuously keeps posted, in the public areas of such place of business and in each sleeping room in the place of business, a copy of this section, printed in distinct type, shall be liable for the loss of or injury to such property suffered by any guest, unless such guest has offered to deliver the property to the keeper of a hotel, restaurant, apartment

house, motel, or rooming house, for custody in such metal safe or vault, and the proprietor of such business has omitted or refused to take and deposit the same in such safe or vault for custody and give such guest a receipt therefor. If such property is offered by the guest and deposited by the proprietor in such safe, there shall be no liability on the part of the proprietor for loss or injury to such property absent negligence or dishonesty on the part of the proprietor or his or her agents. The proprietor of such business place shall not be obliged to receive from any one guest, for deposit in such safe or vault, any property, described in this section, exceeding a total value of five hundred dollars and shall not be liable for the value of any such property in excess of five hundred dollars, unless receipted for in writing, in which event recovery of the actual damages sustained may be allowed in an amount not to exceed the actual value of such property. Such keeper of a hotel, restaurant, apartment house, motel, or rooming house may, by special arrangement with the guest, receive for deposit in such safe or vault any property upon such terms as they may agree to in writing and, in such a case, shall be liable for any loss of the above enumerated articles of a guest, only after such articles have been accepted for deposit, if such loss is caused by theft or negligence on the part of the keeper of such business or any of his or her servants. Whenever any person shall allow his or her trunks, grips, household articles, boxes of merchandise, or samples to remain in any hotel, restaurant, apartment house, motel, or rooming house after leaving such place of business as a guest, such proprietor shall have the right to deposit any baggage or property so received in a storage warehouse, in which event he or she shall take from the proprietor of such warehouse a receipt for the same in the name of the owner thereof, and hold the receipt, for such owner. The proprietor of a hotel, restaurant, apartment house, motel, or rooming house, after he or she has deposited such baggage or property in a storage warehouse, shall not be responsible for the loss thereof if he or she has the storage warehouse receipt for delivery to the owner of such baggage or property upon demand.

Sec. 9. Every person, firm, or corporation maintaining, operating, or conducting a hotel, restaurant, apartment house, motel, or rooming house, where a suitable room or rooms are provided for the reception and keeping of trunks, packages, wearing apparel, and similar articles, who, on the request of a bona fide guest of such place of business, receives for safekeeping any trunk, bag, or articles of wearing apparel, or similar articles shall (1) issue to such guest a receipt or check therefor, (2) be responsible for

such property so taken, and (3) be liable for loss, damage, or injury to such property, except that the person, firm, or corporation, operating such hotel, restaurant, apartment house, motel, or rooming house, shall not be required to receive and be responsible for any (a) trunk and its contents to the value of more than two hundred dollars, (b) valise, grip, or sample case and its contents to the value of more than seventy-five dollars, (c) box, bundle, or package and its contents to the value of more than twenty-five dollars, or (d) miscellaneous other effects, including wearing apparel and personal belongings so checked to the value of more than seventy-five dollars, unless he or she shall have consented in writing with such guest to assume a greater responsibility.

Sec. 10. The limitations of liability, provided for in sections 3 and 9 of this act, shall apply to all property brought upon the premises of the hotel, restaurant, apartment house, motel, or rooming house for forty-eight hours after the guest has ceased occupying the premises and paid his or her bill therefor, which shall terminate the relation of keeper and guest, except that the keeper or owner may continue to hold such property at the risk of the guest or owner of such property.

Sec. 11. For any loss of or damage to any property left by a guest after he or she has departed from any hotel, restaurant, apartment house, motel, or rooming house and ceased to be a guest thereof, the liability of the proprietor thereof, whether or not such loss or damage is occasioned by the negligence of such proprietor or his or her agents or servants, shall be that of a gratuitous bailee and the amount which may be recovered against such proprietor shall not exceed the sum of two hundred fifty dollars unless the guest shall have declared a greater value upon the property in writing and delivered such declaration, while a guest thereof, to the hotel, restaurant, apartment house, motel, or rooming house, in which event recovery of the actual damages sustained may be allowed in an amount not in excess of the value so declared. Forms for making such declaration shall be furnished by the hotel, restaurant, apartment house, motel, or rooming house. A copy thereof, signed by the proprietor or his or her agent, shall be delivered to the guest. A copy of this section printed in not smaller than ten point type shall be conspicuously posted in the public areas and in each room of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Sec. 12. For any loss of or damage to any property of a guest while in transport to or from any hotel, restaurant, apartment house, motel, or rooming house, whether or not such loss or damage is occasioned by the negligence of such proprietor or his or her agents or servants, the amount which may be recovered against such proprietor shall not exceed five hundred dollars unless the guest shall have declared a greater value upon the property in writing and delivered such declaration, while a guest thereof, to the hotel, restaurant, apartment house, motel, or rooming house, in which event recovery of the actual damages sustained may be allowed in an amount not in excess of the value so declared. Forms for making such declaration shall be furnished by the hotel, restaurant, apartment house, motel, or rooming house. A copy thereof, signed by the proprietor or his or her agent, shall be delivered to the guest. A copy of this section printed in not smaller than ten point type shall be conspicuously posted in the public areas and in each room of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Sec. 13. For any loss of or damage to any property brought into any hotel, restaurant, apartment house, motel, or rooming house, arising out of the negligence of the proprietor or his or her agents or servants, the proprietor thereof shall not be liable for an amount in excess of one thousand dollars unless such guest shall have declared a greater value upon the property in writing and delivered such declaration, while a guest thereof, to the hotel, restaurant, apartment house, motel, or rooming house, in which event recovery of the actual damages sustained may be allowed but not in excess of the value so declared. Forms for making such declaration shall be furnished by the hotel, restaurant, apartment house, motel, or rooming house. A copy thereof signed by the proprietor or his or her agent shall be delivered to the guest. A copy of this section printed in not smaller than ten point type shall be conspicuously posted in the public areas and in each room of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Sec. 14. There shall be no liability on the part of the proprietor of any hotel, apartment house, rooming house, restaurant, or motel, for loss of, or damage to, any property of guests of such place of business unless within seven days from the time of discovery of any loss or damage, such loss or damage is reported in writing to such proprietor. A copy of this section in not smaller than ten point type shall be conspicuously posted in the public areas and in each room

of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Sec. 15. That section 81-216.21, Revised Statutes Supplement, 1981, be amended to read as follows:

81-216.21. (1) Permits shall be required of those persons specified in the codes adopted by reference pursuant to sections 81-216.15 to 81-216.19. In addition, food processing establishments as defined in the Food Service Code and food storage establishments shall be required to hold permits. The procedures applicable to the issuance, suspension, or revocation of permits for food processing establishments and food storage establishments shall be as prescribed for food service establishments in Chapter 10 of the Food Service Code. Permits may be suspended or revoked for violation of the applicable provisions of sections 81-216.01 to 81-216.37 and the Food Processing and Storage Code.

(2) As a condition precedent to the issuance of permits required pursuant to sections 81-216.01 to 81-216.37, an applicant shall pay an initial permit fee of twenty dollars.

(3) Except as provided in subsections (6) to (8) of this section and subsection (1) of section 81-216.27, permitholders shall pay annual inspection fees on or before August 1 of each year as follows:

(a) Food service establishments, nontemporary, thirty-five dollars plus fifteen dollars for each separate and distinct food preparation area other than the first such area;

(b) Mobile food units or pushcarts, thirty-five dollars plus five dollars per unit or pushcart;

(c) Temporary food service establishment, twenty-five dollars plus fifteen dollars for each additional food handling operation;

(d) Food processing establishment, thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment;

(e) Food storage establishment, thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment;

(f) Retail food store, thirty-five dollars plus fifteen dollars for each food preparation area within the

store except the meat processing and produce handling areas;

(g) Salvage processing plant, thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment;

(h) Salvage distributor, thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment; and

(i) One to ten vending machines, five dollars; eleven to twenty vending machines, ten dollars; twenty-one to thirty vending machines, fifteen dollars; thirty-one to forty vending machines, twenty dollars; and over forty vending machines, twenty-five dollars.

(4) Whenever an establishment is engaged in more than one of the food handling activities listed under subsection (3) of this section, the inspection fee charged shall be based upon the primary activity conducted within the establishment as determined by the department.

(5) The department may impose a penalty for inspection fees which are more than one month delinquent. Such penalty may not exceed twenty per cent of the fee for each month of delinquency.

(6) Religious, charitable, and fraternal organizations, educational institutions, health care facilities, nursing homes, and governmental organizations operating any type of food service establishment other than a ~~temporary food service establishment~~, mobile food unit, or pushcart, shall be exempt from the requirements in subsections (1) to (5) of this section.

(7) Persons whose primary food-related business activity is determined by the department to be egg handling within the meaning of sections 2-3501 to 2-3525 and who are validly licensed and paying fees pursuant to such sections, shall be exempt from the permit and inspection fee requirements of sections 81-216.01 to 81-216.37.

(8) Persons holding permits or licenses and regulated under the Nebraska Pasteurized Milk Law or the Nebraska Manufacturing Milk Act and egg handlers licensed and regulated under the Nebraska Graded Egg Act shall be exempt from the provisions of sections 81-216.01 to 81-216.37.

Sec. 16. That section 81-216.31, Revised Statutes Supplement, 1981, be amended to read as follows:

81-216.31. (1) It shall be unlawful for any person engaged in the sale, merchandising, or distribution of food to knowingly cause, with intent to deceive, the dissemination of a false advertisement regarding a food.

(2) An advertisement of a food shall be deemed to be false if it is false or misleading in any manner, including the following:

(a) The advertising of food as that of another;

(b) The advertising of food in a manner causing the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of such food;

(c) The advertising of food in a manner causing the likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by another;

(d) The advertisement of food by use of deceptive representations or deceptive designation of geographic origin in connection with such food;

(e) The advertisement of food by way of representations that the food has sponsorship, approval, characteristics, ingredients, benefits, uses, or qualities that it does not have or that a person or company has a sponsorship, approval status, affiliation, or connection that he, she, or it does not have;

(f) The advertisement of food by way of a representation that the food is of a particular standard, quality, or grade, when it is not;

(g) The advertisement of food by disparaging the food of another by false or misleading representations of fact;

(h) The advertisement of food with an intent not to sell it as advertised, or an intent to sell an alternative food in substitution for the advertised food;

(i) The advertisement of food with the intent not to supply a reasonably expectable public demand, unless the advertisement imposes a limitation of quantity; or

(j) The advertisement of food by making false or misleading statements of fact concerning the reasons for, existence of, or amounts of, price reductions.

Sec. 17. That original sections 81-216.21 and 81-216.31, Revised Statutes Supplement, 1981, are repealed.

Sec. 18. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.