

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 916

Introduced by Dierks, 40

Read first time January 9, 2002

Committee: Agriculture

A BILL

1 FOR AN ACT relating to food regulation; to amend section 2-3517,
2 Reissue Revised Statutes of Nebraska, and sections
3 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,257,
4 81-2,270, 81-2,272.09, 81-2,272.19, 81-2,272.20,
5 81-2,272.21, 81-2,272.23, 81-2,272.24, 81-2,272.25,
6 81-2,272.27, and 81-2,272.28, Revised Statutes
7 Supplement, 2000; to change provisions of the Nebraska
8 Pure Food Act and the Nebraska Graded Egg Act; to provide
9 an exception; to define and redefine terms; to change and
10 eliminate food handling and preparation requirements and
11 fees; to harmonize provisions; to repeal the original
12 sections; and to outright repeal sections 81-2,270.01,
13 81-2,272.07, 81-2,272.11, 81-2,272.13, 81-2,272.18, and
14 81-2,272.30, Revised Statutes Supplement, 2000.
15 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-3517, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-3517. (1) ~~The provisions of the Nebraska Graded Egg~~
4 ~~Act~~ Section 2-3520 shall not apply to: the sale of shell eggs by
5 any

6 (a) A producer with an annual shell egg production from a
7 flock of three thousand hens or less; or

8 (b) An egg handler required to have a permit under the
9 Nebraska Graded Egg Act but whose primary food-related business
10 activity is not egg handling.

11 (2) Section 2-3512 shall not apply to any person exempt
12 from the comparable provisions of the Egg Products Inspection Act
13 and the regulations thereunder by virtue of ~~the provisions of~~ 7
14 C.F.R. 59.100, as such regulations existed on January 1, 1998.

15 ~~(3) The license and inspection fee requirements of~~
16 ~~section 2-3520 shall not apply to egg handlers whose primary~~
17 ~~food-related business activity is not egg handling but is one for~~
18 ~~which a permit is held pursuant to the Nebraska Pure Food Act.~~

19 Sec. 2. Section 81-2,239, Revised Statutes Supplement,
20 2000, is amended to read:

21 81-2,239. Sections 81-2,239 to 81-2,292 and sections 6
22 and 18 to 23 of this act and the provisions of the Food Code, the
23 Food Salvage Code, and the Current Good Manufacturing Practice In
24 Manufacturing, Packing, or Holding Human Food adopted by reference
25 in sections 81-2,257.01 to 81-2,259, shall be known and may be
26 cited as the Nebraska Pure Food Act.

27 Sec. 3. Section 81-2,240, Revised Statutes Supplement,
28 2000, is amended to read:

1 81-2,240. For purposes of the Nebraska Pure Food Act,
 2 unless the context otherwise requires, the definitions found in
 3 sections 81-2,241 to 81-2,254.01 and section 6 of this act shall be
 4 used. In addition, the definitions found in the codes and practice
 5 adopted by reference in sections 81-2,257.01 to 81-2,259, shall be
 6 used.

7 Sec. 4. Section 81-2,244.01, Revised Statutes
 8 Supplement, 2000, is amended to read:

9 81-2,244.01. Food Code shall mean the ~~1995~~ 1999
 10 Recommendations of the United States Public Health Service, Food
 11 and Drug Administration, except sections ~~1-201.10(B)(2)~~
 12 1-201.10(B)(3), (31), (32), ~~(53)~~ (54), and ~~(68)~~ (69), 2-102.11,
 13 2-103.11(H), ~~2-201~~ 2-201.11, 2-201.12, 2-201.13, 2-201.14,
 14 2-301.12, ~~2-301.13~~, 2-301.14, 2-301.16, ~~2-402.11~~ 2-302.11(B),
 15 2-403.11, ~~3-201.14~~ 3-201.11(E), 3-201.16, ~~3-201.17(D)~~, 3-202.11(A),
 16 3-301.11, ~~3-304.16~~ 3-302.11(B)(4), ~~3-401.11(A)(4)~~ 3-304.13,
 17 3-304.17, 3-401.11(C)(2) and (D)(2), ~~3-401.15~~, ~~3-403.11~~, 3-501,
 18 3-502.11, 3-502.12, 3-603.11, 3-701.11(C), 4-204.111, 4-204.117,
 19 4-301.12(C)(5), ~~and~~ (D), and (E), 4-603.16(C), 4-603.17, ~~5-203.15~~
 20 4-802.11(C), 5-103.12, 5-104.11, 5-104.12, 5-203.12, 5-302.16,
 21 ~~6-301.11(B)~~ 6-302.10, 8-101, 8-102, 8-201.11, 8-201.12,
 22 8-201.13(A)(2) and (3) and (B), 8-201.14(C), 8-202 through 8-304,
 23 8-401.10(B)(2), 8-402.20 through 8-403.20, 8-403.50 through
 24 8-404.12, and 8-405.20(B). The term Food Code does not include the
 25 annexes of such federal recommendations.

26 Sec. 5. Section 81-2,245.01, Revised Statutes
 27 Supplement, 2000, is amended to read:

28 81-2,245.01. Food establishment shall mean an operation

1 that stores, prepares, packages, serves, sells, vends, or otherwise
2 provides food for human consumption. The term does not include:

3 (1) An establishment or vending machine operation that
4 offers only prepackaged snack foods; ~~that are not potentially~~
5 ~~hazardous~~;

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

8 (3) A food processing plant;

9 (4) A salvage ~~establishment~~ operation;

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

14 (6) A private home or other area where food that is not
15 potentially hazardous is prepared: (a) For ~~for~~ sale or service at
16 a religious, charitable, or fraternal organization's bake sale or
17 similar function; or (b) for sale directly to the consumer at a
18 farmers market if the consumer is informed by a clearly visible
19 placard at the sale location that the food was prepared in a
20 kitchen that is not subject to regulation and inspection by the
21 regulatory authority;

22 (7) The location where food prepared by a caterer is
23 served so long as the caterer only minimally handles the food at
24 the serving location; and

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

1 Sec. 6. Snack foods shall mean: (1) Soft drinks,
 2 carbonated or noncarbonated, which do not contain a primary dairy
 3 product or dairy ingredient base or which contain less than fifteen
 4 percent natural fruit or vegetable juice; (2) candy; (3) chewing
 5 gum; (4) potato or corn chips; (5) pretzels; (6) cheese puffs and
 6 curls; (7) crackers; (8) popped popcorn; (9) nuts and edible seeds;
 7 and (10) cookies, cakes, pies, and other pastries which are not
 8 potentially hazardous.

9 Sec. 7. Section 81-2,257, Revised Statutes Supplement,
 10 2000, is amended to read:

11 81-2,257. Critical violations are designated in the Food
 12 Code and sections ~~81-2,270.01,~~ 81-2,272.02 to 81-2,272.04,
 13 81-2,272.06, ~~to~~ 81-2,272.08, 81-2,272.10, 81-2,272.12, 81-2,272.14
 14 to 81-2,272.17, ~~to~~ ~~81-2,272.18,~~ 81-2,272.21, 81-2,272.23 to
 15 81-2,272.27, and 81-2,272.29 and subdivision (4) of section 18 of
 16 this act.

17 Sec. 8. Section 81-2,270, Revised Statutes Supplement,
 18 2000, is amended to read:

19 81-2,270. (1) No person shall operate: (a) A food
 20 establishment; (b) a food processing plant; or (c) a salvage
 21 operation, without a valid permit which sets forth the types of
 22 operation occurring within the establishment.

23 (2) Application for a permit shall be made to the
 24 director on forms prescribed and furnished by the department. Such
 25 application shall include the applicant's full name and mailing
 26 address, the names and addresses of any partners, members, or
 27 corporate officers, the name and address of the person authorized
 28 by the applicant to receive the notices and orders of the

1 department as provided in the Nebraska Pure Food Act, whether the
2 applicant is an individual, partnership, limited liability company,
3 corporation, or other legal entity, the location and type of
4 proposed establishment or operation, and the signature of the
5 applicant. Application for a permit shall be made prior to the
6 operation of a food establishment, food processing plant, or
7 salvage operation. The application and shall be accompanied by an
8 initial permit fee of fifty dollars and an initial inspection fee
9 in the same amount as ~~is annually required pursuant to subsection~~
10 ~~(3) of this section~~ the annual inspection fee if inspections are
11 required to be done by the department. If the food establishment,
12 food processing plant, or salvage operation has been in operation
13 prior to applying for a permit, the applicant shall pay an
14 additional fee of fifty dollars through June 30, 2003, and sixty
15 dollars on and after July 1, 2003.

16 (3) Payment of the initial permit fee, the initial
17 inspection fee, and the fee for failing to apply for a permit prior
18 to operation shall not preclude payment of the annual inspection
19 fees due on August 1 of each year. Except as provided in
20 subsections ~~(6)~~ (8) through ~~(9)~~ (11) of this section and subsection
21 (1) of section 81-2,281, a permitholder shall pay annual inspection
22 fees on or before August 1 of each year.

23 (4) Through June 30, 2003, the initial permit fee shall
24 be fifty dollars and the annual inspection fee shall be as follows:

25 (a) A convenience store, licensed beverage establishment,
26 limited food service establishment, and temporary food
27 establishment, fifty dollars plus twenty-five dollars for each
28 separate and distinct food preparation area within the

1 establishment other than the first such area;

2 (b) A mobile food unit, twenty-five dollars per food
3 unit. If the mobile food unit is supplied by a commissary this fee
4 is in addition to the inspection fee due for the commissary;

5 (c) A pushcart, ten dollars per pushcart. If the
6 pushcart is supplied by a commissary this fee is in addition to the
7 inspection fee due for the commissary;

8 (d) One to ten vending machines, ten dollars; eleven to
9 twenty vending machines, twenty dollars; twenty-one to thirty
10 vending machines, thirty dollars; thirty-one to forty vending
11 machines, forty dollars; and over forty vending machines, fifty
12 dollars. Only vending machines which are not limited food vending
13 machines shall be included in the number of vending machines upon
14 which the fee is determined. If the vending machines are supplied
15 by a commissary this fee is in addition to the inspection fee due
16 for the commissary; and

17 (e) A food processing plant, a salvage operation, and any
18 other food establishment, including a commissary, seventy dollars
19 plus twenty-five dollars for each separate and distinct food
20 preparation area within the establishment other than the first such
21 area.

22 (5) On and after July 1, 2003:

23 (a) The director shall set the initial permit fee and the
24 annual inspection fees on or before July 1 of each fiscal year to
25 meet the criteria in this subsection. The director may raise or
26 lower the fees each year, but the fees shall not exceed the maximum
27 fees listed in subdivision (5)(b) of this section. The director
28 shall determine the fees based on estimated annual revenue and

1 fiscal year end cash fund balance as follows:

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

5 (ii) The estimated fiscal year end cash fund balance
 6 shall not be greater than seventeen percent of program cash fund
 7 appropriations allocated for the act; and

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

10 (b) The maximum fees are:

		<u>Additional</u>		
		<u>First Food</u>	<u>Food</u>	<u>Unit Or</u>
		<u>Preparation</u>	<u>Preparation</u>	<u>Units</u>
<u>Food</u>	<u>Initial</u>	<u>Area Annual</u>	<u>Area Annual</u>	<u>Annual</u>
<u>Handling</u>	<u>Permit</u>	<u>Inspection</u>	<u>Inspection</u>	<u>Inspection</u>
<u>Activity</u>	<u>Fee</u>	<u>Fee</u>	<u>Fee (per area)</u>	<u>Fee</u>
<u>Convenience Store</u>	<u>\$60</u>	<u>\$60.52</u>	<u>\$30.26</u>	<u>N/A</u>
<u>Licensed Beverage</u>				
<u>Establishment</u>	<u>\$60</u>	<u>\$60.52</u>	<u>\$30.26</u>	<u>N/A</u>
<u>Limited Food Service</u>				
<u>Establishment</u>	<u>\$60</u>	<u>\$60.52</u>	<u>\$30.26</u>	<u>N/A</u>
<u>Temporary Food</u>				
<u>Establishment</u>	<u>\$60</u>	<u>\$60.52</u>	<u>\$30.26</u>	<u>N/A</u>
<u>Mobile Food Unit</u>				
<u>(for each unit)</u>	<u>\$60</u>	<u>N/A</u>	<u>N/A</u>	<u>\$30.26</u>
<u>Pushcart (for each</u>				
<u>unit)</u>	<u>\$60</u>	<u>N/A</u>	<u>N/A</u>	<u>\$12.10</u>
<u>Vending Machine</u>				

1	<u>Operations:</u>	<u>\$60</u>			
2	<u>One to ten units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$12.10</u>
3	<u>Eleven to twenty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$24.20</u>
4	<u>Twenty-one to thirty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$36.30</u>
5	<u>Thirty-one to forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$48.40</u>
6	<u>Over forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$60.50</u>
7	<u>Food Processing</u>				
8	<u>Plant</u>	<u>\$60</u>	<u>\$84.73</u>	<u>\$30.26</u>	<u>N/A</u>
9	<u>Salvage Operation</u>	<u>\$60</u>	<u>\$84.73</u>	<u>\$30.26</u>	<u>N/A</u>
10	<u>Commissary</u>	<u>\$60</u>	<u>\$84.73</u>	<u>\$30.26</u>	<u>N/A</u>
11	<u>All Other Food</u>				
12	<u>Establishments</u>	<u>\$60</u>	<u>\$84.73</u>	<u>\$30.26</u>	<u>N/A</u>

13 ~~(4)~~ ~~Whenever~~ (6) Through June 30, 2003, if an
14 establishment is engaged in more than one food handling activity
15 listed under subsection ~~(3)~~ (4) of this section, the inspection fee
16 charged shall be based upon the primary activity conducted within
17 the establishment as determined by the department. On and after
18 July 1, 2003, if an establishment is engaged in more than one food
19 handling activity listed under subsection (5) of this section, the
20 inspection fee charged shall be based upon the primary activity
21 conducted within the establishment as determined by the department
22 and any fees assessed for each additional food preparation area
23 within the primary establishment as determined by the department.

24 ~~(5)~~ (7) The department may impose a penalty for an
25 inspection fee which is more than one month delinquent. The
26 penalty may not exceed fifty percent of the fee for the first month
27 of delinquency and one hundred percent of the fee for the second
28 month of delinquency.

1 ~~(6)~~ (8) An educational institution, health care facility,
 2 nursing home, or governmental organization operating any type of
 3 food establishment, other than a mobile food unit or pushcart, is
 4 exempt from the requirements in subsections (1) through ~~(5)~~ (7) of
 5 this section.

6 ~~(7)~~ (9) A person whose primary food-related business
 7 activity is determined by the department to be egg handling within
 8 the meaning of the Nebraska Graded Egg Act and who is validly
 9 licensed and paying fees pursuant to such act is exempt from the
 10 permit and inspection fee requirements of the Nebraska Pure Food
 11 Act.

12 ~~(8)~~ (10) A person holding a permit or license and
 13 regulated under the Nebraska Manufacturing Milk Act or the Nebraska
 14 Pasteurized Milk Law and an egg handler licensed and regulated
 15 under the Nebraska Graded Egg Act are exempt from the Nebraska Pure
 16 Food Act.

17 ~~(9)~~ (11) A religious, charitable, or fraternal
 18 organization operating any type of temporary food establishment,
 19 mobile food unit, or pushcart is exempt from the requirements of
 20 subsections (1) through ~~(5)~~ (7) of this section. Any such
 21 organization operating any nontemporary food establishment prior to
 22 July 1, 1985, is exempt from the requirements of subsection (2) of
 23 this section.

24 Sec. 9. Section 81-2,272.09, Revised Statutes
 25 Supplement, 2000, is amended to read:

26 81-2,272.09. (1) A food employee may use ~~an~~
 27 ~~alcohol-based, instant hand sanitizer lotion or~~ a chemical hand
 28 sanitizing solution used as a hand dip, when the hand dip:

1 (a) Is clean and at a strength equivalent to at least one
2 hundred milligrams per liter chlorine;

3 (b) Complies with one of the following, as such existed
4 on the effective date of this act:

5 (i) Is an approved drug that is listed in the federal
6 Food and Drug Administration publication Approved Drug Products
7 with Therapeutic Equivalence Evaluations as an approved drug based
8 on safety and effectiveness; or

9 (ii) Has active antimicrobial ingredients that are listed
10 in the federal Food and Drug Administration monograph for
11 Over-the-counter Health-Care Antiseptic Drug Products as an
12 antiseptic handwash or the United States Department of Agriculture
13 List of Proprietary Substances and Nonfood Compounds, Miscellaneous
14 Publication No. 1419;

15 (c) Except as provided in subsection (2) of this section,
16 complies with one of the following regulations, as such regulations
17 existed on the effective date of this act:

18 (i) Has components that are exempted from the requirement
19 of being listed in federal food additive regulations as specified
20 in 21 C.F.R. 170.39 -- Threshold of regulation for substances used
21 in food-contact articles; or

22 (ii) Complies with and is listed in 21 C.F.R. 178 --
23 Indirect food additives: Adjuvants, production aids, and
24 sanitizers as regulated for use as a food additive with conditions
25 of safe use; 21 C.F.R. 182 -- Substances generally recognized as
26 safe, 21 C.F.R. 184 -- Direct food substances affirmed as generally
27 recognized as safe; or 21 C.F.R. 186 -- Indirect food substances
28 affirmed as generally recognized as safe for use in contact with

1 food; and

2 (d) Is applied only to hands that are cleaned as
3 specified under section 81-2,272.08.

4 (2) If a chemical hand sanitizing solution used as a hand
5 dip does not meet the criteria specified under subdivision (1) of
6 this section, use shall be:

7 (a) Followed by thorough hand rinsing in clean water
8 before hand contact with food or by the use of gloves; or

9 (b) Limited to situations that involve no direct contact
10 with food by the bare hands.

11 ~~(a) Consists of, or is made up of, a chemical formulation~~
12 ~~specifically listed for use as a hand sanitizer in 21 C.F.R.~~
13 ~~178.1010 sanitizing solutions or the components are generally~~
14 ~~recognized as safe as specified in 21 C.F.R. 182 - Substances~~
15 ~~Generally Recognized As Safe and 21 C.F.R. 184 - Direct Food~~
16 ~~Substances Affirmed As Generally Recognized As Safe; or~~

17 ~~(b) Consists of, or is made up of, a chemical formulation~~
18 ~~that is not generally recognized as safe or listed for use as a~~
19 ~~hand sanitizer and.~~

20 ~~(i) Is followed by a thorough hand rinsing in clean water~~
21 ~~or the use of gloves; or~~

22 ~~(ii) Is used only where there is no direct contact with~~
23 ~~food by the hands; and~~

24 ~~(c) Is applied only to hands that are cleaned as~~
25 ~~specified under section 81-2,272.08.~~

26 ~~(2) A chemical hand sanitizing solution used as a hand~~
27 ~~dip shall be maintained clean and at a strength equivalent to one~~
28 ~~hundred milligrams per liter chlorine or above.~~

1 Sec. 10. Section 81-2,272.19, Revised Statutes
2 Supplement, 2000, is amended to read:

3 81-2,272.19. Stored frozen foods shall be maintained
4 frozen. Frozen potentially hazardous food that is slacked to
5 moderate the temperature shall be held under refrigeration that
6 maintains the food temperature at:

7 (1) Forty-five ~~forty-five~~ degrees Fahrenheit (seven
8 degrees Celsius) or below ~~or at any~~ if the food is to be consumed
9 within four calendar days;

10 (2) Forty-one degrees Fahrenheit (five degrees Celsius)
11 or below if the food is not to be consumed within four calendar
12 days; or

13 (3) Any temperature if the food remains frozen.

14 Sec. 11. Section 81-2,272.20, Revised Statutes
15 Supplement, 2000, is amended to read:

16 81-2,272.20. Potentially hazardous food shall be thawed:

17 (1) Under refrigeration that maintains the food
18 temperature at forty-five degrees Fahrenheit (seven degrees
19 Celsius) or below if the food is to be consumed within four
20 calendar days or at forty-one degrees Fahrenheit (five degrees
21 Celsius) or below if the food is not to be consumed within four
22 calendar days;

23 (2) Completely submerged under running water:

24 (a) At a water temperature of seventy degrees Fahrenheit
25 (twenty-one degrees Celsius) or below;

26 (b) With sufficient water velocity to agitate and float
27 off loose particles in an overflow; and

28 (c) (i) For a ~~period of time that does not~~ allow thawed

1 portions of ready-to-eat food: For a period of time that does not
 2 allow the food temperature to rise above forty-five degrees
 3 Fahrenheit (seven degrees Celsius), if the food is to be consumed
 4 within four calendar days or to rise above forty-one degrees
 5 Fahrenheit (five degrees Celsius) if the food is not to be consumed
 6 within four calendar days; or

7 (ii) ~~For for a period of time that does not allow~~ thawed
 8 portions of a raw animal food requiring cooking: For a period of
 9 time that does not allow the food temperature to be above
 10 forty-five degrees Fahrenheit (seven degrees Celsius) for more than
 11 four hours, including the time the food is exposed to the running
 12 water and the time needed for preparation for cooking or the time
 13 it takes under refrigeration to lower the food temperature to
 14 forty-five degrees Fahrenheit (seven degrees Celsius), if the food
 15 is to be consumed within four calendar days or to be above
 16 forty-one degrees Fahrenheit (five degrees Celsius) if the food is
 17 not to be consumed within four calendar days;

18 (3) As part of a cooking process if the food that is
 19 frozen is:

20 (a) Cooked as specified in the Nebraska Pure Food Act; or

21 (b) Thawed in a microwave oven and immediately
 22 transferred to conventional cooking equipment, with no interruption
 23 in the process; or

24 (4) Using any procedure ~~that thaws~~ if a portion of frozen
 25 ready-to-eat food ~~that~~ is thawed and prepared for immediate service
 26 in response to an individual consumer's order.

27 Sec. 12. Section 81-2,272.21, Revised Statutes
 28 Supplement, 2000, is amended to read:

1 81-2,272.21. (1) Cooked potentially hazardous food shall
2 be cooled:

3 (a) ~~From~~ Within two hours from one hundred forty degrees
4 Fahrenheit (sixty degrees Celsius) to seventy degrees Fahrenheit
5 (twenty-one degrees Celsius); ~~within two hours,~~ and

6 (b) ~~From~~ Within four hours from seventy degrees
7 Fahrenheit (twenty-one degrees Celsius) to:

8 (i) Forty-five ~~forty-five~~ degrees Fahrenheit (seven
9 degrees Celsius) or below within four hours if the food is to be
10 consumed within four calendar days, minus the time before freezing
11 that the food was held above forty-one degrees Fahrenheit (five
12 degrees Celsius); or

13 (ii) Forty-one degrees Fahrenheit (five degrees Celsius)
14 or below if the food is not to be consumed within four calendar
15 days, minus the time before freezing that the food was held above
16 forty-one degrees Fahrenheit (five degrees Celsius).

17 (2) Potentially hazardous food prepared from ingredients
18 at ambient temperature shall be cooled within four hours to:

19 (a) Forty-five ~~forty-five~~ degrees Fahrenheit (seven
20 degrees Celsius) or below if the food is to be consumed within four
21 calendar days, minus the time before freezing that the food was
22 held above forty-five degrees Fahrenheit (seven degrees Celsius);
23 or

24 (b) Forty-one degrees Fahrenheit (five degrees Celsius)
25 or below if the food is not to be consumed within four calendar
26 days, minus the time before freezing that the food was held above
27 forty-five degrees Fahrenheit (seven degrees Celsius). ~~within four~~
28 ~~hours if prepared from ingredients at ambient temperature.~~

1 ~~(3) A potentially hazardous food received at a~~
 2 ~~temperature above forty-five degrees Fahrenheit (seven degrees~~
 3 ~~Celsius) during shipment from the supplier shall be cooled to~~
 4 ~~forty-five degrees Fahrenheit (seven degrees Celsius) or below~~
 5 ~~within four hours.~~

6 Sec. 13. Section 81-2,272.23, Revised Statutes
 7 Supplement, 2000, is amended to read:

8 81-2,272.23. Except during preparation, cooking, or
 9 cooling or when time is used as the public health control as
 10 specified in section 81-2,272.26, potentially hazardous food shall
 11 be maintained:

12 (1) At one hundred forty degrees Fahrenheit (sixty
 13 degrees Celsius) or above, except that roasts cooked to a
 14 temperature and for a time specified in the Nebraska Pure Food Act
 15 may be held at a temperature of one hundred thirty degrees
 16 Fahrenheit (fifty-four degrees Celsius); or

17 (2) At forty-five degrees Fahrenheit (seven degrees
 18 Celsius) or below if the food is to be consumed within four
 19 calendar days or between forty-one degrees Fahrenheit (five degrees
 20 Celsius) and forty-five degrees Fahrenheit (seven degrees Celsius)
 21 if the food is not to be consumed within four calendar days, except
 22 as specified in section 81-2,272.15.

23 Sec. 14. Section 81-2,272.24, Revised Statutes
 24 Supplement, 2000, is amended to read:

25 81-2,272.24. ~~Except for individual meal portions served~~
 26 ~~or repackaged for sale from a bulk container upon a consumer's~~
 27 ~~request:~~ (1) For refrigerated, ready-to-eat, potentially hazardous
 28 food prepared on-premises of a food establishment and held

1 refrigerated for more than twenty-four hours in such food
2 establishment, the container shall be clearly marked at the time of
3 preparation to indicate the consumption date which is the date by
4 which the food is allowed to be consumed. Calculation of the
5 consumption date shall include the day of preparation. The
6 consumption date shall be:

7 (a) Seven calendar days or less if the food is held
8 refrigerated at forty-one degrees Fahrenheit (five degrees Celsius)
9 or below; or

10 (b) Four calendar days or less if the food is held
11 refrigerated between forty-five degrees Fahrenheit (seven degrees
12 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

13 (2) For ready-to-eat, potentially hazardous food prepared
14 on-premises in a food establishment and subsequently frozen at such
15 food establishment, the container shall be clearly marked:

16 (a) When the food is thawed, to indicate that the food is
17 allowed to be consumed only within the next twenty-four hours; or

18 (b) (i) When the food is placed into the freezer, to
19 indicate the number of days before freezing that the food was held
20 refrigerated. Calculation of the number of days shall include the
21 day of preparation. The number of days is allowed to be:

22 (A) Seven calendar days or less if the food is held
23 refrigerated at forty-one degrees Fahrenheit (five degrees Celsius)
24 or below; or

25 (B) Four calendar days or less if the food is held
26 refrigerated between forty-five degrees Fahrenheit (seven degrees
27 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius);
28 and

1 (ii) When the food is removed from the freezer, to
2 indicate the consumption date which is the date by which the food
3 is allowed to be consumed. Calculation of the consumption date
4 shall include the day the food is removed from the freezer. The
5 consumption date shall be:

6 (A) Seven calendar days or less, minus the time before
7 freezing that the food was held refrigerated, if the food is held
8 refrigerated at forty-one degrees Fahrenheit (five degrees Celsius)
9 or below before and after freezing; or

10 (B) Four calendar days or less, minus the time before
11 freezing that the food was held refrigerated, if the food is held
12 refrigerated between forty-five degrees Fahrenheit (seven degrees
13 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius)
14 before and after freezing.

15 (3) For refrigerated, ready-to-eat, potentially hazardous
16 food prepared and packaged by a food processing plant which is
17 opened in a food establishment and held refrigerated at such food
18 establishment, the container shall be clearly marked, at the time
19 the original container is opened, to indicate the consumption date
20 which is the date by which the food is allowed to be consumed.
21 Calculation of the consumption date shall include the day the
22 original container is opened. The consumption date shall be:

23 (a) Seven calendar days or less if the food is held
24 refrigerated at forty-one degrees Fahrenheit (five degrees
25 Celsius) or below; or

26 (b) Four calendar days or less if the food is held
27 refrigerated between forty-five degrees Fahrenheit (seven degrees
28 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

1 (4) For refrigerated, ready-to-eat, potentially hazardous
2 food prepared and packaged by a food processing plant and
3 subsequently opened and frozen in a food establishment, the
4 container shall be clearly marked:

5 (a) When the food is thawed, to indicate that the food is
6 allowed to be consumed only within the next twenty-four hours; or

7 (b) (i) To indicate the number of days between the opening
8 of the original container and freezing that the food was held
9 refrigerated. Calculation of the number of days shall include the
10 day of opening the original container. The number of days is
11 allowed to be:

12 (A) Seven calendar days or less if the food is held
13 refrigerated at forty-one degrees Fahrenheit (five degrees Celsius)
14 or below; or

15 (B) Four calendar days or less if the food is held
16 refrigerated between forty-five degrees Fahrenheit (seven degrees
17 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius);
18 and

19 (ii) When the food is removed from the freezer, to
20 indicate the consumption date which is the date by which the food
21 is allowed to be consumed. Calculation of the consumption date
22 shall include the day the food is removed from the freezer. The
23 consumption date shall be:

24 (A) Seven days or less, minus the time before freezing
25 that the food is held refrigerated, if the food was maintained at
26 forty-one degrees Fahrenheit (five degrees Celsius) or below before
27 and after freezing; or

28 (B) Four calendar days or less, minus the time before

1 freezing that the food was held refrigerated, if the food is held
2 refrigerated between forty-five degrees Fahrenheit (seven degrees
3 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius)
4 before and after freezing. Refrigerated, ready-to-eat, potentially
5 hazardous food prepared and held for more than twenty-four hours in
6 a food establishment shall be marked with the date of preparation
7 and consumed by a date which is no more than ten calendar days
8 after preparation. The food shall be discarded if not consumed
9 within ten calendar days after the date of preparation, and

10 ~~(2) A container of refrigerated, ready-to-eat,~~
11 ~~potentially hazardous food prepared and packaged by a food~~
12 ~~processing plant shall be marked as follows:~~

13 ~~(a) A container shall be marked by the food processor~~
14 ~~with any reasonably accepted term which indicates the date by which~~
15 ~~the food shall be consumed,~~

16 ~~(b) A container of food to be served in a food~~
17 ~~establishment shall be marked by the food establishment with the~~
18 ~~date the container is opened. Such food shall be discarded if it~~
19 ~~is not consumed within ten calendar days after being opened in a~~
20 ~~food establishment or before the food processor's date by which the~~
21 ~~food shall be consumed, whichever date occurs first, and~~

22 ~~(c) A container of food which has been repackaged for~~
23 ~~retail sale by a food establishment shall be labeled with a "sell~~
24 ~~by" or "use by" date. Such date shall not exceed the food~~
25 ~~processor's date by which the food shall be consumed or ten~~
26 ~~calendar days from the date of repackaging, whichever occurs first.~~

27 Subdivision (2) of this section does

28 (5) Subsections (3) and (4) of this section do not apply

1 to whole, unsliced portions of a cured and processed product with
2 original casing maintained on the remaining portion, such as
3 bologna, salami, or other sausage in a cellulose casing.

4 (6) This section does not apply to individual meal
5 portions served or repackaged for sale from a bulk container upon a
6 consumer's request.

7 Sec. 15. Section 81-2,272.25, Revised Statutes
8 Supplement, 2000, is amended to read:

9 81-2,272.25. (1) A food specified under subsection (1)
10 of section 81-2,272.24 shall be discarded if not consumed within,
11 including the day of preparation:

12 (a) Seven calendar days if the food is held refrigerated
13 at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

14 (b) Four calendar days if the food is held refrigerated
15 between forty-five degrees Fahrenheit (seven degrees Celsius) and
16 forty-one degrees Fahrenheit (five degrees Celsius).

17 (2) A food specified under subdivision (2)(a) or (4)(a)
18 of section 81-2,272.24 shall be discarded if not consumed within
19 twenty-four hours after thawing.

20 (3) A food specified under subdivision (2)(b) or (4)(b)
21 of section 81-2,272.24 shall be discarded on or before the most
22 recent consumption date marked on the food container if the food is
23 not consumed by that date.

24 (4) A food specified under subsection (3) of section
25 81-2,272.24 shall be discarded if not consumed within, including
26 the day of opening the original container:

27 (a) Seven calendar days if the food is held refrigerated
28 at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

1 (b) Four calendar days if the food is held refrigerated
2 between forty-five degrees Fahrenheit (seven degrees Celsius) and
3 forty-one degrees Fahrenheit (five degrees Celsius).

4 (5) A food specified under section 81-2,272.24 shall be
5 discarded if the food is:

6 (a) Not consumed before the most recent consumption date
7 marked on the container;

8 (b) Except for food specified in subdivision (2)(a) or
9 (4)(a) of such section, in a container or package which is not
10 marked with a consumption date or number of days held in
11 refrigeration before freezing; or

12 (c) Inappropriately marked with a consumption date or
13 number of days held refrigerated that exceeds the restrictions
14 under section 81-2,272.24.

15 (6) Refrigerated, ready-to-eat, potentially hazardous
16 food prepared in a food establishment and dispensed through a
17 vending machine with an automatic shut-off control that is
18 activated at a temperature of:

19 (a) Forty-one degrees Fahrenheit (five degrees Celsius)
20 shall be discarded if not sold within seven calendar days; or

21 (b) Forty-five degrees Fahrenheit (seven degrees Celsius)
22 shall be discarded if not sold within four calendar days.

23 (7) A refrigerated, potentially hazardous, ready-to-eat
24 food ingredient or a portion of a refrigerated, potentially
25 hazardous, ready-to-eat food that is subsequently combined with
26 additional ingredients or portions of food shall retain the
27 consumption date marking or number of days held refrigerated
28 marking of the earliest or first-prepared ingredient or portion and

1 shall be discarded as specified under this section. A vending
2 machine which dispenses ~~ready-to-eat, potentially hazardous food~~
3 shall be equipped with an automatic cutoff control that is
4 activated at a temperature of ~~forty-five degrees Fahrenheit (seven~~
5 ~~degrees Celsius).~~ Refrigerated, ~~ready-to-eat, potentially~~
6 ~~hazardous food in a vending machine shall be discarded if not sold~~
7 ~~or served within ten calendar days.~~ Refrigerated, ~~ready-to-eat,~~
8 ~~potentially hazardous food in a vending machine in which the~~
9 ~~automatic cutoff control has been activated shall be discarded if~~
10 ~~the time constraint specified in subdivision (2) of section~~
11 ~~81-2,272.26 has been exceeded.~~

12 Sec. 16. Section 81-2,272.27, Revised Statutes
13 Supplement, 2000, is amended to read:

14 81-2,272.27. A food establishment may use a reduced
15 oxygen packaging method if a variance has been granted by the
16 regulatory authority or under the following conditions:

17 (1) A food establishment shall only use a reduced oxygen
18 packaging method with potentially hazardous food that does not
19 support the growth of the bacteria *Clostridium botulinum* because
20 it:

21 (a) Has an AW (water activity) of ninety-one hundredths
22 or less;

23 (b) Has a pH of four and six-tenths or less; or

24 (c) Is a meat product cured and processed in the food
25 establishment that at the time of processing had a concentration of
26 sodium nitrite of one hundred twenty milligrams per liter or higher
27 and has a brine concentration of at least three and one-half
28 percent.

1 (2) A food with a high level of competing organisms such
2 as raw meat, raw poultry, or semi-soft cheese containing live
3 active starter culture organisms may be packaged using a reduced
4 oxygen method. Such products shall be labeled with a "sell by" or
5 "use by" date not to exceed fourteen days and shall be discarded if
6 not sold by that date.

7 (3) Products packaged using a reduced oxygen method shall
8 be maintained at ~~forty-five~~ forty-one degrees Fahrenheit (five
9 ~~seven~~ degrees Celsius) or below.

10 (4) Except as provided in subdivision (2) of this
11 section, products packaged using a reduced oxygen method shall be
12 discarded if not sold within thirty days from processing if the
13 food is processed at the food establishment. Food processed by a
14 food processing plant that has been repackaged by the food
15 establishment shall be discarded if not sold within fourteen days
16 from packaging by the food establishment or the original
17 manufacturers "sell by" or "use by" date, whichever occurs first.

18 (5) Except as provided in subdivision (2) of this
19 section, products packaged using a reduced oxygen method shall be
20 labeled with a "sell by" or "use by" date which is not more than
21 thirty days from the date it was processed by the food
22 establishment. Food processed by a food processing plant that has
23 been repackaged by the food establishment shall be labeled with a
24 "sell by" or "use by" date which is not more than fourteen days
25 from the date it was repackaged by the food establishment or the
26 original manufacturer's "sell by" or "use by" date, whichever
27 occurs first.

28 (6) Food establishments which process and package food

1 using a reduced oxygen method shall have written policies for
2 operational procedures that:

3 (a) Prohibit contacting ready-to-eat foods with bare
4 hands without proper handwashing;

5 (b) Identify a designated area for reduced oxygen
6 packaging which separates raw foods and ready-to-eat foods to
7 minimize cross contamination;

8 (c) Restrict access to the processing equipment to only
9 responsible trained personnel familiar with the potential hazards
10 of the operation; and

11 (d) Delineate cleaning and sanitation procedures for food
12 contact surfaces.

13 (7) Food establishments which package food using a
14 reduced oxygen method shall have a training program to ensure that
15 the individual responsible for the reduced oxygen packaging
16 operation understands the requirements of the Nebraska Pure Food
17 Act and the procedures, equipment, and facilities required for safe
18 operation.

19 (8) A food establishment shall not package fish using a
20 reduced oxygen method unless the fish remains frozen before,
21 during, and after packaging or a variance has been granted by the
22 regulatory authority.

23 Sec. 17. Section 81-2,272.28, Revised Statutes
24 Supplement, 2000, is amended to read:

25 81-2,272.28. ~~In a food establishment,~~ a Any temporary
26 food establishment, mobile food unit, or food establishment with a
27 temporary interruption of its water supply, which does not meet the
28 requirements of subdivisions (1) through (4) of section 18 of this

1 act, shall use:

- 2 (1) Containers of commercially bottled drinking water;
 3 (2) One or more closed portable water containers;
 4 (3) An enclosed vehicular water tank;
 5 (4) An on-premises water storage tank; or
 6 (5) Piping, tubing, or hoses connected to an adjacent
 7 approved water source. Any hose used for conveying drinking water
 8 from a water tank shall have a smooth interior surface, be of food
 9 grade material, and, if not permanently attached, be clearly and
 10 durably identified as to its use.

11 Sec. 18. Except in response to a temporary interruption
 12 of a water supply in the food establishment, any food establishment
 13 which is not a mobile food unit or temporary food establishment
 14 shall:

- 15 (1) Have water under pressure provided to all fixtures,
 16 equipment, and nonfood equipment that are required to use water;
 17 (2) Receive water through the use of an approved water
 18 main;
 19 (3) Have a permanent plumbing system; and
 20 (4) Have at least one toilet which is permanent,
 21 convenient, accessible, and located within the same permanently
 22 roofed structure.

23 Sec. 19. (1) Except as provided under subsection (2) of
 24 this section, a food employee shall keep his or her fingernails
 25 trimmed, filed, and maintained so the edges and surfaces are
 26 cleanable and not rough. Unless wearing intact gloves in good
 27 repair, a food employee shall not wear fingernail polish or
 28 artificial fingernails when working with exposed food.

1 (2) This section does not apply to a food employee such
2 as a counter staff person who only serves beverages and wrapped or
3 packaged foods, a host staff person, or a wait staff person if he
4 or she presents a minimal risk of contaminating exposed food, clean
5 equipment, utensils, and linens, and unwrapped single-service and
6 single-use articles.

7 Sec. 20. Except for raw dough being prepared prior to
8 being cooked, linens and cloth napkins shall not be used in contact
9 with food unless they are used to line a container for the service
10 of foods and the linens and napkins are replaced each time the
11 container is refilled. Linens and cloth napkins which are used in
12 contact with food and cloth napkins used by consumers shall be
13 laundered between each use.

14 Sec. 21. Ready-to-eat food that may have been
15 contaminated by an employee who has been restricted or excluded as
16 specified under section 81-2,272.04 shall be discarded.

17 Sec. 22. (1) A machine vending potentially hazardous
18 food shall have an automatic control that prevents the machine from
19 vending food:

20 (a) If there is a power failure, mechanical failure, or
21 other condition that results in an internal machine temperature
22 that can not maintain food temperatures as specified under the
23 Nebraska Pure Food Act; and

24 (b) If a condition specified under subsection (1)(a) of
25 this section occurs, until the machine is serviced and restocked
26 with food that has been maintained at temperatures specified under
27 the act.

28 (2) When the automatic shutoff within a machine vending

1 potentially hazardous food is activated:

2 (a) In a refrigerated vending machine, the ambient
 3 temperature shall not exceed forty-one degrees Fahrenheit (five
 4 degrees Celsius) or forty-five degrees Fahrenheit (seven degrees
 5 Celsius) as specified under the act for more than thirty minutes
 6 immediately after the machine is filled, serviced, or restocked; or

7 (b) In a hot holding vending machine, the ambient
 8 temperature shall not be below one hundred forty degrees Fahrenheit
 9 (sixty degrees Celsius) for more than one hundred twenty minutes
 10 immediately after the machine is filled, serviced, or restocked.

11 Sec. 23. Refrigerated, potentially hazardous food which
 12 is not to be consumed within twenty-four hours shall be at a
 13 temperature of forty-one degrees Fahrenheit (five degrees Celsius)
 14 or below when received. Refrigerated, potentially hazardous food
 15 which is to be consumed within twenty-four hours shall be at a
 16 temperature between forty-five degrees Fahrenheit (seven degrees
 17 Celsius) and forty-five degrees Fahrenheit (five degrees Celsius)
 18 when received.

19 Sec. 24. Original section 2-3517, Reissue Revised
 20 Statutes of Nebraska, and sections 81-2,239, 81-2,240, 81-2,244.01,
 21 81-2,245.01, 81-2,257, 81-2,270, 81-2,272.09, 81-2,272.19,
 22 81-2,272.20, 81-2,272.21, 81-2,272.23, 81-2,272.24, 81-2,272.25,
 23 81-2,272.27, and 81-2,272.28, Revised Statutes Supplement, 2000,
 24 are repealed.

25 Sec. 25. The following sections are outright repealed:
 26 Sections 81-2,270.01, 81-2,272.07, 81-2,272.11, 81-2,272.13,
 27 81-2,272.18, and 81-2,272.30, Revised Statutes Supplement, 2000.