

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB262

Hearing Date: Tuesday January 31, 2023
Committee On: Agriculture
Introducer: Agriculture
One Liner: Change and eliminate provisions of the Nebraska Pure Food Act

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Brewer, Halloran, Hansen, B., Holdcroft, Ibach, Hughes, Riepe
Nay:		
Absent:	1	Senator Raybould
Present Not Voting:		

Testimony:

Proponents:

Rick Leonard
Sherry Vinton

Representing:

Agriculture Committee
Nebraska Department of Agriculture

Opponents:

Colton Wolinski
Jeremy Eschlyman
Jeremy Collinson

Representing:

Nebraska Environmental Health Association
Friends of Public Health
Board of Registered Environmental Health Specialists

Neutral:

Ansley Fellers
Zoe Olsen

Representing:

Nebraska Grocery Industry
Nebraska Hospitality Association

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 262 would amend the Nebraska Pure Food Act, (Neb. Rev. Stat. §§81 2,239 to 81 2,292) as described below:

Secs. 1 and 2: Amends §81-2,239 and §81-2,240 to incorporate sections 5, 8 and 9 of the bill into the Nebraska Pure Food Act.

Sec. 3: Amends §81-2,244.01 which defines the term "Food Code" to incorporate the 2017 Food Code recommendations of the FDA except for specific sections cited. LB 262 strikes the exclusion of Food Code section 5-104.11 and thereby adopts the Food Code standard for safe water sourcing. This section of the Food Code is currently replaced by §81-2,272.31 which requires food establishments to have a permanent water source. Utilization of the food code standard would allow water from non-permanent sources such as bottled water which is helpful for food trucks.

Sec. 4. Amends §81-2,245.01 to add an additional option for food safety training to register as a cottage food operation.

Secs. 5 and 9: Inserts new sections defining “food handling activity” and “secondary food handling activity” to clarify how these terms are used in §81-2,270 which sets out primary and secondary inspection fees.

Sec. 6: Amends §81-2,248 to revise the term “itinerate food vendor” so that the term includes a temporary food establishment. Consolidating the terms reduces the number of distinct permit categories and simplifies the permitting process.

Sec. 7: Amends §81-2,251.03 to consolidate licensed beverage establishments, currently defined in §81-2,251.02, within the term “limited food service establishment”. Consolidating the terms reduces the number of distinct permit categories and simplifies the permitting process.

Sec. 8: Inserts a new defined term for “limited food retail establishment” which replaces the definition of convenience store in §81-2,242.03.

Sec 10: Amends §81-2,263 to incorporate sections 5, 8 and 9 into the Nebraska Pure Food Act for purpose of resolving conflicts between the Act and referenced codes.

Sec. 11: Amends §81-2,270 to clarify permitting fees and processes as follows:.

- clarifies penalties and procedure for resolving establishments operating without a valid permit, either failing to obtain a license prior to initial operation or continuing operations without completing annual license renewal and annual fee payment;
- revises permit categories to remove obsolete categories due to consolidation of terms sections 6 through 8;
- removes unnecessary permit category for “food delivery service” due to lack of facilities to inspect with such services;
- clarifies how secondary inspection fees are implemented;
- clarifies the permit category for mobile food establishments that do not meet the definition of mobile food unit.
- Provides that a licensed food establishment that sells food within another licensed food establishment is not required to obtain an additional permit.

Sec. 12: Amends §81-2,271 to clarify where a permit shall be posted by various types of food establishments and the requirements of permit holders to notify the department regarding the location of food handling activities.

Sec. 13: Amends §81-2,281 to clarify qualifications for food inspectors. Currently, this section limits inspectors to persons credentialed as registered environmental health specialists (REHS). LB 262 would also allow persons meeting Food Code section 8-402.10 qualifications to serve as food inspectors.

Sec. 14: Repealers

Sec. 15: Outright repealed sections

Explanation of amendments:

The committee amendment (AM719) is a white copy amendment which replaces the bill. The amendment retains the original purposes of LB 262 bill with a modification described below and also incorporates the provisions of LB 263, LB 264, LB 305 and LB 740 as those bills were advanced to general file.

LB 262 revision:

Sections 17 through 29, and Section 33 of AM719 incorporate the original substantive provisions of LB 262. The only revision to LB 262 is found in section 33 which replaces section 13 of LB 262 as introduced. The amendment retains the

option that food inspectors meet the minimal credentialing of Food Code section 8-402.10 provided the individual completes a cited food safety credentialing standard within 3 years of hire. The amendment would not preclude local regulatory authorities from utilizing only persons credentialed as Registered Environmental Health Specialists.

LB 740:

Sections 30 through 32 of AM719 insert the substantive provisions of LB 740 as advanced to general file with committee amendment AM619. These sections amend the Pure Food Act to allow for food truck permitting reciprocity among certain local jurisdictions and provides for a registry of local regulations applicable to food trucks and production of guidance materials to advise food truck operators.

Sec. 30: Inserts a new section authorizing local Pure Food Act regulatory authorities to enter into agreements to grant reciprocity for local food safety licensing of mobile food establishments. Inserts a duty of local regulatory authority to report to the Legislature any reciprocity agreement entered into or actions to explore reciprocity agreements and impediments to such agreements.

Section 31: Inserts a new section assigning a duty to the Department of Agriculture to maintain a mobile food establishment ordinance registry. The section would require cities of the 1st or 2nd class to submit a copies of municipal ordinances governing the operation of food trucks in their jurisdiction, any permit application forms, and contact information for purposes of mobile food establishment regulation. Cities that do not regulate mobile food establishments satisfy their obligation under this section by submitting a statement that no such regulations exist in their jurisdiction. Cities are to notify the Department by Dec 31 of any revisions to registry information.

Sec. 32: Inserts a new section which assigns a duty to the Department to develop guidance documents for mobile food establishment operators advising of applicable health and safety permitting regulations to operate in local jurisdictions. Section 32 includes revisions rewriting the section for clarity that the guidance document describe food permitting requirements applicable to mobile food establishments and for purposes of qualifying for reciprocity in licensing regulations of participating local Pure Food Act regulatory authorities.

AM 719 omits original section 4 of LB 740 as introduced which would have redefined the term mobile food unit. The term mobile food establishment is utilized to refer to food trucks.

Committee vote to attach LB 740: Yes – 8; No – 0; Abstain – 0, Not Present - 0

LB 263:

Sections 1 through 12 of AM719 incorporate the provisions of LB 263 which makes revisions to the Nebraska Hemp Farming Act. These sections revise the Hemp Farming Act to be consistent with the USDA Final Rule implementing the 2018 Farm Bill hemp provisions and to make other adjustments to aid with administration of the Act. The relevant sections of AM719 are explained below:

Sec. 1: Amends §2-503 to update the definition of “acceptable THC level” and “measurement of uncertainty” to incorporate these terms as defined by 7 CFR 990 as existing on January 1, 2022. LB 263 also inserts a new defined term for “remediation” incorporating that term as defined in 7 CFR 990.

Sec. 2: Amends §2-504 which assigns rule-making and implementing authority for various purposes to the Department. The revisions authorize the Department to also accomplish necessary changes in requirements governing hemp production through amendment to the state hemp plan and to specify the types of records the department may require through rules and regulations.

Sec. 3: Amends §2-505 to remove an obsolete external reference and to adopt the most recent reference to a cited federal

CFR definition of “key participants.”

Secs. 4, 6, & 12: Amends §§2-506, 2-509 & 2-514 to strike an external reference to §2-5701, an expired hemp growers license provision made obsolete by the Hemp Farming Act. §2-5701 is outright repealed in Section 41.

Sec. 5: Amends §2-508 to remove a date specific requirement for initial license application or annual license renewal and removes what becomes obsolete late fee provisions.

Sec. 7: Amends §2-510 to specify that destruction of non-compliant hemp be performed within 30 days of notification by the Department.

Sec. 8: Amends §2-511 to increase the threshold at which hemp exceeding the acceptable THC level is deemed a negligent violation from 0.5% to 1.0%. Note, this does not increase the THC concentration of hemp that may be harvested. Any hemp above 0.3% THC is still subject to destruction.

Sec. 9: Amends §2-514 to:

- remove statutory prescription that sampling occur at each lot to defer to sampling as specified in the Hemp plan. The hemp plan will continue to require sampling and testing of each lot unless the Department amends the plan to allow alternative sampling where appropriate for certain categories of hemp as authorized under the USDA final rule.
- increase the harvest deadline after sample collection from 15 to 30 days.
- require 7-days notice of a request for official sample collection and provides that the licensee assumes risk of any damage resulting from failure to timely request sampling.
- add remediation, if allowed by the Department, as an option in the event of an adverse test result.

Sec. 10: Amends §2-515 which prescribes documentation to be carried by persons transporting hemp. LB 263 clarifies that this duty applies when transporting hemp cultivated under the Hemp Farming Act. Expands an exclusion for growers when transporting untested hemp for purpose of private testing to include testing for any private purpose.

Sec. 11: Amends §2-517 to require the Nebraska Hemp Commission to meet at least annually instead of quarterly.

Committee vote to attach LB 263: Yes – 8; No – 0; Abstain – 0, Not Present - 0

LB 264:

Sections 13 through 16 and 34 through 37 of AM719 insert the provisions of LB 264 which makes a series of revisions to the Grain Warehouse Act and the Grain Dealers Act.

Secs. 13 & 35: Amends §75-156 and §88-527 to conform these sections with the replacement of the term “warehouseman” with the term “warehouse operator” in section 34.

Secs. 14 & 34:: Amends §75-902 of the Grain Dealer Act and and §88-526 of the Grain Warehouse Act by revising the definition of “grain” to remove an ambiguity whether grain excludes segregated commodities such as certified organic.

Sec. 15: Amends §75-903, which sets forth requirements for licensure as a grain dealer, as follows:

- Increase the statutory maximum dealer security from \$300,000 to \$1 million.
- Removes a statutory formula for calculating the security amount to defer to the Commission to set the amount by regulation to be consistent with a similar provision of the grain Warehouse Act.

Secs. 16 & 36: Amends §75-903.02 of the Grain Dealer Act and §88-528.01 of the Grain Warehouse Act to clarify an exemption for criminal background checks of persons submitting a new license application who have previously submitted a background check for a previous but separate license.

Sec. 37: Amends Section 88-530 to increase the statutory maximum warehouse bond from \$500,000 to \$1 million.

Committee vote to attach LB 264: Yes – 8; No – 0; Abstain – 0, Not Present - 0

LB 305

Sections 38 & 39 of AM719 insert the provisions of LB 305 as advanced to general file.

Section 38: Amends §88-541 which currently directs the Public Service Commission to at least annually fix storage rates and provides that warehouse licensees may not deviate from such rate, either higher or lower, except by application to and hearing before the Public Service Commission. This section removes the duty and authority of the Commission to establish storage rates, but specifies that warehouse licensees must prominently post storage rates and related charges on signage issued by the Commission and that the schedule of rates and charges posted shall be full compensation for receiving, handling, storing, delivering and insuring grain. The revisions to this section of the Grain Warehouse Act provide that existing warehouse licensees file with the Public Service Commission their current schedule storage rates and charges on the date of the filing. New license applicants would file a schedule of storage rates and charges with the license application. Warehouse licensees would be free to adjust such rates and charges by filing notice with the public service commission and all grain owners of record at least 30 days prior to any adjustment of such rates or charges taking effect.

Section 39: Amends §88-549 which requires licensees to annually notify grain storers of current storage costs and declares failure to do so is a Class IV misdemeanor. This section of AM719 would add charging storage rates and charges other than, or in addition to, those filed and posted as a misdemeanor violation under this section.

Committee vote to attach LB 305: Yes – 8; No – 0; Abstain – 0, Not Present - 0

Correlating provisions:

AM719 correlates repealers and outright repealed sections of all provisions included in the committee amendment.

Steve Halloran, Chairperson