

## LEGISLATIVE BILL 250

Approved by the Governor April 16, 2003

Introduced by Kremer, 34

AN ACT relating to agriculture; to amend sections 2-3512 and 2-3520, Reissue Revised Statutes of Nebraska, and sections 81-2,239, 81-2,244.01, 81-2,245.01, 81-2,257, 81-2,263, 81-2,270, 81-2,272.10, 81-2,272.15, 81-2,272.19, 81-2,272.20, 81-2,272.21, 81-2,272.23, 81-2,272.24, 81-2,272.25, 81-2,272.27, 81-2,272.28, 81-2,272.29, and 81-2,272.30, Revised Statutes Supplement, 2002; to change and eliminate provisions of the Nebraska Pure Food Act and the Nebraska Graded Egg Act; to define and redefine terms; to change and eliminate food handling and preparation requirements and fees; to harmonize provisions; to repeal the original sections; to outright repeal section 2-3517, Reissue Revised Statutes of Nebraska, and sections 81-2,270.01, 81-2,272.07 to 81-2,272.09, 81-2,272.11 to 81-2,272.13, and 81-2,272.18, Revised Statutes Supplement, 2002; and to declare an emergency.

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

Section 1. Section 2-3512, Reissue Revised Statutes of Nebraska, is amended to read:

2-3512. (1) It shall be unlawful to sell shell eggs below the quality grade of Grade B at retail or to food purveyors except as provided in the packing tolerances for Grade B eggs established under the rules and regulations of the department.

(2) This section does not apply to any person exempt from comparable provisions of the federal Egg Products Inspection Act and 7 C.F.R. 57.100.

Sec. 2. Section 2-3520, Reissue Revised Statutes of Nebraska, is amended to read:

2-3520. There shall be paid to the department an annual license fee of two dollars and fifty cents and an inspection fee based on volume, as follows:

(1) Retailers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases but not more than twenty-five such cases annual average per week, the sum of seven dollars and fifty cents; and

(c) More than twenty-five thirty-dozen cases annual average per week, the sum of ten dollars; and

(2) Egg handlers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases but not more than two hundred such cases annual average per week, the sum of twenty-five dollars;

(c) More than two hundred thirty-dozen cases but not more than five hundred such cases annual average per week, the sum of fifty dollars;

(d) More than five hundred thirty-dozen cases but not more than one thousand such cases annual average per week, the sum of seventy-five dollars;

(e) More than one thousand thirty-dozen cases but not more than fifteen hundred such cases annual average per week, the sum of one hundred dollars;

(f) More than fifteen hundred thirty-dozen cases but not more than two thousand such cases annual average per week, the sum of one hundred twenty-five dollars;

(g) More than two thousand thirty-dozen cases but not more than twenty-five hundred such cases annual average per week, the sum of one hundred fifty dollars; and

(h) More than twenty-five hundred thirty-dozen cases annual average per week, the sum of two hundred dollars.

Application for a license shall be made to the department on forms prescribed and furnished by the department. Licenses shall expire on July 31 of the year following issuance and shall be renewed on or before August 1 of each year. The license fee and the inspection fee shall be paid at the time of the initial application for a license and at the time of each succeeding application for renewal.

The inspection fee shall be based upon the annual average per week volume during the preceding twelve-month period ending June 30. If no annual

average per week volume is available from the preceding twelve-month period, the inspection fee shall be based upon the estimated per week volume for the upcoming year.

This section does not apply to a producer with production from a flock of three thousand hens or less or to an egg handler required to have a license under the Nebraska Graded Egg Act but whose primary food-related business activity is not egg handling.

Sec. 3. Section 81-2,239, Revised Statutes Supplement, 2002, is amended to read:

81-2,239. Sections 81-2,239 to 81-2,292 and sections 19 and 22 to 27 of this act and the provisions of the Food Code, 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 to 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

Sec. 4. Section 81-2,244.01, Revised Statutes Supplement, 2002, is amended to read:

81-2,244.01. Food Code shall mean the ~~1995~~ 2001 Recommendations of the United States Public Health Service, Food and Drug Administration, except sections ~~1-201.10(B)(2), (31), (32), (53), and (68),~~ 1-201.10(B)(1), (3), (36), (37), (57), (58), and (73), 2-102.11, 2-103.11(H) and (K), ~~2-201.11, 2-201.12, 2-201.13, 2-201.14, 2-301.12, 2-301.13, 2-301.14, 2-301.16, 2-402.11~~ 2-302.11, 2-303.11, 2-403.11, 3-201.14 3-201.11(E), ~~3-201.16, 3-201.17(D),~~ 3-202.11(A) and (D), 3-301.11, 3-304.16 3-302.11(B)(4), ~~3-401.11(A)(4)~~ 3-304.13, 3-304.17, 3-401.11(C)(2) and (D)(2), 3-401.15, ~~3-403.11, 3-403.11(C), 3-404.11(A),~~ 3-501, 3-502.11, 3-502.12, 3-603.11, 3-701.11(C), 4-204.111, 4-204.117, 4-301.12(C)(5), ~~and (D), and (E),~~ 4-302.12(B), 4-603.16(C), 4-603.17, 5-203.15 4-802.11(C), 5-103.12, 5-104.11, 5-104.12, 5-203.12, 5-203.15, 5-302.16, ~~6-301.11(B)~~ 6-301.14, 6-302.10, 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, 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. 5. Section 81-2,245.01, Revised Statutes Supplement, 2002, 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~~ soft drinks, carbonated or noncarbonated, that do not contain a primary dairy product or dairy ingredient base or that contain less than fifteen percent natural fruit or vegetable juice; candy; chewing gum; potato or corn chips; pretzels; cheese puffs and curls; crackers; popped popcorn; nuts and edible seeds; and cookies, cakes, pies, and other pastries, 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~~ operation;

(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: (a) For ~~for~~ sale or service at a religious, charitable, or fraternal organization's bake sale or similar function; or (b) for sale directly to the consumer at a farmers market if the consumer is informed by a clearly visible placard at the sale location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

(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; and

(9) A pharmacy as defined in section 71-425 if the pharmacy only sells prepackaged pharmaceutical, medicinal, or health supplement foods that are not potentially hazardous or foods described in subdivision (1) of this section.

Sec. 6. Section 81-2,257, Revised Statutes Supplement, 2002, is amended to read:

81-2,257. 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,~~ 81-2,272.14 to 81-2,272.17, 81-2,272.21, 81-2,272.23 to 81-2,272.27, and 81-2,272.29, subdivision (4) of section 19 of this act, and sections 25, 26, and 27 of this act.

Sec. 7. Section 81-2,263, Revised Statutes Supplement, 2002, is amended to read:

81-2,263. If there is an inconsistency between sections 81-2,239 to 81-2,292 and sections 19 and 22 to 27 of this act and any of the codes adopted by reference, the requirements of the sections shall control.

Sec. 8. Section 81-2,270, Revised Statutes Supplement, 2002, 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. The application 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 the annual inspection fee 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 through June 30, 2003, and sixty dollars on and after July 1, 2003.

(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)~~ (8) through ~~(9)~~ (11) 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.

(4) Through June 30, 2003, the initial permit fee shall be fifty dollars and the annual inspection fee shall be 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. 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.

(5) On and after July 1, 2003:

(a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision (5)(b) of this section. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balance as follows:

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

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

(iii) All fee increases or decreases shall be equally distributed between all categories; and

(b) The maximum fees are:

Food Handling Activity	Initial Permit Fee	First Food Preparation Area Annual Inspection Fee		Additional Food Preparation Area Annual Inspection Fee (per area)		Unit Or
		Annual Inspection Fee	Annual Inspection Fee	Annual Inspection Fee	Annual Inspection Fee	Units Annual Inspection Fee
Convenience Store	\$61.72	\$61.72		\$30.86		N/A
Licensed Beverage Establishment	\$61.72	\$61.72		\$30.86		N/A
Limited Food Service Establishment	\$61.72	\$61.72		\$30.86		N/A
Temporary Food Establishment	\$61.72	\$61.72		\$30.86		N/A
Mobile Food Unit (for each unit)	\$61.72	N/A		N/A		\$30.86
Pushcart (for each unit)	\$61.72	N/A		N/A		\$12.34
Vending Machine Operations:	\$61.72					
One to ten units		N/A		N/A		\$12.34
Eleven to twenty units		N/A		N/A		\$24.68
Twenty-one to thirty units		N/A		N/A		\$37.02
Thirty-one to forty units		N/A		N/A		\$49.36
Over forty units		N/A		N/A		\$61.70
Food Processing Plant	\$61.72	\$86.40		\$30.86		N/A
Salvage Operation	\$61.72	\$86.40		\$30.86		N/A
Commissary	\$61.72	\$86.40		\$30.86		N/A
All Other Food Establishments	\$61.72	\$86.40		\$30.86		N/A

~~(4) Whenever~~ (6) Through June 30, 2003, if an establishment is engaged in more than one food handling activity listed under in subsection (3) (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the establishment as determined by the department. On and after July 1, 2003, if an establishment is engaged in more than one food handling activity listed in subsection (5) of this section, the inspection fee charged shall be based upon the primary activity conducted within the establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

~~(5) (7)~~ 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) (8)~~ An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through (5) (7) of this section.

~~(7) (9)~~ 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) (10)~~ 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) (11)~~ 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) (7) 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. 9. Section 81-2,272.10, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.10. Except when washing fruits and vegetables, food

employees shall not contact exposed, ready-to-eat food with their bare hands unless the food employee washes his or her hands as specified in section ~~81-2,272.08~~ or washes his or her hands and uses suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

Sec. 10. Section 81-2,272.15, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.15. ~~Except as otherwise provided by law, potentially hazardous food shall be at a temperature of forty-five degrees Fahrenheit (seven degrees Celsius) or below when received at a food establishment.~~ Potentially hazardous food that is cooked and received hot shall be at a temperature of one hundred ~~thirty-five~~ forty degrees Fahrenheit (~~fifty-seven~~ sixty degrees Celsius) or above and shall be free of evidence of previous temperature abuse.

Sec. 11. Section 81-2,272.19, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.19. Stored frozen foods shall be maintained frozen. Frozen potentially hazardous food that is slacked to moderate the temperature shall be held under refrigeration that maintains the food temperature at:

- (1) ~~Forty-five~~ forty-five degrees Fahrenheit (seven degrees Celsius) or below ~~or at any~~ if the food is to be consumed within four calendar days;
- (2) Forty-one degrees Fahrenheit (five degrees Celsius) or below if the food is not to be consumed within four calendar days; or
- (3) Any temperature if the food remains frozen.

Sec. 12. Section 81-2,272.20, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.20. Potentially hazardous food shall be thawed:

(1) Under refrigeration that maintains the food temperature at forty-five degrees Fahrenheit (seven degrees Celsius) or below if the food is to be consumed within four calendar days or at forty-one degrees Fahrenheit (five degrees Celsius) or below if the food is not to be consumed within four calendar days;

(2) Completely submerged under running water:

(a) At a water temperature of seventy degrees Fahrenheit (twenty-one degrees Celsius) or below;

(b) With sufficient water velocity to agitate and float off loose particles in an overflow; and

(c) (i) For a period of time that does not allow thawed portions of ready-to-eat food: For a period of time that does not allow the food temperature to rise above forty-five degrees Fahrenheit (seven degrees Celsius), if the food is to be consumed within four calendar days or to rise above forty-one degrees Fahrenheit (five degrees Celsius) if the food is not to be consumed within four calendar days; or

(ii) For for a period of time that does not allow thawed portions of a raw animal food requiring cooking: For a period of time that does not allow the food temperature to be above forty-five degrees Fahrenheit (seven degrees Celsius) for more than four hours, including the time the food is exposed to the running water and the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to forty-five degrees Fahrenheit (seven degrees Celsius), if the food is to be consumed within four calendar days or to be above forty-one degrees Fahrenheit (five degrees Celsius) if the food is not to be consumed within four calendar days;

(3) As part of a cooking process if the food that is frozen is:

(a) Cooked as specified in the Nebraska Pure Food Act; or

(b) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(4) Using any procedure ~~that thaws~~ if a portion of frozen ready-to-eat food that is thawed and prepared for immediate service in response to an individual consumer's order.

Sec. 13. Section 81-2,272.21, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.21. (1) Cooked potentially hazardous food shall be cooled:

(a) ~~From~~ Within two hours from one hundred ~~forty~~ thirty-five degrees Fahrenheit (~~fifty-seven~~ sixty degrees Celsius) to seventy degrees Fahrenheit (twenty-one degrees Celsius); within ~~two hours~~, and

(b) ~~From~~ Within four hours from seventy degrees Fahrenheit (twenty-one degrees Celsius) to be in compliance with subdivision (2) of section 81-2,272.23. ~~forty-five degrees Fahrenheit (seven degrees Celsius) or below within four hours.~~

(2) Potentially hazardous food prepared from ingredients at ambient temperature shall be cooled within four hours to be in compliance with

subdivision (2) of section 81-2,272.23. ~~forty-five degrees Fahrenheit (seven degrees Celsius) or below within four hours if prepared from ingredients at ambient temperature.~~

~~(3) A potentially hazardous food received at a temperature above forty-five degrees Fahrenheit (seven degrees Celsius) during shipment from the supplier shall be cooled to forty-five degrees Fahrenheit (seven degrees Celsius) or below within four hours.~~

Sec. 14. Section 81-2,272.23, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.23. Except during preparation, cooking, or cooling or when time is used as the public health control as specified in section 81-2,272.26, potentially hazardous food shall be maintained:

(1) At one hundred ~~forty~~ thirty-five degrees Fahrenheit (~~sixty~~ fifty-seven degrees Celsius) or above, except that roasts cooked to a temperature and for a time specified in the Nebraska Pure Food Act may be held at a temperature of one hundred thirty degrees Fahrenheit (fifty-four degrees Celsius); or

(2) At forty-five degrees Fahrenheit (seven degrees Celsius) or below, except as specified in section 81-2,272.15. if the food is to be consumed within four calendar days or at forty-one degrees Fahrenheit (five degrees Celsius) or below if the food is not to be consumed within four calendar days.

Sec. 15. Section 81-2,272.24, Revised Statutes Supplement, 2002, 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) For refrigerated, ready-to-eat, potentially hazardous food prepared on the premises of a food establishment and held refrigerated for more than twenty-four hours in such food establishment, the container shall be clearly marked with the date of preparation. The food shall be consumed within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

(2) For refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant which is opened in a food establishment and held refrigerated at such food establishment, the container shall be clearly marked, at the time the original container is opened, to indicate the date the food container was opened. The food shall be consumed within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

This subsection does not apply to fermented sausages which retain an original casing or shelf stable salt-cured products produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" or to shelf stable, dry, fermented sausages when the face has been cut, but the remaining portion is whole and intact.

(3) A refrigerated, ready-to-eat, potentially hazardous food that is frequently rewrapped or for which date marking is impractical may be marked by an alternative method acceptable to the regulatory authority.

(4) A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(5) This section does not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request. 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 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.~~

~~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. 16. Section 81-2,272.25, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.25. (1) A food specified under subsection (1) of section 81-2,272.24 shall be discarded if not consumed within, including the day of preparation:

(a) Seven calendar days if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

(2) A ready-to-eat, potentially hazardous food prepared on premises or by a food processing plant and opened at a food establishment and subsequently frozen at such food establishment shall be discarded if not consumed within twenty-four hours after thawing.

(3) A food specified under subsection (3) of section 81-2,272.24 shall be discarded if not consumed within, including the day of opening the original container:

(a) Seven calendar days if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

(4) A food specified under section 81-2,272.24 shall be discarded if the food is:

(a) Not consumed before the most recent consumption date marked on the container;

(b) In a container or package which is not marked with a preparation date or number of days held in refrigeration before freezing; or

(c) Inappropriately marked with a consumption date or number of days held refrigerated that exceeds the restrictions under section 81-2,272.24.

(5) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of:

(a) Forty-one degrees Fahrenheit (five degrees Celsius) shall be discarded if not sold within seven calendar days; or

(b) Forty-five degrees Fahrenheit (seven degrees Celsius) shall be discarded if not sold within four calendar days. A vending machine which dispenses ready-to-eat, potentially hazardous food shall be equipped with an automatic cutoff control that is activated at a temperature of forty-five degrees Fahrenheit (seven degrees Celsius). Refrigerated, ready-to-eat, potentially hazardous food in a vending machine shall be discarded if not sold or served within ten calendar days. Refrigerated, ready-to-eat, potentially hazardous food in a vending machine in which the automatic cutoff control has been activated shall be discarded if the time constraint specified in subdivision (2) of section 81-2,272.26 has been exceeded.

Sec. 17. Section 81-2,272.27, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.27. A food establishment may use a reduced oxygen packaging method if a variance has been granted by the regulatory authority or under the following conditions:

(1) A food establishment shall only use a reduced oxygen packaging method with potentially hazardous food that does not support the growth of the bacteria Clostridium botulinum because it:

(a) Has an AW (water activity) of ninety-one hundredths or less;

(b) Has a pH of four and six-tenths or less; or

(c) Is a meat product cured and processed in the food establishment that at the time of processing had a concentration of sodium nitrite of one hundred twenty milligrams per liter or higher and has a brine concentration of

at least three and one-half percent.

(2) A food with a high level of competing organisms such as raw meat, raw poultry, or semi-soft cheese containing live active starter culture organisms may be packaged using a reduced oxygen method. Such products shall be labeled with a "sell by" or "use by" date not to exceed fourteen days and shall be discarded if not sold by that date.

(3) Products packaged using a reduced oxygen method shall be maintained at ~~forty-five~~ forty-one degrees Fahrenheit (five ~~seven~~ degrees Celsius) or below.

(4) Except as provided in subdivision (2) of this section, products packaged using a reduced oxygen method shall be discarded if not sold within thirty days from processing if the food is processed at the food establishment. Food processed by a food processing plant that has been repackaged by the food establishment shall be discarded if not sold within fourteen days from packaging by the food establishment or the original manufacturers "sell by" or "use by" date, whichever occurs first.

(5) Except as provided in subdivision (2) of this section, products packaged using a reduced oxygen method shall be labeled with a "sell by" or "use by" date which is not more than thirty days from the date it was processed by the food establishment. Food processed by a food processing plant that has been repackaged by the food establishment shall be labeled with a "sell by" or "use by" date which is not more than fourteen days from the date it was repackaged by the food establishment or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(6) Food establishments which process and package food using a reduced oxygen method shall have written policies for operational procedures that:

(a) Prohibit contacting ready-to-eat foods with bare hands without proper handwashing;

(b) Identify a designated area for reduced oxygen packaging which separates raw foods and ready-to-eat foods to minimize cross contamination;

(c) Restrict access to the processing equipment to only responsible trained personnel familiar with the potential hazards of the operation; and

(d) Delineate cleaning and sanitation procedures for food contact surfaces.

(7) Food establishments which package food using a reduced oxygen method shall have a training program to ensure that the individual responsible for the reduced oxygen packaging operation understands the requirements of the Nebraska Pure Food Act and the procedures, equipment, and facilities required for safe operation.

(8) A food establishment shall not package fish using a reduced oxygen method unless the fish remains frozen before, during, and after packaging or a variance has been granted by the regulatory authority.

Sec. 18. Section 81-2,272.28, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.28. In a food establishment, a Any temporary food establishment, mobile food unit, or food establishment with a temporary interruption of its water supply, which does not meet the requirements of subdivisions (1) through (4) of section 19 of this act, shall use:

(1) Containers of commercially bottled drinking water;

(2) One or more closed portable water containers;

(3) An enclosed vehicular water tank;

(4) An on-premises water storage tank; or

(5) Piping, tubing, or hoses connected to an adjacent approved water source. Any hose used for conveying drinking water from a water tank shall have a smooth interior surface, be of food grade material, and, if not permanently attached, be clearly and durably identified as to its use.

Sec. 19. Except in response to a temporary interruption of a water supply in the food establishment, any food establishment which is not a mobile food unit or temporary food establishment shall:

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

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

(3) Have a permanent plumbing system; and

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

Sec. 20. Section 81-2,272.29, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.29. A carbonating device or a beverage dispenser with an internal carbonator intended to be connected to a water supply system under pressure in a food establishment shall have an air gap as specified in the Nebraska Pure Food Act or a backflow prevention device as specified in the act

a dual check valve. Such valve shall be installed so that it is upstream from a carbonating device and downstream from any copper in the water supply line.

Sec. 21. Section 81-2,272.30, Revised Statutes Supplement, 2002, is amended to read:

81-2,272.30. ~~(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-three degrees Fahrenheit (fifty-seven 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. 22. (1) Except as provided under subsection (2) of this section, a food employee shall keep his or her fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Unless wearing intact gloves in good condition, a food employee shall not wear fingernail polish or artificial fingernails when working with exposed food.

(2) This section does not apply to a food employee such as a counter staff person who only serves beverages and wrapped or packaged foods, a host staff person, or a wait staff person if he or she presents a minimal risk of contaminating exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

Sec. 23. While preparing food, a food employee shall not wear jewelry on his or her arms and hands except for plain rings such as wedding bands and medical information bracelets.

Sec. 24. Except for raw dough being prepared prior to being cooked, linens and cloth napkins shall not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled. Linens and cloth napkins which are used in contact with food and cloth napkins used by consumers shall be laundered between each use.

Sec. 25. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under section 81-2,272.04 shall be discarded.

Sec. 26. (1) A vending machine dispensing potentially hazardous food shall have an automatic control that prevents the vending machine from dispensing food:

(a) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under the Nebraska Pure Food Act; and

(b) If a condition specified under subsection (1)(a) of this section occurs, until the vending machine is serviced and restocked with food that has been maintained at temperatures specified under the act.

(2) When the automatic shutoff within a vending machine dispensing potentially hazardous food is activated:

(a) In a refrigerated vending machine, the ambient temperature shall not exceed forty-one degrees Fahrenheit (five degrees Celsius) or forty-five degrees Fahrenheit (seven degrees Celsius) as specified under the act for more than thirty minutes immediately after the vending machine is filled, serviced, or restocked; or

(b) In a hot holding vending machine, the ambient temperature shall not be below one hundred thirty-five degrees Fahrenheit (fifty-seven degrees Celsius) for more than one hundred twenty minutes immediately after the vending machine is filled, serviced, or restocked.

Sec. 27. Refrigerated, potentially hazardous food which is not to be consumed within twenty-four hours shall be at a temperature of forty-one degrees Fahrenheit (five degrees Celsius) or below when received.

Refrigerated, potentially hazardous food which is to be consumed within twenty-four hours shall be at a temperature between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius) when received.

Sec. 28. Original sections 2-3512 and 2-3520, Reissue Revised Statutes of Nebraska, and sections 81-2,239, 81-2,244.01, 81-2,245.01, 81-2,257, 81-2,263, 81-2,270, 81-2,272.10, 81-2,272.15, 81-2,272.19, 81-2,272.20, 81-2,272.21, 81-2,272.23, 81-2,272.24, 81-2,272.25, 81-2,272.27, 81-2,272.28, 81-2,272.29, and 81-2,272.30, Revised Statutes Supplement, 2002, are repealed.

Sec. 29. The following sections are outright repealed: Section 2-3517, Reissue Revised Statutes of Nebraska, and sections 81-2,270.01, 81-2,272.07 to 81-2,272.09, 81-2,272.11 to 81-2,272.13, and 81-2,272.18, Revised Statutes Supplement, 2002.

Sec. 30. Since an emergency exists, this act takes effect when passed and approved according to law.