

## LEGISLATIVE BILL 771

Approved by the Governor March 7, 2012

Introduced by Carlson, 38.

FOR AN ACT relating to the Nebraska Pure Food Act; to amend sections 81-2,239, 81-2,244.01, 81-2,257, 81-2,259, 81-2,270, 81-2,271, and 81-2,277, Reissue Revised Statutes of Nebraska; to change and eliminate food establishment and food safety provisions; to harmonize provisions; to repeal the original sections; to outright repeal sections 81-2,272.02, 81-2,272.17, and 81-2,272.36, 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, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,239 Sections 81-2,239 to 81-2,292 and section 7 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 2005 2009 Recommendations of the United States Public Health Service, Food and Drug Administration, except the definitions of adulterated food and food establishment and sections ~~2-102.11, 2-103.11(H) and (K), 3-201.11(E), 2-103.11(K), 3-301.11(B), (C), and (D), 3-304.13, 3-401.11(C)(2) and (D)(2), 3-404.11(A), 3-501.16, 3-501.17, 3-501.18, 3-502.11, 3-502.12, 3-603.11, 4-204.11, 4-301.12(C)(5), (D), and (E), 4-302.12(B), 4-603.16(C), 4-802.11(C), 5-103.12, 5-104.11, 6-301.14, 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. Section 81-2,257, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,257 ~~Critical violations~~ Priority items are designated in the Food Code and sections ~~81-2,272.02, 81-2,272.10, 81-2,272.17, 81-2,272.24, 81-2,272.25, and 81-2,272.27. and 81-2,272.36 and subdivision (4) of section 81-2,272.31.~~

Sec. 4. Section 81-2,259, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,259 The Legislature hereby adopts by reference the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it ~~exists on August 28, 1999.~~ existed on April 1, 2011.

Sec. 5. Section 81-2,270, Reissue Revised Statutes of Nebraska, 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 or notifying the regulatory authority, 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 regardless of when the initial permit was obtained.

(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.

(b) The maximum fees are:

		First	Additional	
		Food	Food	
		Preparation	Preparation	Unit
		Area	Area	Or
		Annual	Annual	Units
Food	Initial	Annual	Inspection	Annual
Handling	Permit	Inspection	Fee	Inspection
Activity	Fee	Fee	(per area)	Fee
Convenience Store	\$74.36	\$74.36	\$37.18	N/A
<u>Convenience Store</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
Itinerant Food Vendor	\$74.36	\$74.36	\$37.18	N/A
<u>Itinerant Food Vendor</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
Licensed Beverage				
<u>Licensed Beverage</u>				
Establishment	\$74.36	\$74.36	\$37.18	N/A
<u>Establishment</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
Limited Food Service				
<u>Limited Food Service</u>				
Establishment	\$74.36	\$74.36	\$37.18	N/A
<u>Establishment</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
Temporary Food				
<u>Temporary Food</u>				
Establishment	\$74.36	\$74.36	\$37.18	N/A
<u>Establishment</u>	<u>\$86.19</u>	<u>\$86.19</u>	<u>\$43.09</u>	<u>N/A</u>
Mobile Food Unit				
<u>Mobile Food Unit</u>				

<del>(for each unit)</del>	<del>\$74.36</del>	<del>N/A</del>	<del>N/A</del>	<del>\$37.18</del>
<u>(for each unit)</u>	<u>\$86.19</u>	<u>N/A</u>	<u>N/A</u>	<u>\$43.09</u>
<del>Pushcart (for each unit)</del>	<del>\$74.36</del>	<del>N/A</del>	<del>N/A</del>	<del>\$14.87</del>
<u>Pushcart (for each unit)</u>	<u>\$86.19</u>	<u>N/A</u>	<u>N/A</u>	<u>\$17.23</u>
Vending Machine				
<u>Vending Machine</u>				
<del>Operations:</del>	<del>\$74.36</del>			
<u>Operations:</u>	<u>\$86.19</u>			
<del>One to ten units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$14.87</del>
<u>One to ten units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$17.23</u>
<del>Eleven to twenty units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$29.74</del>
<u>Eleven to twenty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$34.46</u>
<del>Twenty-one to thirty</del>				
<del>units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$44.61</del>
<u>Twenty-one to thirty</u>				
<u>units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$51.69</u>
<del>Thirty-one to forty</del>				
<del>units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$59.48</del>
<u>Thirty-one to forty</u>				
<u>units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$68.92</u>
<del>Over forty units</del>		<del>N/A</del>	<del>N/A</del>	<del>\$74.34</del>
<u>Over forty units</u>		<u>N/A</u>	<u>N/A</u>	<u>\$86.15</u>
<del>Food Processing Plant</del>	<del>\$74.36</del>	<del>\$104.12</del>	<del>\$37.18</del>	<del>N/A</del>
<u>Food Processing Plant</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>
<del>Salvage Operation</del>	<del>\$74.36</del>	<del>\$104.12</del>	<del>\$37.18</del>	<del>N/A</del>
<u>Salvage Operation</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>
<del>Commissary</del>	<del>\$74.36</del>	<del>\$104.12</del>	<del>\$37.18</del>	<del>N/A</del>
<u>Commissary</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>
<del>All Other Food</del>				
<u>All Other Food</u>				
<del>Establishments</del>	<del>\$74.36</del>	<del>\$104.12</del>	<del>\$37.18</del>	<del>N/A</del>
<u>Establishments</u>	<u>\$86.19</u>	<u>\$120.64</u>	<u>\$43.09</u>	<u>N/A</u>

(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) 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 Milk Act 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 81-2,271, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,271 (1) The permit required by section 81-2,270 shall be posted in a location in the food establishment, food processing plant, or salvage operation which is conspicuous to the public. A salvage operation shall also have a copy of the permit in each vehicle.

(2) The permit is not transferable to any other person or location. Any permit issued lapses automatically upon a change of ownership or location except as provided in subsection (3) of this section. The permitholder shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. The permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive the notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

(3) A mobile food unit, pushcart, or vending machine may be moved if the permitholder is able to provide the location of such unit, pushcart, or machine to the regulatory authority upon request and the person authorized by the permitholder to receive notices and orders of the department maintains a permanent mailing address on file with the department.

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

Sec. 7. (1) Except during preparation, cooking, or cooling or when time is used as the public health control as specified under the Nebraska Pure Food Act and except as specified under subsection (2) of this section, potentially hazardous food (time and temperature control for safety food) shall be maintained:

(a) At one hundred thirty-five degrees Fahrenheit (fifty-seven degrees Celsius) or above, except that roasts cooked to a temperature and for a time specified in the Nebraska Pure Food Act or reheated as specified in the act may be held at a temperature of one hundred thirty degrees Fahrenheit (fifty-four degrees Celsius) or above; or

(b) At:

(i) Forty-one degrees Fahrenheit (five degrees Celsius) or less; or

(ii) Forty-five degrees Fahrenheit (seven degrees Celsius) or between forty-one degrees Fahrenheit (five degrees Celsius) and forty-five degrees Fahrenheit (seven degrees Celsius) in existing refrigeration equipment that is not capable of maintaining the food at forty-one degrees Fahrenheit (five degrees Celsius) or less if:

(A) The equipment is in place and in use in the food establishment;  
and

(B) Refrigeration equipment that is not capable of meeting a cold holding temperature of forty-one degrees Fahrenheit (five degrees Celsius) that is in use on the effective date of this act shall, upon replacement of the equipment or at a change of ownership of the food establishment, be replaced with equipment that is capable of maintaining foods at forty-one degrees Fahrenheit (five degrees Celsius) or below.

(2) Eggs that have not been treated to destroy all viable

Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit (seven degrees Celsius) or less.

(3) Potentially hazardous food (time and temperature control for safety food) in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under subsection (1) of this section, while contained within specially designed equipment that complies with the design and construction requirements as specified in the act.

Sec. 8. Section 81-2,277, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,277 Food processing plants shall comply with the federal Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it ~~exists on August 28, 1999.~~ existed on April 1, 2011.

Sec. 9. Original sections 81-2,239, 81-2,244.01, 81-2,257, 81-2,259, 81-2,270, 81-2,271, and 81-2,277, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 10. The following sections are outright repealed: Sections 81-2,272.02, 81-2,272.17, and 81-2,272.36, Reissue Revised Statutes of Nebraska.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.