

LEGISLATIVE BILL 474

Approved by the Governor March 3, 1999

Introduced by Agriculture Committee: Dierks, 40, Chairperson; Chambers, 11; Cudaback, 36; Robak, 22; Schellpeper, 18; Vrtiska, 1

AN ACT relating to the Nebraska Pure Food Act; to amend section 81-2,252, Reissue Revised Statutes of Nebraska, and sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,262, 81-2,270, 81-2,272.08, 81-2,272.18, 81-2,272.24, 81-2,281, and 81-2,288.01, Revised Statutes Supplement, 1998; to define and redefine terms; to adopt federal law by reference; to change and provide requirements; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2,239, Revised Statutes Supplement, 1998, is amended to read:

81-2,239. Sections 81-2,239 to 81-2,292 and sections 5 to 7, 13, 15, 18, and 19 of this act and the provisions of the Food Code, ~~and~~ 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 and 81-2,258 and section 7 of this act shall be known and may be cited as the Nebraska Pure Food Act.

Sec. 2. Section 81-2,240, Revised Statutes Supplement, 1998, 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 81-2,254.01 and sections 5 and 6 of this act shall be used. In addition, the definitions found in the codes and practice adopted by reference in sections 81-2,257.01 and 81-2,258 and section 7 of this act shall be used.

Sec. 3. Section 81-2,244.01, Revised Statutes Supplement, 1998, is amended to read:

81-2,244.01. Food Code shall mean the 1995 Recommendations of the United States Public Health Service, Food and Drug Administration, except sections 1-201.10(B)(2), (31), (32), (53), and (68), 2-102.11, 2-103.11(H), 2-201, 2-301.12, 2-301.13, 2-301.14, 2-301.16, 2-402.11, 2-403.11, 3-201.14, 3-201.16, 3-201.17(D), 3-202.11, 3-301.11, 3-304.16, 3-401.11(A)(4), 3-401.15, 3-403.11, 3-501, 3-502.11, 3-502.12, 3-603.11, 4-301.12(C)(5) and (D), 4-603.16(C), 4-603.17, 5-203.15, 5-302.16, 6-301.11(B), 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, ~~and~~ 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, Revised Statutes Supplement, 1998, is amended to read:

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

(1) An establishment or vending machine operation that offers only prepackaged foods that are not potentially hazardous;

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

(3) A food processing plant;

(4) A salvage establishment;

(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 potentially hazardous is prepared for sale or service at a religious, charitable, or fraternal organization's bake sale or similar function;

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

(8) 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.

Sec. 5. Limited food vending machine shall mean a vending machine which does not dispense potentially hazardous food.

Sec. 6. Pushcart shall mean a non-self-propelled vehicle limited to serving food which is not 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. 7. 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 exists on the effective date of this act.

Sec. 8. Section 81-2,252, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,252. Regulatory authority shall mean the department or a political subdivision or state agency under contract with the department to perform regulatory functions authorized pursuant to the Nebraska Pure Food Act.

Sec. 9. Section 81-2,262, Revised Statutes Supplement, 1998, is amended to read:

81-2,262. Certified copies of the codes and practice adopted by reference pursuant to sections 81-2,257.01 and 81-2,258 and section 7 of this act shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

Sec. 10. Section 81-2,270, Revised Statutes Supplement, 1998, is amended to read:

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

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation and shall be accompanied by an initial permit fee of fifty dollars and an initial inspection fee in the same amount as is annually required pursuant to subsection (3) of this section if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying for a permit, the applicant shall pay an additional fee of fifty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (6) through (9) of this section and subsection (1) of section 81-2,281, a permit holder shall pay annual inspection fees on or before August 1 of each year as follows:

(a) A convenience store, licensed beverage establishment, limited food service establishment, and temporary food establishment, fifty dollars plus twenty-five dollars for each separate and distinct food preparation area within the establishment other than the first such area;

(b) A mobile food unit, twenty-five dollars per food unit. If the mobile food unit is supplied by a commissary this fee is in addition to the inspection fee due for the commissary;

(c) A pushcart, ten dollars per pushcart. If the pushcart is supplied by a commissary this fee is in addition to the inspection fee due for the commissary;

(d) One to ten vending machines, ten dollars; eleven to twenty vending machines, twenty dollars; twenty-one to thirty vending machines, thirty dollars; thirty-one to forty vending machines, forty dollars; and over forty vending machines, fifty dollars. This fee, based upon the number of vending machines, Only vending machines which are not limited food vending machines shall be included in the number of vending machines upon which the fee is determined. If the vending machines are supplied by a commissary this fee is in addition to the inspection fee due for the commissary; and

(e) A food processing plant, a salvage operation, and any other food establishment, including a commissary, seventy dollars plus twenty-five dollars for each separate and distinct food preparation area within the establishment other than the first such area.

(4) Whenever an establishment is engaged in more than one food handling activity listed under subsection (3) of this section, the inspection fee charged shall be based upon the primary activity conducted within the establishment as determined by the department.

(5) The department may impose a penalty for an inspection fee which

is more than one month delinquent. The penalty may not exceed fifty percent of the fee for the first month of delinquency and one hundred percent of the fee for the second month of delinquency.

(6) An educational institution, health care facility, nursing home, or governmental organization operating any type of food ~~service~~ establishment other than a mobile food unit or pushcart is exempt from the requirements in subsections (1) through (5) of this section.

(7) A person whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who is validly licensed and paying fees pursuant to such act is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act.

(8) A person holding a permit or license and regulated under the Nebraska Manufacturing Milk Act or the Nebraska Pasteurized Milk Law and an egg handler licensed and regulated under the Nebraska Graded Egg Act are exempt from the Nebraska Pure Food Act.

(9) A religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (5) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

Sec. 11. Section 81-2,272.08, Revised Statutes Supplement, 1998, is amended to read:

81-2,272.08. (1) A food employee shall clean his or her hands and exposed portions of his or her arms with a cleaning compound in a lavatory that is equipped as specified in the Food Code by vigorously rubbing together the surfaces of his or her lathered hands and arms for at least twenty seconds and thoroughly rinsing with clean water. A food employee shall pay particular attention to the areas underneath the fingernails and between the fingers. A food employee shall clean his or her hands and exposed portions of his or her arms:

- (1) (a) After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- (2) (b) After using the toilet room;
- (3) (c) After caring for or handling any animals;
- (4) (d) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- (5) (e) After handling soiled equipment or utensils;
- (6) (f) Immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles;
- (7) (g) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (8) (h) When switching between working with raw foods and working with ready-to-eat foods; and
- (9) (i) After engaging in other activities that contaminate the hands.

(2) After hand washing, a towel shall not be used more than once for hand drying, and hands shall be dried in accordance with the Food Code.

Sec. 12. Section 81-2,272.18, Revised Statutes Supplement, 1998, is amended to read:

81-2,272.18. Raw animal foods cooked in a microwave oven shall be:

- (1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- (2) Covered to retain surface moisture;
- (3) Heated an additional twenty-five degrees Fahrenheit (fourteen degrees Celsius) above the temperature specified in the Nebraska Pure Food Act to compensate for shorter cooking times to a temperature of at least one hundred sixty-five degrees Fahrenheit (seventy-four degrees Celsius) in all parts of the food; and

(4) Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

Sec. 13. (1) Except as specified under subsections (2), (3), and (5) of this section, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit (seventy-four degrees Celsius) for fifteen seconds.

(2) Except as specified under subsection (3) of this section, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit (seventy-four degrees Celsius) and the food is rotated or stirred, covered, and allowed to stand covered two minutes

after reheating.

(3) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant, shall be heated to a temperature of at least one hundred forty degrees Fahrenheit (sixty degrees Celsius) for hot holding.

(4) Reheating for hot holding shall be done rapidly and the minimum temperature specified under subsection (1) of this section shall be reached within two hours.

(5) Remaining unsliced portions of roasts of beef that are cooked as specified in the Nebraska Pure Food Act may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in the act.

Sec. 14. Section 81-2,272.24, Revised Statutes Supplement, 1998, is amended to read:

81-2,272.24. Except for individual meal portions served or repackaged for sale from a bulk container upon a consumer's request:

(1) Refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than twenty-four hours in a food establishment shall be marked with the date of preparation and consumed by a date which is no more than ten calendar days after preparation. The food shall be discarded if not consumed within ten calendar days after the date of preparation; and

(2) A container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant shall be marked ~~to~~ indicate as follows:

(a) A container shall be marked by the food processor with any reasonably accepted term which indicates the date by which the food shall be consumed;

(b) A container of food to be served in a food establishment shall be marked by the food establishment with the date the container is opened. Such food shall be discarded if it is not consumed within ten calendar days after being opened in a food establishment or before the food processor's date by which the food shall be consumed, whichever date occurs first; and

(c) A container of food which has been repackaged for retail sale by a food establishment shall be labeled with a "sell by" or "use by" date. Such date shall not exceed the food processor's date by which the food shall be consumed or ten calendar days from the date of repackaging, whichever occurs first. This subdivision

Subdivision (2) of this section does not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

Sec. 15. Food processing plants shall comply with the federal Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it exists on the effective date of this act.

Sec. 16. Section 81-2,281, Revised Statutes Supplement, 1998, is amended to read:

81-2,281. (1) The department shall enforce the Nebraska Pure Food Act. The department may contract with any political subdivision or state agency it deems qualified to conduct any or all regulatory functions authorized pursuant to the act except those functions relating to the issuance, suspension, or revocation of permits or any order of probation. Holders of permits issued pursuant to the act who are regularly inspected by political subdivisions under contract with the department shall be exempt from the inspection fees prescribed in section 81-2,270 if such holders pay license or inspection fees to the political subdivision performing the inspections.

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

(3) All inspections conducted pursuant to the act shall be performed by persons who are registered environmental health specialists or trainees as defined in section 71-3702.

(4) Duly authorized personnel of the regulatory authority after showing proper identification shall have access at all reasonable times to food establishments, food processing plants, or salvage operations required by the act to obtain a permit to perform authorized regulatory functions. Such functions shall include, but not be limited to, inspections, checking records maintained in the establishment or other locations to obtain information pertaining to food and supplies purchased, received, used, sold, or

distributed, copying and photographing violative conditions, and examining and sampling food. When samples are taken, the inspectors shall pay or offer to pay for samples taken. The authorized personnel shall also have access to the records of salvage operations pertaining to distressed salvageable and salvaged merchandise purchased, received, used, sold, or distributed.

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

Sec. 17. Section 81-2,288.01, Revised Statutes Supplement, 1998, is amended to read:

81-2,288.01. (1) The regulatory authority shall document on an inspection report form:

(a) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, status of the permit, and personnel certificates that may be required;

(b) Specific factual observations of violative conditions, omissions, or other deviations from the requirements of the Nebraska Pure Food Act that require correction by the permit holder; and

(c) Whether the violations listed are critical or repeated.

(2) The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified in the Nebraska Pure Food Act.

(3) All procedures and requirements related to the inspection of food establishments in the act apply to food processing plants and salvage operations.

(4) The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

Sec. 18. The regulatory authority may increase the interval between inspections beyond six months if the food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction.

Sec. 19. Critical violations are designated in the Food Code and sections 81-2,270.01, 81-2,272.02 to 81-2,272.04, 81-2,272.06 to 81-2,272.08, 81-2,272.10, 81-2,272.12 to 81-2,272.18, 81-2,272.21, 81-2,272.23 to 81-2,272.27, and 81-2,272.29.

Sec. 20. Original section 81-2,252, Reissue Revised Statutes of Nebraska, and sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,262, 81-2,270, 81-2,272.08, 81-2,272.18, 81-2,272.24, 81-2,281, and 81-2,288.01, Revised Statutes Supplement, 1998, are repealed.