

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
FIRST SESSION

LEGISLATIVE BILL 250

Introduced by Kremer, 34

Read first time January 13, 2003

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-3512 and  
2 2-3520, Reissue Revised Statutes of Nebraska, and  
3 sections 81-2,239, 81-2,244.01, 81-2,245.01, 81-2,257,  
4 81-2,263, 81-2,270, 81-2,272.10, 81-2,272.15,  
5 81-2,272.19, 81-2,272.20, 81-2,272.21, 81-2,272.23,  
6 81-2,272.24, 81-2,272.25, 81-2,272.27, 81-2,272.28,  
7 81-2,272.29, and 81-2,272.30, Revised Statutes  
8 Supplement, 2002; to change provisions of the Nebraska  
9 Pure Food Act and the Nebraska Graded Egg Act; to provide  
10 an exception; to define and redefine terms; to change and  
11 eliminate food handling and preparation requirements and  
12 fees; to harmonize provisions; to repeal the original  
13 sections; to outright repeal section 2-3517, Reissue  
14 Revised Statutes of Nebraska, and sections 81-2,270.01,  
15 81-2,272.07 to 81-2,272.09, 81-2,272.11 to 81-2,272.13,  
16 and 81-2,272.18, Revised Statutes Supplement, 2002; and  
17 to declare an emergency.

LB 250

LB 250

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

1           Section 1.   Section 2-3512, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           2-3512.   (1) It shall be unlawful to sell shell eggs  
4 below the quality grade of Grade B at retail or to food purveyors  
5 except as provided in the packing tolerances for Grade B eggs  
6 established under the rules and regulations of the department.

7           (2) This section does not apply to any person exempt from  
8 comparable provisions of the federal Egg Products Inspection Act  
9 and 7 C.F.R. 57.100.

10          Sec. 2.   Section 2-3520, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12          2-3520.   There shall be paid to the department an annual  
13 license fee of two dollars and fifty cents and an inspection fee  
14 based on volume, as follows:

15                 (1) Retailers:

16                     (a) Not more than ten thirty-dozen cases annual average  
17 per week, the sum of five dollars;

18                     (b) More than ten thirty-dozen cases but not more than  
19 twenty-five such cases annual average per week, the sum of seven  
20 dollars and fifty cents; and

21                     (c) More than twenty-five thirty-dozen cases annual  
22 average per week, the sum of ten dollars; and

23                 (2) Egg handlers:

24                     (a) Not more than ten thirty-dozen cases annual average  
25 per week, the sum of five dollars;

26                     (b) More than ten thirty-dozen cases but not more than  
27 two hundred such cases annual average per week, the sum of  
28 twenty-five dollars;

1           (c) More than two hundred thirty-dozen cases but not more  
2 than five hundred such cases annual average per week, the sum of  
3 fifty dollars;

4           (d) More than five hundred thirty-dozen cases but not  
5 more than one thousand such cases annual average per week, the sum  
6 of seventy-five dollars;

7           (e) More than one thousand thirty-dozen cases but not  
8 more than fifteen hundred such cases annual average per week, the  
9 sum of one hundred dollars;

10          (f) More than fifteen hundred thirty-dozen cases but not  
11 more than two thousand such cases annual average per week, the sum  
12 of one hundred twenty-five dollars;

13          (g) More than two thousand thirty-dozen cases but not  
14 more than twenty-five hundred such cases annual average per week,  
15 the sum of one hundred fifty dollars; and

16          (h) More than twenty-five hundred thirty-dozen cases  
17 annual average per week, the sum of two hundred dollars.

18           Application for a license shall be made to the department  
19 on forms prescribed and furnished by the department. Licenses  
20 shall expire on July 31 of the year following issuance and shall be  
21 renewed on or before August 1 of each year. The license fee and  
22 the inspection fee shall be paid at the time of the initial  
23 application for a license and at the time of each succeeding  
24 application for renewal.

25           The inspection fee shall be based upon the annual average  
26 per week volume during the preceding twelve-month period ending  
27 June 30. If no annual average per week volume is available from  
28 the preceding twelve-month period, the inspection fee shall be

1 based upon the estimated per week volume for the upcoming year.

2 This section does not apply to a producer with production  
 3 from a flock of three thousand hens or less or to an egg handler  
 4 required to have a license under the Nebraska Graded Egg Act but  
 5 whose primary food-related business activity is not egg handling.

6 Sec. 3. Section 81-2,239, Revised Statutes Supplement,  
 7 2002, is amended to read:

8 81-2,239. Sections 81-2,239 to 81-2,292 and sections 19  
 9 and 22 to 27 of this act and the provisions of the Food Code, the  
 10 Food Salvage Code, and the Current Good Manufacturing Practice In  
 11 Manufacturing, Packing, or Holding Human Food adopted by reference  
 12 in sections 81-2,257.01 to 81-2,259, shall be known and may be  
 13 cited as the Nebraska Pure Food Act.

14 Sec. 4. Section 81-2,244.01, Revised Statutes  
 15 Supplement, 2002, is amended to read:

16 81-2,244.01. Food Code shall mean the ~~1995~~ 2001  
 17 Recommendations of the United States Public Health Service, Food  
 18 and Drug Administration, except sections ~~1-201.10(B)(2), (31),~~  
 19 ~~(32), (53), and (68),~~ 1-201.10(B)(1), (3), (36), (37), (57), (58),  
 20 and (73), 2-102.11, 2-103.11(H) and (K), ~~2-201~~ 2-201.11, 2-201.12,  
 21 2-201.13, 2-201.14, ~~2-301.12, 2-301.13, 2-301.14, 2-301.16,~~  
 22 ~~2-402.11~~ 2-302.11, 2-303.11, ~~2-403.11, 3-201.14~~ 3-201.11(E),  
 23 ~~3-201.16, 3-201.17(D),~~ 3-202.11(A) and (D), 3-301.11, ~~3-304.16~~  
 24 3-302.11(B)(4), ~~3-401.11(A)(4)~~ 3-304.13, 3-304.17, 3-401.11(C)(2)  
 25 and (D)(2), ~~3-401.15, 3-403.11,~~ 3-403.11(C), 3-404.11(A), 3-501,  
 26 3-502.11, 3-502.12, 3-603.11, 3-701.11(C), 4-204.111, 4-204.117,  
 27 4-301.12(C)(5), and (D), and (E), 4-302.12(B), 4-603.16(C),  
 28 4-603.17, ~~5-203.15~~ 4-802.11(C), 5-103.12, 5-104.11, 5-104.12,

1 5-203.12, 5-203.15, 5-302.16, ~~6-301.11(B)~~ 6-301.14, 6-302.10,  
 2 8-101, 8-102, 8-201.11, 8-201.12, 8-201.13(A) (2) and (3) and (B),  
 3 8-201.14(C), 8-202 through 8-304, 8-401.10(B) (2), 8-402.20 through  
 4 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B). The term  
 5 Food Code does not include the annexes of such federal  
 6 recommendations.

7 Sec. 5. Section 81-2,245.01, Revised Statutes  
 8 Supplement, 2002, is amended to read:

9 81-2,245.01. Food establishment shall mean an operation  
 10 that stores, prepares, packages, serves, sells, vends, or otherwise  
 11 provides food for human consumption. The term does not include:

12 (1) An establishment or vending machine operation that  
 13 offers only prepackaged ~~foods~~ soft drinks, carbonated or  
 14 noncarbonated, that do not contain a primary dairy product or dairy  
 15 ingredient base or that contain less than fifteen percent natural  
 16 fruit or vegetable juice; candy; chewing gum; potato or corn chips;  
 17 pretzels; cheese puffs and curls; crackers; popped popcorn; nuts  
 18 and edible seeds; and cookies, cakes, pies, and other pastries that  
 19 are not potentially hazardous;

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

22 (3) A food processing plant;

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

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

28 (6) A private home or other area where food that is not

1 potentially hazardous is prepared: (a) For ~~for~~ sale or service at  
 2 a religious, charitable, or fraternal organization's bake sale or  
 3 similar function; or (b) for sale directly to the consumer at a  
 4 farmers market if the consumer is informed by a clearly visible  
 5 placard at the sale location that the food was prepared in a  
 6 kitchen that is not subject to regulation and inspection by the  
 7 regulatory authority;

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

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

15 Sec. 6. Section 81-2,257, Revised Statutes Supplement,  
 16 2002, is amended to read:

17 81-2,257. Critical violations are designated in the Food  
 18 Code and sections ~~81-2,270.01,~~ 81-2,272.02 to 81-2,272.04,  
 19 81-2,272.06, ~~to 81-2,272.08,~~ 81-2,272.10, ~~81-2,272.12 to~~  
 20 ~~81-2,272.18,~~ 81-2,272.14 to 81-2,272.17, 81-2,272.21, 81-2,272.23  
 21 to 81-2,272.27, and 81-2,272.29, subdivision (4) of section 19 of  
 22 this act, and sections 25, 26, and 27 of this act.

23 Sec. 7. Section 81-2,263, Revised Statutes Supplement,  
 24 2002, is amended to read:

25 81-2,263. If there is an inconsistency between sections  
 26 81-2,239 to 81-2,292 and sections 19 and 22 to 27 of this act and  
 27 any of the codes adopted by reference, the requirements of the  
 28 sections shall control.

1           Sec. 8. Section 81-2,270, Revised Statutes Supplement,  
2 2002, is amended to read:

3           81-2,270. (1) No person shall operate: (a) A food  
4 establishment; (b) a food processing plant; or (c) a salvage  
5 operation, without a valid permit which sets forth the types of  
6 operation occurring within the establishment.

7           (2) Application for a permit shall be made to the  
8 director on forms prescribed and furnished by the department. Such  
9 application shall include the applicant's full name and mailing  
10 address, the names and addresses of any partners, members, or  
11 corporate officers, the name and address of the person authorized  
12 by the applicant to receive the notices and orders of the  
13 department as provided in the Nebraska Pure Food Act, whether the  
14 applicant is an individual, partnership, limited liability company,  
15 corporation, or other legal entity, the location and type of  
16 proposed establishment or operation, and the signature of the  
17 applicant. Application for a permit shall be made prior to the  
18 operation of a food establishment, food processing plant, or  
19 salvage operation. The application and shall be accompanied by an  
20 initial permit fee of fifty dollars and an initial inspection fee  
21 in the same amount as is annually required pursuant to subsection  
22 (3) of this section the annual inspection fee if inspections are  
23 required to be done by the department. If the food establishment,  
24 food processing plant, or salvage operation has been in operation  
25 prior to applying for a permit, the applicant shall pay an  
26 additional fee of fifty dollars through June 30, 2003, and sixty  
27 dollars on and after July 1, 2003.

28           (3) Payment of the initial permit fee, the initial

1 inspection fee, and the fee for failing to apply for a permit prior  
2 to operation shall not preclude payment of the annual inspection  
3 fees due on August 1 of each year. Except as provided in  
4 subsections ~~(6)~~ (8) through ~~(9)~~ (11) of this section and subsection  
5 (1) of section 81-2,281, a permit holder shall pay annual inspection  
6 fees on or before August 1 of each year.

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

9 (a) A convenience store, licensed beverage establishment,  
10 limited food service establishment, and temporary food  
11 establishment, fifty dollars plus twenty-five dollars for each  
12 separate and distinct food preparation area within the  
13 establishment other than the first such area;

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

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

20 (d) One to ten vending machines, ten dollars; eleven to  
21 twenty vending machines, twenty dollars; twenty-one to thirty  
22 vending machines, thirty dollars; thirty-one to forty vending  
23 machines, forty dollars; and over forty vending machines, fifty  
24 dollars. Only vending machines which are not limited food vending  
25 machines shall be included in the number of vending machines upon  
26 which the fee is determined. If the vending machines are supplied  
27 by a commissary this fee is in addition to the inspection fee due  
28 for the commissary; and

1           (e) A food processing plant, a salvage operation, and any  
 2 other food establishment, including a commissary, seventy dollars  
 3 plus twenty-five dollars for each separate and distinct food  
 4 preparation area within the establishment other than the first such  
 5 area.

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

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

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

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

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

22           (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>

LB 250

LB 250

1	<u>Convenience Store</u>	<u>\$61.72</u>	<u>\$61.72</u>	<u>\$30.86</u>	<u>N/A</u>
2	<u>Licensed Beverage</u>				
3	<u>Establishment</u>	<u>\$61.72</u>	<u>\$61.72</u>	<u>\$30.86</u>	<u>N/A</u>
4	<u>Limited Food Service</u>				
5	<u>Establishment</u>	<u>\$61.72</u>	<u>\$61.72</u>	<u>\$30.86</u>	<u>N/A</u>
6	<u>Temporary Food</u>				
7	<u>Establishment</u>	<u>\$61.72</u>	<u>\$61.72</u>	<u>\$30.86</u>	<u>N/A</u>
8	<u>Mobile Food Unit</u>				
9	<u>(for each unit)</u>	<u>\$61.72</u>	<u>N/A</u>	<u>N/A</u>	<u>\$30.86</u>
10	<u>Pushcart (for each</u>				
11	<u>unit)</u>	<u>\$61.72</u>	<u>N/A</u>	<u>N/A</u>	<u>\$12.34</u>
12	<u>Vending Machine</u>				
13	<u>Operations:</u>	<u>\$61.72</u>			
14	<u>One to ten units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$12.34</u>
15	<u>Eleven to twenty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$24.68</u>
16	<u>Twenty-one to thirty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$37.02</u>
17	<u>Thirty-one to forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$49.36</u>
18	<u>Over forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$61.70</u>
19	<u>Food Processing</u>				
20	<u>Plant</u>	<u>\$61.72</u>	<u>\$86.40</u>	<u>\$30.86</u>	<u>N/A</u>
21	<u>Salvage Operation</u>	<u>\$61.72</u>	<u>\$86.40</u>	<u>\$30.86</u>	<u>N/A</u>
22	<u>Commissary</u>	<u>\$61.72</u>	<u>\$86.40</u>	<u>\$30.86</u>	<u>N/A</u>
23	<u>All Other Food</u>				
24	<u>Establishments</u>	<u>\$61.72</u>	<u>\$86.40</u>	<u>\$30.86</u>	<u>N/A</u>

25           ~~(4)~~ ~~Whenever~~ (6) Through June 30, 2003, if an  
26 establishment is engaged in more than one food handling activity  
27 listed under subsection ~~(3)~~ (4) of this section, the inspection fee  
28 charged shall be based upon the primary activity conducted within

1 the establishment as determined by the department. On and after  
2 July 1, 2003, if an establishment is engaged in more than one food  
3 handling activity listed under subsection (5) of this section, the  
4 inspection fee charged shall be based upon the primary activity  
5 conducted within the establishment as determined by the department  
6 and any fees assessed for each additional food preparation area  
7 within the primary establishment as determined by the department.

8 ~~(5)~~ (7) The department may impose a penalty for an  
9 inspection fee which is more than one month delinquent. The  
10 penalty may not exceed fifty percent of the fee for the first month  
11 of delinquency and one hundred percent of the fee for the second  
12 month of delinquency.

13 ~~(6)~~ (8) An educational institution, health care facility,  
14 nursing home, or governmental organization operating any type of  
15 food establishment, other than a mobile food unit or pushcart, is  
16 exempt from the requirements in subsections (1) through ~~(5)~~ (7) of  
17 this section.

18 ~~(7)~~ (9) A person whose primary food-related business  
19 activity is determined by the department to be egg handling within  
20 the meaning of the Nebraska Graded Egg Act and who is validly  
21 licensed and paying fees pursuant to such act is exempt from the  
22 permit and inspection fee requirements of the Nebraska Pure Food  
23 Act.

24 ~~(8)~~ (10) A person holding a permit or license and  
25 regulated under the Nebraska Manufacturing Milk Act or the Nebraska  
26 Pasteurized Milk Law and an egg handler licensed and regulated  
27 under the Nebraska Graded Egg Act are exempt from the Nebraska Pure  
28 Food Act.

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

8           Sec. 9.       Section 81-2,272.10, Revised Statutes  
 9 Supplement, 2002, is amended to read:

10           81-2,272.10. Except when washing fruits and vegetables,  
 11 food employees shall not contact exposed, ready-to-eat food with  
 12 their bare hands unless the food employee washes his or her hands  
 13 ~~as specified in section 81-2,272.08~~ or washes his or her hands and  
 14 uses suitable utensils such as deli tissue, spatulas, tongs,  
 15 single-use gloves, or dispensing equipment. Food employees shall  
 16 minimize bare hand and arm contact with exposed food that is not in  
 17 a ready-to-eat form.

18           Sec. 10.     Section 81-2,272.15, Revised Statutes  
 19 Supplement, 2002, is amended to read:

20           81-2,272.15. ~~Except as otherwise provided by law,~~  
 21 ~~potentially hazardous food shall be at a temperature of forty-five~~  
 22 ~~degrees Fahrenheit (seven degrees Celsius) or below when received~~  
 23 ~~at a food establishment.~~ Potentially hazardous food that is cooked  
 24 and received hot shall be at a temperature of one hundred  
 25 thirty-five ~~forty~~ degrees Fahrenheit (~~sixty~~ fifty-seven degrees  
 26 Celsius) or above and shall be free of evidence of previous  
 27 temperature abuse.

28           Sec. 11.     Section 81-2,272.19, Revised Statutes

1 Supplement, 2002, is amended to read:

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

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

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

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

13 Sec. 12. Section 81-2,272.20, Revised Statutes  
14 Supplement, 2002, is amended to read:

15 81-2,272.20. Potentially hazardous food shall be thawed:

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

22 (2) Completely submerged under running water:

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

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

27 (c) (i) For a period of time that does not allow thawed  
28 portions of ready-to-eat food: For a period of time that does not

1 allow the food temperature to rise above forty-five degrees  
 2 Fahrenheit (seven degrees Celsius), ~~if the food is to be consumed~~  
 3 within four calendar days or to rise above forty-one degrees  
 4 Fahrenheit (five degrees Celsius) if the food is not to be consumed  
 5 within four calendar days; or

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

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

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

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

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

26 Sec. 13. Section 81-2,272.21, Revised Statutes  
 27 Supplement, 2002, is amended to read:

28 81-2,272.21. (1) Cooked potentially hazardous food shall

1 be cooled:

2 (a) ~~From~~ Within two hours from one hundred ~~forty~~  
3 thirty-five degrees Fahrenheit (~~sixty~~ fifty-seven degrees Celsius)  
4 to seventy degrees Fahrenheit (twenty-one degrees Celsius); ~~within~~  
5 ~~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. 14.       Section 81-2,272.23, Revised Statutes  
 7 Supplement, 2002, 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~~ thirty-five degrees Fahrenheit  
 13 (~~sixty~~ fifty-seven degrees Celsius) or above, except that roasts  
 14 cooked to a temperature and for a time specified in the Nebraska  
 15 Pure Food Act may be held at a temperature of one hundred thirty  
 16 degrees 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. 15.       Section 81-2,272.24, Revised Statutes  
 24 Supplement, 2002, 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 with the date  
3 of preparation. The food shall be consumed within:

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

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

10 (2) For refrigerated, ready-to-eat, potentially hazardous  
11 food prepared and packaged by a food processing plant which is  
12 opened in a food establishment and held refrigerated at such food  
13 establishment, the container shall be clearly marked, at the time  
14 the original container is opened, to indicate the date the food  
15 container was opened. The food shall be consumed within:

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

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

22 This subsection does not apply to fermented sausages  
23 which retain an original casing or shelf stable salt-cured products  
24 produced in a federally inspected food processing plant that are  
25 not labeled "Keep Refrigerated" or to shelf stable, dry, fermented  
26 sausages when the face has been cut, but the remaining portion is  
27 whole and intact.

28 (3) A refrigerated, ready-to-eat, potentially hazardous

1 food that is frequently rewrapped or for which date marking is  
2 impractical may be marked by an alternative method acceptable to  
3 the regulatory authority.

4 (4) A refrigerated, ready-to-eat, potentially hazardous  
5 food ingredient or a portion of a refrigerated, ready-to-eat,  
6 potentially hazardous food that is subsequently combined with  
7 additional ingredients or portions of food shall retain the date  
8 marking of the earliest-prepared or first-prepared ingredient.

9 (5) This section does not apply to individual meal  
10 portions served or repackaged for sale from a bulk container upon a  
11 consumer's request. Refrigerated, ready to eat, potentially  
12 hazardous food prepared and held for more than twenty-four hours in  
13 a food establishment shall be marked with the date of preparation  
14 and consumed by a date which is no more than ten calendar days  
15 after preparation. The food shall be discarded if not consumed  
16 within ten calendar days after the date of preparation, and

17 (2) A container of refrigerated, ready to eat,  
18 potentially hazardous food prepared and packaged by a food  
19 processing plant shall be marked as follows:

20 (a) A container shall be marked by the food processor  
21 with any reasonably accepted term which indicates the date by which  
22 the food shall be consumed,

23 (b) A container of food to be served in a food  
24 establishment shall be marked by the food establishment with the  
25 date the container is opened. Such food shall be discarded if it  
26 is not consumed within ten calendar days after being opened in a  
27 food establishment or before the food processor's date by which the  
28 food shall be consumed, whichever date occurs first, and

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

6           ~~Subdivision (2) of this section does not apply to whole,~~  
 7 ~~unsliced portions of a cured and processed product with original~~  
 8 ~~easing maintained on the remaining portion, such as bologna,~~  
 9 ~~salami, or other sausage in a cellulose casing.~~

10           Sec. 16.           Section 81-2,272.25, Revised Statutes  
 11 Supplement, 2002, is amended to read:

12           81-2,272.25. (1) A food specified under subsection (1)  
 13 of section 81-2,272.24 shall be discarded if not consumed within,  
 14 including the day of preparation:

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

17           (b) Four calendar days if the food is held refrigerated  
 18 between forty-five degrees Fahrenheit (seven degrees Celsius) and  
 19 forty-one degrees Fahrenheit (five degrees Celsius).

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

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

27           (4) A food specified under subsection (3) of section  
 28 81-2,272.24 shall be discarded if not consumed within, including

1 the day of opening the original container:

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

4 (b) Four calendar days if the food is held refrigerated  
5 between forty-five degrees Fahrenheit (seven degrees Celsius) and  
6 forty-one degrees Fahrenheit (five degrees Celsius).

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

9 (a) Not consumed before the most recent consumption date  
10 marked on the container;

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

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

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

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

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

26 (7) A refrigerated, ready-to-eat, potentially hazardous  
27 food ingredient or a portion of a refrigerated, ready-to-eat,  
28 potentially hazardous food that is subsequently combined with

1 additional ingredients or portions of food shall retain the  
 2 consumption date marking or number of days held refrigerated  
 3 marking of the earliest or first-prepared ingredient or portion and  
 4 shall be discarded as specified under this section. A vending  
 5 machine which dispenses ready-to-eat, potentially hazardous food  
 6 shall be equipped with an automatic cutoff control that is  
 7 activated at a temperature of ~~forty-five degrees Fahrenheit (seven~~  
 8 ~~degrees Celsius).~~ Refrigerated, ready-to-eat, potentially  
 9 hazardous food in a vending machine shall be discarded if not sold  
 10 or served within ten calendar days. Refrigerated, ready-to-eat,  
 11 potentially hazardous food in a vending machine in which the  
 12 automatic cutoff control has been activated shall be discarded if  
 13 the time constraint specified in subdivision (2) of section  
 14 ~~81-2,272.26 has been exceeded.~~

15 Sec. 17. Section 81-2,272.27, Revised Statutes  
 16 Supplement, 2002, is amended to read:

17 81-2,272.27. A food establishment may use a reduced  
 18 oxygen packaging method if a variance has been granted by the  
 19 regulatory authority or under the following conditions:

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

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

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

27 (c) Is a meat product cured and processed in the food  
 28 establishment that at the time of processing had a concentration of

1 sodium nitrite of one hundred twenty milligrams per liter or higher  
2 and has a brine concentration of at least three and one-half  
3 percent.

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

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

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

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

1 original manufacturer's "sell by" or "use by" date, whichever  
2 occurs first.

3 (6) Food establishments which process and package food  
4 using a reduced oxygen method shall have written policies for  
5 operational procedures that:

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

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

11 (c) Restrict access to the processing equipment to only  
12 responsible trained personnel familiar with the potential hazards  
13 of the operation; and

14 (d) Delineate cleaning and sanitation procedures for food  
15 contact surfaces.

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

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

26 Sec. 18. Section 81-2,272.28, Revised Statutes  
27 Supplement, 2002, is amended to read:

28 81-2,272.28. ~~In a food establishment,~~ a Any temporary

1 food establishment, mobile food unit, or food establishment with a  
 2 temporary interruption of its water supply, which does not meet the  
 3 requirements of subdivisions (1) through (4) of section 19 of this  
 4 act, shall use:

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

14 Sec. 19. Except in response to a temporary interruption  
 15 of a water supply in the food establishment, any food establishment  
 16 which is not a mobile food unit or temporary food establishment  
 17 shall:

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

25 Sec. 20. Section 81-2,272.29, Revised Statutes  
 26 Supplement, 2002, is amended to read:

27 81-2,272.29. A carbonating device or a beverage  
 28 dispenser with an internal carbonator intended to be connected to a

1 water supply system under pressure in a food establishment shall  
2 have an air gap as specified in the Nebraska Pure Food Act or a  
3 backflow prevention device as specified in the act a ~~dual check~~  
4 ~~valve~~. Such valve shall be installed so that it is upstream from a  
5 carbonating device and downstream from any copper in the water  
6 supply line.

7           Sec. 21.       Section 81-2,272.30, Revised Statutes  
8 Supplement, 2002, is amended to read:

9           81-2,272.30.   ~~(1) Except as specified under subsections~~  
10 ~~(2), (3), and (5) of this section, potentially hazardous food that~~  
11 ~~is cooked, cooled, and reheated for hot holding shall be reheated~~  
12 ~~so that all parts of the food reach a temperature of at least one~~  
13 ~~hundred sixty-five degrees Fahrenheit (seventy-four degrees~~  
14 ~~Celsius) for fifteen seconds.~~

15           ~~(2) Except as specified under subsection (3) of this~~  
16 ~~section, potentially hazardous food reheated in a microwave oven~~  
17 ~~for hot holding shall be reheated so that all parts of the food~~  
18 ~~reach a temperature of at least one hundred sixty-five degrees~~  
19 ~~Fahrenheit (seventy-four degrees Celsius) and the food is rotated~~  
20 ~~or stirred, covered, and allowed to stand covered two minutes after~~  
21 ~~reheating.~~

22           ~~(3)~~ Ready-to-eat food taken from a commercially  
23 processed, hermetically sealed container, or from an intact package  
24 from a food processing plant, shall be heated to a temperature of  
25 at least one hundred ~~forty~~ thirty-five degrees Fahrenheit (~~sixty~~  
26 fifty-seven degrees Celsius) for hot holding.

27           ~~(4)~~ Reheating for hot holding shall be done rapidly and  
28 the minimum temperature specified under subsection ~~(1)~~ of this

1 ~~section shall be reached within two hours.~~

2 ~~(5) Remaining unsliced portions of roasts of beef that~~  
3 ~~are cooked as specified in the Nebraska Pure Food Act may be~~  
4 ~~reheated for hot holding using the oven parameters and minimum time~~  
5 ~~and temperature conditions specified in the act.~~

6 Sec. 22. (1) Except as provided under subsection (2) of  
7 this section, a food employee shall keep his or her fingernails  
8 trimmed, filed, and maintained so the edges and surfaces are  
9 cleanable and not rough. Unless wearing intact gloves in good  
10 condition, a food employee shall not wear fingernail polish or  
11 artificial fingernails when working with exposed food.

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

18 Sec. 23. While preparing food, a food employee shall not  
19 wear jewelry on his or her arms and hands except for plain rings  
20 such as wedding bands and medical information bracelets.

21 Sec. 24. Except for raw dough being prepared prior to  
22 being cooked, linens and cloth napkins shall not be used in contact  
23 with food unless they are used to line a container for the service  
24 of foods and the linens and napkins are replaced each time the  
25 container is refilled. Linens and cloth napkins which are used in  
26 contact with food and cloth napkins used by consumers shall be  
27 laundered between each use.

28 Sec. 25. Ready-to-eat food that may have been

1 contaminated by an employee who has been restricted or excluded as  
2 specified under section 81-2,272.04 shall be discarded.

3           Sec. 26.     (1) A vending machine dispensing potentially  
4 hazardous food shall have an automatic control that prevents the  
5 vending machine from dispensing food:

6           (a) If there is a power failure, mechanical failure, or  
7 other condition that results in an internal machine temperature  
8 that cannot maintain food temperatures as specified under the  
9 Nebraska Pure Food Act; and

10           (b) If a condition specified under subsection (1)(a) of  
11 this section occurs, until the vending machine is serviced and  
12 restocked with food that has been maintained at temperatures  
13 specified under the act.

14           (2) When the automatic shutoff within a vending machine  
15 dispensing potentially hazardous food is activated:

16           (a) In a refrigerated vending machine, the ambient  
17 temperature shall not exceed forty-one degrees Fahrenheit (five  
18 degrees Celsius) or forty-five degrees Fahrenheit (seven degrees  
19 Celsius) as specified under the act for more than thirty minutes  
20 immediately after the vending machine is filled, serviced, or  
21 restocked; or

22           (b) In a hot holding vending machine, the ambient  
23 temperature shall not be below one hundred thirty-five degrees  
24 Fahrenheit (fifty-seven degrees Celsius) for more than one hundred  
25 twenty minutes immediately after the vending machine is filled,  
26 serviced, or restocked.

27           Sec. 27. Refrigerated, potentially hazardous food which  
28 is not to be consumed within twenty-four hours shall be at a

1 temperature of forty-one degrees Fahrenheit (five degrees Celsius)  
2 or below when received. Refrigerated, potentially hazardous food  
3 which is to be consumed within twenty-four hours shall be at a  
4 temperature between forty-five degrees Fahrenheit (seven degrees  
5 Celsius) and forty-one degrees Fahrenheit (five degrees Celsius)  
6 when received.

7           Sec. 28.     Original sections 2-3512 and 2-3520, Reissue  
8 Revised Statutes of Nebraska, and sections 81-2,239, 81-2,244.01,  
9 81-2,245.01, 81-2,257, 81-2,263, 81-2,270, 81-2,272.10,  
10 81-2,272.15, 81-2,272.19, 81-2,272.20, 81-2,272.21, 81-2,272.23,  
11 81-2,272.24, 81-2,272.25, 81-2,272.27, 81-2,272.28, 81-2,272.29,  
12 and 82-2,272.30, Revised Statutes Supplement, 2002, are repealed.

13           Sec. 29.     The following sections are outright repealed:  
14 Section 2-3517, Reissue Revised Statutes of Nebraska, and sections  
15 81-2,270.01, 81-2,272.07 to 81-2,272.09, 81-2,272.11 to  
16 81-2,272.13, and 81-2,272.18, Revised Statutes Supplement, 2002.

17           Sec. 30.     Since an emergency exists, this act takes  
18 effect when passed and approved according to law.