

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT (CORRECTED)
LB321

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

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Brewer, Halloran, Hansen, B., Holdcroft, Ibach, Riepe
Nay:	1	Senator Raybould
Absent:	1	Senator Hughes
Present Not Voting:		

Testimony:

Proponents:

Senator Tom Brandt
Nicole Fox
Cindy Harper
Erin Oden
John Hansen

Representing:

Introducer
Platte Institute
Creative Confections
ET's Sweets
Nebraska Farmers Union

Opponents:

Laura McDougall
Ansley Fellers

Representing:

Friends of Public Health
Nebraska Grocery Industry Association

Neutral:

Bill Hawkins
Sherry Vinton

Representing:

Self
Nebraska Department of Agriculture

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

Committee Statement Text
LB 321 (Brandt) Change Pure Food Act provisions relating to cottage foods

LB 321 conditionally expands the types of foods that may be prepared and sold by cottage food operations to include certain time/temperature control for safety (formerly known as potentially hazardous) foods.

Sec. 1: Amends §81-2,245.01 of the Pure Food Act which defines the term "food establishment" for purposes of the Pure Food Act. Food establishments are defined broadly to include any facility where food is prepared, stored, served or sold

beyond household consumption except for an enumerated list of food operations expressly excluded.

LB 321 would expand the existing cottage food exclusion for food prepared in private homes and other areas under subsection (7). The bill identifies existing cottage food limitations for non TTCS foods as subdivision (7)(a) and inserts a new subdivision (7)(b) to further exclude as cottage food operations those preparing certain time/temperature control for safety (TTCS) foods. The new subdivision (b) would insert the following requirements to operate within the cottage food exemptions when serving TTCS foods:

- the foods offered are not alcohol, low acid canned foods, unpasteurized milk or a number of meat products
- the foods are labeled for ingredients in descending order
- the food is delivered directly to the consumer (cannot be sent by mail or carrier), not be in transport more than 2 hours, and held at safe temperatures during transport

New subdivision 7(b) further provides that the expanded cottage food exemption for TTCS foods is not construed to:

- restrict investigations of food-borne illness
 - prohibit production or sale of any foods otherwise allowed
 - apply to the sale of live animals or animal shares,
 - affect the regulation of other goods and services that may be produced at a cottage food location, or
 - exempt sellers of TTCS foods from hunting or fishing regulations
- New subdivision 7(b) also:
- prohibits a regulatory authority from requiring food training requirements beyond those currently required under the existing cottage food exemption, and
 - Expressly states that violations of the expanded cottage food exemption are subject to cited disciplinary provisions but limits any fine to \$75.

Sec. 2: Amends §81-2,280 which creates a requirement for persons selling food under the cottage food exemption to register with the department and specifies conditions of registration. This section currently exempts persons selling under the existing cottage food provision when selling exclusively at a farmers market. LB 321 would clarify that registration is required when selling potentially hazardous foods at a farmers market.

Explanation of amendments:

Explanation of committee amendments, if any:

The committee amendment (AM483) is a white copy that strikes the original provisions and becomes the bill. AM483 relocates the regulatory provisions currently describing the cottage food exclusion in §81-2,245.01(7) to §81-2,280 which currently only prescribes requirements for cottage food registration. The exclusion of cottage food operations from the definition of "food establishments" in section 81-2,245.01 would simply refer to those meeting the requirements set out in 81-2,280. The purposes of LB 321 to expand the cottage food exemption to include certain potentially hazardous foods is also included in the revisions to §81-2,280. However, the provisions are rewritten for clarity as described below:

- contains the same prohibitions on certain types of potentially hazardous foods as the introduced bill, but substitutes correct terminology and external references as appropriate;
- continues requirements for completion of food safety training and water well testing under current law but as rewritten to be clear these requirements also apply to cottage food operations offering TTCS foods allowed by the bill. AM483 also adds an additional option for a program offered through UNL to meet the food safety training requirement. AM483 continues the existing exemption from these requirements for those whose sales are confined to direct sales at a farmers market or similar event;
- continues the existing product labeling disclosures but as rewritten to be clear they apply to cottage food operations offering non TTCS foods and TTCS foods allowed by the bill and to add the additional ingredient labeling requirement for TTCS foods proposed in the original bill, AM483 continues the existing exemption from these requirements for those whose sales are confined to direct sales at a farmers market or similar event;
- Includes the provision of LB 321 as introduced that limits delivery of TTCS foods to person- to-person (may not be sent through mail or carrier) and that such foods cannot be taken to a delivery point greater than 2 hours away and to comply with food temperature holding requirements of the Pure Food Act while in transport.

-- Eliminates unnecessary provisions declaring violations of the cottage food limitations subject to cited enforcement provisions from the original bill except to reinforce that cottage foods may not be adulterated.

Finally, AM483 inserts an express preemption of local subdivision rules and regulations not in conformance with the bill.

Steve Halloran, Chairperson