

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 134

FINAL READING

Introduced by Brasch, 16.

Read first time January 06, 2017

Committee: Agriculture

1 A BILL FOR AN ACT relating to agriculture; to amend sections 81-2,262,
2 81-2,263, 81-2,270, 81-2,271, 81-2,272.31, 81-2,281, and 81-2,288,
3 Reissue Revised Statutes of Nebraska, and sections 81-2,239 and
4 81-2,240, Revised Statutes Cumulative Supplement, 2016; to define
5 terms; to change provisions of the Nebraska Pure Food Act; to
6 provide for the regulation of eggs for human consumption as
7 prescribed; to provide requirements and an exception for a food
8 delivery service; to authorize facility, food, and records
9 inspections and fees by the Department of Agriculture as prescribed;
10 to transfer funds to the Pure Food Cash Fund; to repeal the Nebraska
11 Graded Egg Act and the Graded Egg Fund; to eliminate penalties; to
12 harmonize provisions; to repeal the original sections; and to
13 outright repeal sections 2-3501, 2-3502, 2-3503, 2-3504, 2-3505,
14 2-3506, 2-3507, 2-3508, 2-3509, 2-3510, 2-3511, 2-3512, 2-3513,
15 2-3514, 2-3515, 2-3516, 2-3518, 2-3519, 2-3520, 2-3521, 2-3522,
16 2-3523, 2-3524, and 2-3525, Reissue Revised Statutes of Nebraska.
17 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,239, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 81-2,239 Sections 81-2,239 to 81-2,292 and sections 3, 4, and 8 of
4 this act and the provisions of the Food Code and the Current Good
5 Manufacturing Practice In Manufacturing, Packing, or Holding Human Food
6 adopted by reference in sections 81-2,257.01 and ~~to~~ 81-2,259, shall be
7 known and may be cited as the Nebraska Pure Food Act.

8 Sec. 2. Section 81-2,240, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 81-2,240 For purposes of the Nebraska Pure Food Act, unless the
11 context otherwise requires, the definitions found in sections 81-2,241 to
12 81-2,254 and sections 3 and 4 of this act shall be used. In addition, the
13 definitions found in the code codes and practice adopted by reference in
14 sections 81-2,257.01 and ~~to~~ 81-2,259 shall be used.

15 Sec. 3. Egg handler shall mean any person who engages in any
16 business in commerce which involves buying or selling any shell eggs or
17 processing any shell egg products and who is not a producer with
18 production from a flock of three thousand hens or less. Egg handler shall
19 include persons who assemble, collect, break, process, grade, package, or
20 wholesale shell eggs. The term does not include a person whose primary
21 food-related business activity is not egg handling.

22 Sec. 4. Food delivery service shall mean an operation that only
23 meets the definition of food establishment by relinquishing possession of
24 food to a consumer through a delivery service including home delivery of
25 grocery orders, restaurant takeout orders, or other delivery services
26 provided by a common or contract carrier.

27 Sec. 5. Section 81-2,262, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 81-2,262 Copies Certified~~copies~~ of the code codes and practice
30 adopted by reference pursuant to sections 81-2,257.01 and ~~to~~ 81-2,259,
31 shall be filed in the offices of the Secretary of State, Clerk of the

1 Legislature, and department.

2 Sec. 6. Section 81-2,263, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 81-2,263 If there is an inconsistency between sections 81-2,239 to
5 81-2,292 and sections 3, 4, and 8 of this act and any code ~~of the codes~~
6 adopted by reference, the requirements of the sections shall control.

7 Sec. 7. Section 81-2,270, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 81-2,270 (1) No person shall operate: (a) A food establishment; (b)
10 a food processing plant; or (c) a salvage operation, without a valid
11 permit which sets forth the types of operation occurring within the
12 establishment.

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

30 (3) Payment of the initial permit fee, the initial inspection fee,
31 and the fee for failing to apply for a permit prior to operation shall

1 not preclude payment of the annual inspection fees due on August 1 of
2 each year. Except as provided in subsections (7) through (10) of this
3 section and subsection (2) ~~(1)~~ of section 81-2,281, a permitholder shall
4 pay annual inspection fees on or before August 1 of each year regardless
5 of when the initial permit was obtained.

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

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

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

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

21 (b) The maximum fees are:

				<u>No Food</u>
			Additional	<u>Preparation</u>
	First	Food	Food	<u>Area,</u>
	Food	Preparation	Preparation	Unit
	Preparation	Area	Area	Or
	Area	Annual	Annual	Units
28 Food	Initial	Annual	Inspection	Annual
29 Handling	Permit	Inspection	Fee	Inspection
30 Activity	Fee	Fee	(per area)	Fee
31 Convenience Store	\$86.19	\$86.19	\$43.09	N/A

1	Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A
2	Licensed Beverage				
3	Establishment	\$86.19	\$86.19	\$43.09	N/A
4	Limited Food Service				
5	Establishment	\$86.19	\$86.19	\$43.09	N/A
6	Temporary Food				
7	Establishment	\$86.19	\$86.19	\$43.09	N/A
8	<u>Food Delivery Service</u>	<u>\$86.19</u>	<u>N/A</u>	<u>N/A</u>	<u>\$17.23</u>
9	Mobile Food Unit				
10	(for each unit)	\$86.19	N/A	N/A	\$43.09
11	Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
12	Vending Machine				
13	Operations:	\$86.19			
14	One to ten units		N/A	N/A	\$17.23
15	Eleven to twenty units		N/A	N/A	\$34.46
16	Twenty-one to thirty				
17	units		N/A	N/A	\$51.69
18	Thirty-one to forty				
19	units		N/A	N/A	\$68.92
20	Over forty units		N/A	N/A	\$86.15
21	Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
22	Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
23	Commissary	\$86.19	\$120.64	\$43.09	N/A
24	All Other Food				
25	Establishments	\$86.19	\$120.64	\$43.09	N/A

26 (5) If a food establishment is engaged in more than one food
 27 handling activity listed in subsection (4) of this section, the
 28 inspection fee charged shall be based upon the primary activity conducted
 29 within the food establishment as determined by the department and any
 30 fees assessed for each additional food preparation area within the

1 primary establishment as determined by the department.

2 (6) If a person fails to pay the inspection fee for more than one
3 month after the fee is due, such person shall pay a late fee equal to
4 fifty percent of the total fee for the first month that the fee is late
5 and one hundred percent for the second month that the fee is late. The
6 purpose of the late fee is to cover the administrative costs associated
7 with collecting fees. All money collected as a late fee shall be remitted
8 to the State Treasurer for credit to the Pure Food Cash Fund.

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

13 (8) A food establishment which produces eggs and only stores,
14 packages, sells, delivers, or otherwise provides for human consumption
15 the eggs it produces, or only stores, packages, sells, delivers, or
16 otherwise provides for human consumption eggs produced from no more than
17 four producers at the same time, is exempt from the requirements of
18 subsections (1) through (6) of this section. Any food establishment with
19 a valid egg handler license and for which all fees have been paid prior
20 to the effective date of this person whose primary food-related business
21 activity is determined by the department to be egg handling within the
22 meaning of the Nebraska Graded Egg Act and who is validly licensed and
23 paying fees pursuant to such act is exempt from the permit and inspection
24 fee requirements of the Nebraska Pure Food Act until August 1, 2018.

25 (9) A food establishment or food processing plant person holding a
26 permit or license and regulated under the Nebraska Milk Act is and an egg
27 handler licensed and regulated under the Nebraska Graded Egg Act are
28 exempt from the requirements of subsections (1) through (6) of this
29 section Nebraska Pure Food Act.

30 (10) A single event food vendor or a religious, charitable, or
31 fraternal organization operating any type of temporary food

1 establishment, mobile food unit, or pushcart is exempt from the
2 requirements of subsections (1) through (6) of this section. Any such
3 organization operating any nontemporary food establishment prior to July
4 1, 1985, is exempt from the requirements of subsection (2) of this
5 section.

6 Sec. 8. Any person who for remuneration packs and sells, offers for
7 sale, barter, or otherwise provides eggs for human consumption shall
8 comply with all applicable requirements set forth in rules and
9 regulations adopted and promulgated by the department and shall establish
10 the source of the eggs by labeling the eggs with a packer identification
11 number assigned by the department or the United States Department of
12 Agriculture.

13 Sec. 9. Section 81-2,271, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 81-2,271 (1) The permit required by section 81-2,270 shall be posted
16 in a location in the food establishment, food processing plant, or
17 salvage operation which is conspicuous to the public. A salvage operation
18 shall also have a copy of the permit in each vehicle. For a food delivery
19 service, the location shall be a permanent address where the permitholder
20 may be contacted.

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

31 (3) A mobile food unit, pushcart, or vending machine may be moved if

1 the permitholder is able to provide the location of such unit, pushcart,
2 or machine to the regulatory authority upon request and the person
3 authorized by the permitholder to receive notices and orders of the
4 department maintains a permanent mailing address on file with the
5 department. A food delivery service shall upon request provide the
6 department with information regarding the location of all conveyances it
7 controls.

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

11 Sec. 10. Section 81-2,272.31, Reissue Revised Statutes of Nebraska,
12 is amended to read:

13 81-2,272.31 Except in response to a temporary interruption of a
14 water supply in the food establishment, any food establishment which is
15 not a food delivery service, mobile food unit, or temporary food
16 establishment shall:

17 (1) Have water under pressure provided to all fixtures, equipment,
18 and nonfood equipment that are required to use water;

19 (2) Receive water through the use of an approved water main;

20 (3) Have a permanent plumbing system; and

21 (4) Have at least one toilet which is permanent, convenient, and
22 accessible.

23 Sec. 11. Section 81-2,281, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 81-2,281 (1) The department shall enforce the Nebraska Pure Food Act
26 and any rule or regulation adopted and promulgated pursuant to such act.

27 The department may:

28 (a) Enter at reasonable times and in a reasonable manner, without
29 being subject to any action for trespass or damages if reasonable care is
30 exercised, any food establishment, food processing plant, or salvage
31 operation to inspect all food, structures, vehicles, equipment, packing

1 materials, containers, records, and labels on such property. The
2 department may inspect and examine all records and property relating to
3 compliance with the Nebraska Pure Food Act. Such records and property
4 shall be made available to the department for review at all reasonable
5 times;

6 (b) In a reasonable manner, hold for inspection and take samples of
7 any food which may not be in compliance with the Nebraska Pure Food Act;

8 (c) Inspect at any time or place food that is being shipped into or
9 through the state and take any enforcement action authorized under the
10 Nebraska Pure Food Act; and

11 (d) Obtain an inspection warrant in the manner prescribed in
12 sections 29-830 to 29-835 from a court of record if any person refuses to
13 allow the department to inspect pursuant to this subsection.

14 (2) In addition to its authority provided in subsection (1) of this
15 section, the ~~The~~ department may contract with any political subdivision
16 or state agency it deems qualified to conduct any or all regulatory
17 functions authorized pursuant to the act except those functions relating
18 to the issuance, suspension, or revocation of permits or any order of
19 probation. Holders of permits issued pursuant to the act who are
20 regularly inspected by political subdivisions under contract with the
21 department shall be exempt from the inspection fees prescribed in section
22 81-2,270 if such holders pay license or inspection fees to the political
23 subdivision performing the inspections.

24 (3) ~~(2)~~ It shall be the responsibility of the regulatory authority
25 to inspect food establishments and food processing plants as often as
26 required by the act. An inspection of a salvage operation shall be
27 performed at least once every three hundred sixty-five days of operation.
28 Additional inspections shall be performed as often as is necessary for
29 the efficient and effective enforcement of the act.

30 (4) ~~(3)~~ All inspections conducted pursuant to the act shall be
31 performed by persons who are provisional environmental health specialists

1 or registered environmental health specialists as defined in section
2 38-1305 or 38-1306.

3 (5) ~~(4)~~ Duly authorized personnel of the regulatory authority after
4 showing proper identification shall have access at all reasonable times
5 to food establishments, food processing plants, or salvage operations
6 required by the act to obtain a permit to perform authorized regulatory
7 functions. Such functions shall include, but not be limited to,
8 inspections, checking records maintained in the establishment or other
9 locations to obtain information pertaining to food and supplies
10 purchased, received, used, sold, or distributed, copying and
11 photographing violative conditions, and examining and sampling food. When
12 samples are taken, the inspectors shall pay or offer to pay for samples
13 taken. The authorized personnel shall also have access to the records of
14 salvage operations pertaining to distressed salvageable and salvaged
15 merchandise purchased, received, used, sold, or distributed.

16 (6) ~~(5)~~ Regulatory activities performed by a political subdivision
17 or state agency under contract shall conform with the provisions of the
18 act and such activities shall have the same effect as those performed by
19 the department. Any interference with the regulatory authority's duty to
20 inspect shall be an interference with the department's duties for the
21 purposes of section 81-2,273.

22 Sec. 12. Section 81-2,288, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 81-2,288 (1) The department may adopt and promulgate rules and
25 regulations to aid in the administration and enforcement of the Nebraska
26 Pure Food Act.

27 (2) The department may adopt and promulgate rules and regulations to
28 provide for source labeling on eggs which are packaged. The department
29 may establish standards, grades, and weight classes for eggs.

30 (3) ~~(2)~~ The department may contract with agencies of the federal
31 government for the performance by the department of inspections and other

1 regulatory functions at food establishments, food processing plants, or
2 salvage operations within the state which are subject to federal
3 jurisdiction and may receive federal funds for work performed under such
4 contracts.

5 ~~(4)~~ ~~(3)~~ Except as provided in subsection ~~(3)~~ ~~(2)~~ of this section,
6 the provisions of the act shall not apply to establishments or specific
7 portions of establishments regularly inspected for proper sanitation by
8 an agency of the federal government.

9 Sec. 13. The State Treasurer shall transfer any money in the Graded
10 Egg Fund to the Pure Food Cash Fund on the effective date of this act.

11 Sec. 14. Original sections 81-2,262, 81-2,263, 81-2,270, 81-2,271,
12 81-2,272.31, 81-2,281, and 81-2,288, Reissue Revised Statutes of
13 Nebraska, and sections 81-2,239 and 81-2,240, Revised Statutes Cumulative
14 Supplement, 2016, are repealed.

15 Sec. 15. The following sections are outright repealed: Sections
16 2-3501, 2-3502, 2-3503, 2-3504, 2-3505, 2-3506, 2-3507, 2-3508, 2-3509,
17 2-3510, 2-3511, 2-3512, 2-3513, 2-3514, 2-3515, 2-3516, 2-3518, 2-3519,
18 2-3520, 2-3521, 2-3522, 2-3523, 2-3524, and 2-3525, Reissue Revised
19 Statutes of Nebraska.