

## LEGISLATIVE BILL 798

Approved by the Governor March 09, 2016

Introduced by Johnson, 23.

A BILL FOR AN ACT relating to the Nebraska Pure Food Act; to amend sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,248, 81-2,251.01, 81-2,251.06, 81-2,257, 81-2,259, 81-2,272.01, 81-2,272.24, and 81-2,277, Reissue Revised Statutes of Nebraska; to redefine terms and eliminate definitions; to update references to federal law; to change provisions relating to potentially hazardous food; to provide compliance requirements for salvage operations; to repeal adoption of and eliminate references to the Food Salvage Code; to eliminate provisions relating to a reduced oxygen packaging method and the use of linens and cloth napkins; to harmonize provisions; to repeal the original sections; and to outright repeal sections 81-2,246.01, 81-2,247, 81-2,254.01, 81-2,258, 81-2,272.25, 81-2,272.27, and 81-2,272.34, Reissue Revised Statutes of Nebraska.

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 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 81-2,240, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,240 For purposes of the Nebraska Pure Food Act, unless the context otherwise requires, the definitions found in sections 81-2,241 to ~~81-2,254~~ ~~81-2,254.01~~ shall be used. In addition, the definitions found in the codes and practice adopted by reference in sections 81-2,257.01 to 81-2,259 shall be used.

Sec. 3. Section 81-2,244.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,244.01 Food Code shall mean the 2013 ~~2009~~ Recommendations of the United States Public Health Service, Food and Drug Administration, except the definitions of adulterated food and food establishment, person in charge, regulatory authority, and sections 2-102.12, 2-102.20(B), 2-103.11(L, K), 2-501.11, 3-301.11(B), (C), and (D), and (E) 3-304.13, 3-501.16, 3-501.17, 3-501.18, 3-502.11, 3-502.12, 4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C), 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. 4. Section 81-2,245.01, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) An establishment or vending machine operation that offers only prepackaged soft drinks, carbonated or noncarbonated; canned or bottled fruit and vegetable juices; prepackaged ice; candy; chewing gum; potato or corn chips; pretzels; cheese puffs and curls; crackers; popped popcorn; nuts and edible seeds; and cookies, cakes, pies, and other pastries, that are not time/temperature control for safety potentially hazardous foods;

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

(3) A food processing plant;

(4) A salvage operation;

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

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

(7) A private home or other area where food is prepared for distribution at a fundraising event for a charitable purpose if the consumer is informed by a clearly visible placard at the serving location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority. This subdivision does not apply to a caterer or other establishment providing food for the event if the caterer or establishment receives compensation for providing the food;

(8) The location where food prepared by a caterer is served so long as the

caterer only minimally handles the food at the serving location;

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

(10) A pharmacy as defined in section 71-425 if the pharmacy only sells prepackaged pharmaceutical, medicinal, or health supplement foods that are not time/temperature control for safety ~~potentially hazardous~~ or foods described in subdivision (1) of this section; and

(11) An establishment which is not a commercial food establishment and which sells only commercially packaged foods that are not time/temperature control for safety ~~potentially hazardous~~ foods.

Sec. 5. Section 81-2,248, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,248 Itinerant food vendor shall mean a person that sells prepackaged, time/temperature control for safety ~~potentially hazardous~~ food from an approved source at a nonpermanent location such as a farmers market, craft show, or county fair.

Sec. 6. Section 81-2,251.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,251.01 Limited food vending machine shall mean a vending machine which does not dispense time/temperature control for safety ~~potentially hazardous~~ food.

Sec. 7. Section 81-2,251.06, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,251.06 Pushcart shall mean a non-self-propelled vehicle limited to serving food which is not time/temperature control for safety ~~potentially hazardous~~ or commissary wrapped food maintained at temperatures in compliance with the Nebraska Pure Food Act or limited to the preparation and serving of frankfurters.

Sec. 8. Section 81-2,257, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,257 Priority items are designated in the Food Code and sections 81-2,272.10 and 81-2,272.24, ~~81-2,272.25, and 81-2,272.27.~~ Priority foundation items are designated in the Food Code.

Sec. 9. 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 existed on April 1, ~~2011~~ 2015.

Sec. 10. Section 81-2,272.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,272.01 (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, time/temperature control for safety ~~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 March 8, 2012, 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) Time/temperature control for safety ~~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. 11. Section 81-2,272.24, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,272.24 In addition to the provisions of sections 3-501.17 and 3-501.18 of the Food Code which apply to food held at a temperature of forty-one degrees Fahrenheit (five degrees Celsius) or below, food held in refrigeration between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius) shall meet the following requirements:

~~(1) Except when packaging food using a reduced oxygen packaging method as specified in section 3-502.12 of the Food Code section 81-2,272.27 and except as specified in this section 3-501.17 of the Food Code, refrigerated, ready-to-eat, time/temperature control for safety 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 four calendar days or less; ÷~~

~~(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 3-501.17 of the Food Code, refrigerated, ready-to-eat, time/temperature control for safety 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 four calendar days or less; and ÷~~

~~(3) A food specified under this section shall be discarded if such food:~~

~~(a) Exceeds the temperature and time combinations specified in subdivision (1) of this section, except time that the food is frozen;~~

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

~~(c) Is appropriately marked with a date or day that exceeds the temperature and time combination as specified in subdivision (1) of this section; or~~

~~(d) Is prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control if it exceeds the temperature and time combination as specified in subdivision (1) of this section.~~

~~(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.~~

Sec. 12. Section 81-2,277, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,277 Food processing plants and salvage operations shall comply with the federal Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted in section 81-2,259 found in 21 C.F.R. part 110 as it existed on April 1, 2011.

Sec. 13. Original sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,248, 81-2,251.01, 81-2,251.06, 81-2,257, 81-2,259, 81-2,272.01, 81-2,272.24, and 81-2,277, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 14. The following sections are outright repealed: Sections 81-2,246.01, 81-2,247, 81-2,254.01, 81-2,258, 81-2,272.25, 81-2,272.27, and 81-2,272.34, Reissue Revised Statutes of Nebraska.