

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 262

Introduced by Agriculture Committee: Halloran, 33, Chairperson; Brewer, 43; Hansen, B., 16; Holdcroft, 36; Hughes, 24; Ibach, 44; Riepe, 12.

Read first time January 10, 2023

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Nebraska Pure Food Act; to amend
2 section 81-2,251.03, Reissue Revised Statutes of Nebraska, and
3 sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,248,
4 81-2,263, 81-2,270, 81-2,271, and 81-2,281, Revised Statutes
5 Cumulative Supplement, 2022; to define, redefine, and eliminate
6 terms; to change permit and fee provisions relating to food
7 establishments, food processing plants, and salvage operations; to
8 change permit posting and certain change of address, location, and
9 inspection requirements; to eliminate water supply requirements; to
10 harmonize provisions; to repeal the original sections; and to
11 outright repeal sections 81-2,242.03 and 81-2,251.02, Reissue
12 Revised Statutes of Nebraska, and sections 81-2,245, 81-2,251.01,
13 and 81-2,272.31, Revised Statutes Cumulative Supplement, 2022.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,239, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 81-2,239 Sections 81-2,239 to 81-2,292 and sections 5, 8, and 9 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 81-2,259, shall be known
7 and may be cited as the Nebraska Pure Food Act.

8 Sec. 2. Section 81-2,240, Revised Statutes Cumulative Supplement,
9 2022, 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 5, 8, and 9 of this act shall be used. In addition,
13 the definitions found in the code and practice adopted by reference in
14 sections 81-2,257.01 and 81-2,259 shall be used.

15 Sec. 3. Section 81-2,244.01, Revised Statutes Cumulative Supplement,
16 2022, is amended to read:

17 81-2,244.01 Food Code shall mean the 2017 Recommendations of the
18 United States Public Health Service, Food and Drug Administration, except
19 the definitions of adulterated food and food establishment, person in
20 charge, regulatory authority, and sections 2-102.12, 2-102.20(B),
21 2-103.11(I) and (M), 3-301.11(B), (C), (D), and (E), 3-501.16,
22 4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C), ~~5-104.11~~, 8-101,
23 8-102, 8-201.11, 8-201.12, 8-202.10 through 8-304.20, 8-401.10(B)(2),
24 8-402.20 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B).
25 The term Food Code does not include the annexes of such federal
26 recommendations.

27 Sec. 4. Section 81-2,245.01, Revised Statutes Cumulative Supplement,
28 2022, is amended to read:

29 81-2,245.01 Food establishment shall mean an operation that stores,
30 prepares, packages, serves, sells, vends, delivers, or otherwise provides
31 food for human consumption. The term does not include:

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

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

9 (3) A food processing plant;

10 (4) A salvage operation;

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

15 (6) A private home or other area where food that is not time/
16 temperature control for safety food is prepared for sale or service at a
17 religious, charitable, or fraternal organization's bake sale or similar
18 function;

19 (7) A private home or other area where food that is not time/
20 temperature control for safety food is prepared for sale directly to the
21 consumer including, but not limited to, at a farmers market, fair,
22 festival, craft show, or other public event or for pick up at or delivery
23 from such private home or other area, if:

24 (a) The consumer is informed by a clearly visible notification that
25 the food was prepared in a kitchen that is not subject to regulation and
26 inspection by the regulatory authority and may contain allergens. For
27 sales conducted at a farmers market, fair, festival, craft show, or other
28 public event, such notification shall be at the sale location. For sales
29 conducted for pick up at or delivery from a private home or other area,
30 such notification shall be at such private home or other area, on the
31 producer's website if one exists, and in any print, radio, television, or

1 Internet advertisement for such sales;

2 (b) The name and address of the producer is provided to the consumer
3 on the package or container label;

4 (c) Product delivery is made directly from the producer to the
5 actual customer in a person-to-person transaction or by United States
6 mail or a commercial mail delivery service;

7 (d) The producer follows any food safety and handling guidelines for
8 sale at a farmers market, fair, festival, craft show, or other public
9 event required by the county, city, or village where the food is sold;

10 (e) Prior to conducting any food sales, the producer, other than one
11 selling directly to the consumer at a farmers market, has successfully
12 completed (i) a nationally accredited food safety and handling education
13 course that covers topics such as food safety issues, regulations, and
14 techniques to maintain a food-safe environment, ~~or~~ (ii) a certified food
15 safety and handling training course offered at a culinary school or as
16 required by a county, city, or village to obtain a food handler permit, ~~or~~
17 or (iii) a food safety and handling education course approved by the
18 department;

19 (f) The producer, if using private well water to produce food sold
20 under this subdivision (7), has had such well water tested for
21 contamination by nitrates or bacteria prior to conducting any food
22 production and sales; and

23 (g) The producer complies with section 81-2,280;

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

1 (9) The location where food prepared by a caterer is served so long
2 as the caterer only minimally handles the food at the serving location;

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

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

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

14 Sec. 5. Food handling activity shall mean food service, food
15 catering, conducting retail food sales, or operating a commissary, mobile
16 food unit, food pushcart, or food vending machine.

17 Sec. 6. Section 81-2,248, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 81-2,248 Itinerant food vendor shall mean a temporary food
20 establishment or shall mean a person that sells prepackaged, time/
21 temperature control for safety food from an approved source at a
22 nonpermanent location such as a farmers market, craft show, or county
23 fair.

24 Sec. 7. Section 81-2,251.03, Reissue Revised Statutes of Nebraska,
25 is amended to read:

26 81-2,251.03 Limited food service establishment shall mean a food
27 shall mean an establishment that serves only alcoholic beverages or
28 serves or otherwise provides only snack items or commercially prepared
29 and wrapped foods that require little or no preparation.

30 Sec. 8. Limited retail food establishment shall mean a food
31 establishment where food offered to the consumer is intended for off-

1 premises consumption and where there are no meat processing or produce
2 processing areas.

3 Sec. 9. Secondary food handling activity shall mean operating
4 mobile food units, food pushcarts, or food vending machines or operating
5 any other type of food handling activity as not the primary food handling
6 activity.

7 Sec. 10. Section 81-2,263, Revised Statutes Cumulative Supplement,
8 2022, is amended to read:

9 81-2,263 If there is an inconsistency between sections 81-2,239 to
10 81-2,292 and sections 5, 8, and 9 of this act and any code adopted by
11 reference, the requirements of the sections shall control.

12 Sec. 11. Section 81-2,270, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 81-2,270 (1) No person shall operate without a valid permit:

15 (a) A food establishment conducting those food handling activities
16 authorized by such permit;

17 (b) A a food processing plant; or

18 (c) A a salvage operation, ~~without a valid permit which sets forth~~
19 ~~the types of operation occurring within the establishment.~~

20 (2) Application for a permit shall be made to the director on forms
21 prescribed and furnished by the department. Such application shall
22 include (a) the applicant's full name and mailing address and ~~7~~ the names
23 and addresses of any partners, members, or corporate officers, (b) the
24 ~~name and address of the person authorized by the applicant to receive the~~
25 ~~notices and orders of the department as provided in the Nebraska Pure~~
26 ~~Food Act,~~ whether the applicant is an individual, partnership, limited
27 liability company, corporation, or other legal entity, (c) the location
28 and type of proposed establishment or operation, and (d) the signature of
29 the applicant. Application for a permit shall be made prior to the
30 operation of a food establishment, food processing plant, or salvage
31 operation. The application shall be accompanied by an initial permit fee

1 and an initial inspection fee in the same amount as the annual inspection
2 fee if inspections are required to be done by the department. If any the
3 food establishment, food processing plant, or salvage operation is
4 operating without ~~has been in operation prior to applying for a valid~~
5 ~~permit or notifying the regulatory authority, such establishment, plant,~~
6 ~~or operation~~ the applicant shall pay an additional fee of sixty dollars
7 prior to the issuance of a valid permit.

8 (3) Payment of the initial permit fee, the initial inspection fee,
9 and the fee for operating without ~~failing to apply for a valid permit~~
10 ~~prior to operation~~ shall not preclude payment of the annual inspection
11 fees due on August 1 of each year. Except as provided in subsections (7)
12 through (10) of this section and subsection (2) of section 81-2,281, a
13 permitholder shall pay annual inspection fees on or before August 1 of
14 each year regardless of when the initial permit was obtained.

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

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

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

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

30 (b) The maximum fees are:

31

Secondary Secondary

1				<u>or</u>	No Food
2			<u>Base</u>	Additional	Preparation
3			First	Food	Area,
4	<u>Permit Type</u>		Food	Preparation	Unit
5			Preparation	Area	Or
6			Area	Annual	Units
7	Food	Initial	Annual	Inspection	Annual
8	Handling	Permit	Inspection	Fee	Inspection
9	Activity	Fee	Fee	(per area)	Fee
10	<u>Limited Retail</u>				
11	Food Establishment	\$86.19	\$86.19	\$43.09	N/A
12	Convenience Store	\$86.19	\$86.19	\$43.09	N/A
13	Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A
14	Licensed Beverage				
15	Establishment	\$86.19	\$86.19	\$43.09	N/A
16	Limited Food Service				
17	Establishment	\$86.19	\$86.19	\$43.09	N/A
18	Temporary Food				
19	Establishment	\$86.19	\$86.19	\$43.09	N/A
20	Food Delivery Service	\$86.19	N/A	N/A	\$17.23
21	Mobile Food Unit				
22	(for each unit)	\$86.19	N/A	N/A	\$43.09
23	Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
24	Vending Machine				
25	Operations:	\$86.19			
26	One to ten units		N/A	N/A	\$17.23
27	Eleven to twenty units		N/A	N/A	\$34.46
28	Twenty-one to thirty				
29	units		N/A	N/A	\$51.69
30	Thirty-one to forty				

1	units		N/A	N/A	\$68.92
2	Over forty units		N/A	N/A	\$86.15
3	Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
4	Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
5	Commissary	\$86.19	\$120.64	\$43.09	N/A
6	All Other Food				
7	Establishments	\$86.19	\$120.64	\$43.09	N/A

8 (5) ~~For~~ If a food establishment, a base inspection fee includes one
9 food preparation area and is engaged in more than one food handling
10 activity listed in subsection (4) of this section, the inspection fee
11 charged shall be based upon the primary food handling activity conducted
12 within the food establishment as determined by the department. The annual
13 inspection fee shall also include ~~and~~ any fees assessed for each
14 additional food preparation area within the primary establishment and any
15 applicable secondary food handling activity as determined by the
16 department. Any mobile food establishment that does not return to a
17 commissary each day shall obtain a separate permit and pay the base
18 inspection fee for the mobile food establishment.

19 (6) If a person fails to pay the inspection fee for more than one
20 month after the fee is due, such person shall pay a late fee equal to
21 fifty percent of the total fee for the first month that the fee is late
22 and one hundred percent for the second month that the fee is late. The
23 purpose of the late fee is to cover the administrative costs associated
24 with collecting fees. All money collected as a late fee shall be remitted
25 to the State Treasurer for credit to the Pure Food Cash Fund. If the
26 total fees due remain unpaid ninety days after the original due date, the
27 permit shall no longer be valid.

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

1 (8) A food establishment which produces eggs and only stores,
2 packages, sells, delivers, or otherwise provides for human consumption
3 the eggs it produces, or only stores, packages, sells, delivers, or
4 otherwise provides for human consumption eggs produced from no more than
5 four producers at the same time, is exempt from the requirements of
6 subsections (1) through (6) of this section.

7 (9) A food establishment or food processing plant holding a permit
8 under the Nebraska Milk Act is exempt from the requirements of
9 subsections (1) through (6) of this section.

10 (10) A single event food vendor or a religious, charitable, or
11 fraternal organization operating any type of temporary food
12 establishment, mobile food unit, or pushcart is exempt from the
13 requirements of subsections (1) through (6) of this section. Any such
14 organization operating any nontemporary food establishment prior to July
15 1, 1985, is exempt from the requirements of subsection (2) of this
16 section.

17 (11) A permitholder may sell food prepared by the permitholder at
18 the location of another permitholder without obtaining a separate permit
19 at such location so long as the permitholder preparing the food is not a
20 food processing plant. Both the permitholder preparing the food and the
21 permitholder selling the food are responsible for compliance with the
22 Nebraska Pure Food Act.

23 Sec. 12. Section 81-2,271, Revised Statutes Cumulative Supplement,
24 2022, is amended to read:

25 81-2,271 (1) The permit required by section 81-2,270 shall be posted
26 in a conspicuous manner at the food establishment, each location where
27 food handling activity included under a permit is occurring, food
28 processing plant, or salvage operation location in the food
29 establishment, food processing plant, or salvage operation which is
30 conspicuous to the public. A salvage operation shall also have a copy of
31 the permit in each vehicle. For a food establishment that does not have a

1 ~~permanent location delivery service~~, the permit location shall be a
2 permanent address where the permitholder may be contacted.

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

13 (3) A permitholder shall provide information regarding the current
14 location of any food handling activity included under the permitholder's
15 permit ~~A mobile food unit, pushcart, or vending machine may be moved if~~
16 ~~the permitholder is able to provide the location of such unit, pushcart,~~
17 ~~or machine to the regulatory authority upon request and the person~~
18 ~~authorized by the permitholder to receive notices and orders of the~~
19 ~~department maintains a permanent mailing address on file with the~~
20 ~~department. A food delivery service shall upon request provide the~~
21 ~~department with information regarding the location of all conveyances it~~
22 ~~controls.~~

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

26 Sec. 13. Section 81-2,281, Revised Statutes Cumulative Supplement,
27 2022, is amended to read:

28 81-2,281 (1) The department shall enforce the Nebraska Pure Food Act
29 and any rule or regulation adopted and promulgated pursuant to such act.
30 The department may:

31 (a) Enter at reasonable times and in a reasonable manner, without

1 being subject to any action for trespass or damages if reasonable care is
2 exercised, any food establishment, food processing plant, or salvage
3 operation to inspect all food, structures, vehicles, equipment, packing
4 materials, containers, records, and labels on such property. The
5 department may inspect and examine all records and property relating to
6 compliance with the Nebraska Pure Food Act. Such records and property
7 shall be made available to the department for review at all reasonable
8 times;

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

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

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

17 (2) In addition to its authority provided in subsection (1) of this
18 section, the department may contract with any political subdivision or
19 state agency it deems qualified to conduct any or all regulatory
20 functions authorized pursuant to the act except those functions relating
21 to the issuance, suspension, or revocation of permits or any order of
22 probation. Holders of permits issued pursuant to the act who are
23 regularly inspected by political subdivisions under contract with the
24 department shall be exempt from the inspection fees prescribed in section
25 81-2,270 if such holders pay license or inspection fees to the political
26 subdivision performing the inspections.

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

1 the efficient and effective enforcement of the act.

2 (4) All inspections conducted pursuant to the act shall be performed
3 by persons who meet the requirements of section 8-402.10 of the Food Code
4 or are provisional environmental health specialists or registered
5 environmental health specialists as defined in section 38-1305 or
6 38-1306.

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

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

26 Sec. 14. Original section 81-2,251.03, Reissue Revised Statutes of
27 Nebraska, and sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01,
28 81-2,248, 81-2,263, 81-2,270, 81-2,271, and 81-2,281, Revised Statutes
29 Cumulative Supplement, 2022, are repealed.

30 Sec. 15. The following sections are outright repealed: Sections
31 81-2,242.03 and 81-2,251.02, Reissue Revised Statutes of Nebraska, and

1 sections 81-2,245, 81-2,251.01, and 81-2,272.31, Revised Statutes
2 Cumulative Supplement, 2022.