

LEGISLATIVE BILL 74

Approved by the Governor February 14, 2007

Introduced by Erdman, 47

FOR AN ACT relating to food regulation; to amend sections 81-2,244.01, 81-2,257, 81-2,272.10, 81-2,272.17, 81-2,272.24, and 81-2,272.25, Reissue Revised Statutes of Nebraska, and sections 81-2,239 and 81-2,270, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions relating to the Nebraska Pure Food Act; to harmonize provisions; to provide an operative date; to repeal the original sections; to outright repeal sections 81-2,272.03, 81-2,272.04, 81-2,272.05, 81-2,272.06, 81-2,272.14, 81-2,272.15, 81-2,272.16, 81-2,272.19, 81-2,272.20, 81-2,272.21, 81-2,272.22, 81-2,272.23, 81-2,272.26, 81-2,272.28, 81-2,272.29, 81-2,272.30, 81-2,272.33, 81-2,272.35, and 81-2,272.37, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 81-2,239, Revised Statutes Cumulative Supplement, 2006, is amended to read:

81-2,239 Sections 81-2,239 to 81-2,292 and section 3 of this act and the provisions of the Food Code, the Food Salvage Code, and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 to 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

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

81-2,244.01 Food Code shall mean the ~~2001~~ 2005 Recommendations of the United States Public Health Service, Food and Drug Administration, except the definitions of adulterated food and food establishment and sections ~~1-201.10(B)(1), (3), (36), (37), (57), (58), and (73), 2-102.11, 2-103.11(H) and (K), 2-201.11, 2-201.12, 2-201.13, 2-201.14, 2-302.11, 2-303.11, 3-201.11(E), 3-202.11 (A) and (D), 3-301.11, 3-302.11(B)(4), 3-304.13, 3-304.17, 3-401.11(C)(2) and (D)(2), 3-403.11(C), 3-404.11(A), 3-501.17, 3-501.18, 3-502.11, 3-502.12, 3-603.11, 3-701.11(C), 4-204.11, 4-204.117, 4-301.12(C)(5), (D), and (E), 4-302.12(B), 4-603.16(C), 4-603.17, 4-802.11(C), 5-103.12, 5-104.11, 5-104.12, 5-203.12, 5-203.15, 5-302.16, 6-301.14, 6-302.10, 8-101, 8-102, 8-201.11, 8-201.12, 8-201.13(A)(2) and (3) and (B), 8-201.14(C), 8-202 through 8-304, 8-401.10(B)(2), 8-402.20 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B).~~ The term Food Code does not include the annexes of such federal recommendations.

Sec. 3. Itinerant food vendor shall mean a person that sells prepackaged, potentially hazardous food from an approved source at a nonpermanent location such as a farmers market, craft show, or county fair.

Sec. 4. Section 81-2,257, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,257 Critical violations are designated in the Food Code and sections 81-2,272.02, ~~to 81-2,272.04, 81-2,272.06, 81-2,272.10, 81-2,272.14 to 81-2,272.17, 81-2,272.21, 81-2,272.23 to 81-2,272.24, 81-2,272.25, 81-2,272.27, 81-2,272.29, and 81-2,272.35 to 81-2,272.37 and 81-2,272.36~~ and subdivision (4) of section 81-2,272.31.

Sec. 5. Section 81-2,270, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has

been in operation prior to applying for a permit, the applicant shall pay an additional fee of sixty dollars.

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

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

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

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

(iii) All fee increases or decreases shall be equally distributed between all categories; and

(b) The maximum fees are:

		First	Additional	
		Food	Food	Unit
		Preparation	Preparation	Or
		Area	Area	Units
	Initial	Annual	Inspection	Annual
Food	Permit	Inspection	Fee	Inspection
Handling	Fee	Fee	(per area)	Fee
Activity				
Convenience Store	\$61.72	\$61.72	\$30.86	N/A
Licensed Beverage				
Establishment	\$61.72	\$61.72	\$30.86	N/A
Limited Food Service				
Establishment	\$61.72	\$61.72	\$30.86	N/A
Temporary Food				
Establishment	\$61.72	\$61.72	\$30.86	N/A
Mobile Food Unit				
(for each unit)	\$61.72	N/A	N/A	\$30.86
Pusheart (for each				
unit)	\$61.72	N/A	N/A	\$12.34
Vending Machine				
Operations:	\$61.72			
One to ten units		N/A	N/A	\$12.34
Eleven to twenty units		N/A	N/A	\$24.68
Twenty-one to thirty units		N/A	N/A	\$37.02
Thirty-one to forty units		N/A	N/A	\$49.36

Over forty units		N/A	N/A	\$61.70
Food Processing				
Plant	\$61.72	\$86.40	\$30.86	N/A
Salvage Operation	\$61.72	\$86.40	\$30.86	N/A
Commissary	\$61.72	\$86.40	\$30.86	N/A
All Other Food				
Establishments	\$61.72	\$86.40	\$30.86	N/A

		<u>Additional</u>		
		<u>First</u>	<u>Food</u>	
		<u>Food</u>	<u>Preparation</u>	<u>Unit</u>
		<u>Preparation</u>	<u>Area</u>	<u>Or</u>
		<u>Area</u>	<u>Annual</u>	<u>Units</u>
<u>Food</u>	<u>Initial</u>	<u>Annual</u>	<u>Inspection</u>	<u>Annual</u>
<u>Handling</u>	<u>Permit</u>	<u>Inspection</u>	<u>Fee</u>	<u>Inspection</u>
<u>Activity</u>	<u>Fee</u>	<u>Fee</u>	<u>(per area)</u>	<u>Fee</u>
<u>Convenience</u>				
<u>Store</u>	\$74.36	\$74.36	\$37.18	N/A
<u>Itinerant Food Vendor</u>	\$74.36	\$74.36	\$37.18	N/A
<u>Licensed Beverage</u>				
<u>Establishment</u>	\$74.36	\$74.36	\$37.18	N/A
<u>Limited Food Service</u>				
<u>Establishment</u>	\$74.36	\$74.36	\$37.18	N/A
<u>Temporary Food</u>				
<u>Establishment</u>	\$74.36	\$74.36	\$37.18	N/A
<u>Mobile Food Unit</u>				
<u>(for each unit)</u>	\$74.36	N/A	N/A	\$37.18
<u>Pushcart (for each</u>				
<u>unit)</u>	\$74.36	N/A	N/A	\$14.87
<u>Vending Machine</u>				
<u>Operations:</u>	\$74.36			
<u>One to ten units</u>		N/A	N/A	\$14.87
<u>Eleven to twenty units</u>		N/A	N/A	\$29.74
<u>Twenty-one to thirty units</u>		N/A	N/A	\$44.61
<u>Thirty-one to forty units</u>		N/A	N/A	\$59.48
<u>Over forty units</u>		N/A	N/A	\$74.34

Food Processing

<u>Plant</u>	<u>\$74.36</u>	<u>\$104.12</u>	<u>\$37.18</u>	<u>N/A</u>
<u>Salvage Operation</u>	<u>\$74.36</u>	<u>\$104.12</u>	<u>\$37.18</u>	<u>N/A</u>
<u>Commissary</u>	<u>\$74.36</u>	<u>\$104.12</u>	<u>\$37.18</u>	<u>N/A</u>

All Other Food

<u>Establishments</u>	<u>\$74.36</u>	<u>\$104.12</u>	<u>\$37.18</u>	<u>N/A</u>
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(5) If a food establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

(6) ~~The department may impose a penalty for an inspection fee which is more than one month delinquent. The penalty may not exceed fifty percent of the fee for the first month of delinquency and one hundred percent of the fee for the second month of delinquency. If a person fails to pay the inspection fee for more than one month after the fee is due, such person shall pay a late fee equal to fifty percent of the total fee for the first month that the fee is late and one hundred percent for the second month that the fee is late. The purpose of the late fee is to cover the administrative costs associated with collecting fees. All money collected as a late fee shall be remitted to the State Treasurer for credit to the Pure Food Cash Fund.~~

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

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

(9) A person holding a permit or license and regulated under the Nebraska Manufacturing Milk Act or the Nebraska Pasteurized Milk Law and an egg handler licensed and regulated under the Nebraska Graded Egg Act are exempt from the Nebraska Pure Food Act.

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

Sec. 6. Section 81-2,272.10, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,272.10 (1) Food employees shall wash their hands as specified in the Nebraska Pure Food Act.

(2) Food employees shall be trained to wash their hands as specified in the act.

(3) Except when washing fruits and vegetables, food employees shall minimize bare hand and arm contact with exposed food. This may be accomplished with the use of suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or dispensing equipment.

(4) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if they have washed their hands as specified in the act prior to handling the food. ~~Except when washing fruits and vegetables, food employees shall not contact exposed, ready-to-eat food with their bare hands unless the food employee washes his or her hands or washes his or her hands and uses suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.~~

Sec. 7. Section 81-2,272.17, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,272.17 (1) The person in charge of a food establishment shall ensure that consumers who order raw or partially cooked foods of animal origin are informed that the food is not cooked sufficiently to assure its safety. If a raw or undercooked animal food such as beef, eggs, fish, lamb,

pork, poultry, or shellfish is offered in a ready-to-eat form as a deli, menu, vended, or other item, or as a raw ingredient in another ready-to-eat form, the permitholder shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in a raw or undercooked form. The following language will satisfy the consumer advisory requirements:

"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information."

~~(2) This section shall not apply to beef meeting the requirements of subsection (3) of section 81-2,272.16.~~

Sec. 8. Section 81-2,272.24, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,272.24 (1) Except when packaging food using a reduced oxygen packaging method as specified in section 81-2,272.27 and except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the date of preparation. The food shall be sold, consumed on the premises, or discarded within:

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

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

(2) Except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and packaged by a food processing plant and held refrigerated at such food establishment, shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date the food container was opened. The food shall be sold, consumed on the premises, or discarded within:

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

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

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

(3) A refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(4) A date marking system that meets the criteria stated in subsections (1) and (2) of this section may include:

(a) Using a method approved by the regulatory authority for refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(b) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (1) of this section;

(c) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (2) of this section; or

(d) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, if the marking system is disclosed to the regulatory authority upon request.

(5) Subsections (1) and (2) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(6) Subsection (2) of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

(a) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad manufactured in accordance with 21 C.F.R. part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, as such part existed on January 1, 2007;

(b) Hard cheeses containing not more than thirty-nine percent moisture as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as cheddar, gruyere, parmesan and reggiano, and romano;

(c) Semi-soft cheeses containing more than thirty-nine percent moisture, but not more than fifty percent moisture, as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as blue, edam, gorgonzola, gouda, and monterey jack;

(d) Cultured dairy products as defined in 21 C.F.R. part 131, Milk and cream, as such part existed on January 1, 2007, such as yogurt, sour cream, and buttermilk;

(e) Preserved fish products, such as pickled herring and dried or salted cod and other acidified fish products, as defined in 21 C.F.R. part 114, Acidified foods, as such part existed on January 1, 2007;

(f) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007, and which retain the original casing on the product; and

(g) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007.

~~(1) For refrigerated, ready-to-eat, potentially hazardous food prepared on the premises of a food establishment and held refrigerated for more than twenty-four hours in such food establishment, the container shall be clearly marked with the date of preparation. The food shall be consumed within:~~

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

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

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

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

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

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

~~(3) A refrigerated, ready-to-eat, potentially hazardous food that is frequently rewrapped or for which date marking is impractical may be marked by an alternative method acceptable to the regulatory authority.~~

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

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

Sec. 9. Section 81-2,272.25, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,272.25 (1) A food specified under subsections (1) and (2) of section 81-2,272.24 shall be discarded if such food:

(a) Exceeds either of the temperature and time combinations specified in subsection (1) of section 81-2,272.24, except time that the food

is frozen;

(b) Is in a container or package that does not bear a date or day;

or

(c) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subsection (1) of section 81-2,272.24.

(2) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control shall be discarded if it exceeds a temperature and time combination as specified in subsection (1) of section 81-2,272.24.

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

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

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

(2) A ready-to-eat, potentially hazardous food prepared on premises or by a food processing plant and opened at a food establishment and subsequently frozen at such food establishment shall be discarded if not consumed within twenty-four hours after thawing.

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

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

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

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

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

(b) In a container or package which is not marked with a preparation date or number of days held in refrigeration before freezing; or

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

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

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

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

Sec. 10. This act becomes operative on July 1, 2007.

Sec. 11. Original sections 81-2,244.01, 81-2,257, 81-2,272.10, 81-2,272.17, 81-2,272.24, and 81-2,272.25, Reissue Revised Statutes of Nebraska, and sections 81-2,239 and 81-2,270, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 12. The following sections are outright repealed: Sections 81-2,272.03, 81-2,272.04, 81-2,272.05, 81-2,272.06, 81-2,272.14, 81-2,272.15, 81-2,272.16, 81-2,272.19, 81-2,272.20, 81-2,272.21, 81-2,272.22, 81-2,272.23, 81-2,272.26, 81-2,272.28, 81-2,272.29, 81-2,272.30, 81-2,272.33, 81-2,272.35, and 81-2,272.37, Reissue Revised Statutes of Nebraska.

Sec. 13. Since an emergency exists, this act takes effect when passed and approved according to law.