

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 835**

Introduced by Halloran, 33; Brandt, 32; Brewer, 43; Gragert, 40; Hansen,  
B., 16; Moser, 22; Murman, 38; Slama, 1.

Read first time January 08, 2020

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Nebraska Pure Food Act; to amend  
2 section 81-2,288.01, Reissue Revised Statutes of Nebraska, and  
3 sections 81-2,244.01, 81-2,257, and 81-2,270, Revised Statutes  
4 Cumulative Supplement, 2018; to change and eliminate definitions; to  
5 provide a priority item designation; to eliminate obsolete  
6 references; to change regulatory authority inspection reporting  
7 requirements; to repeal the original sections; and to outright  
8 repeal section 81-2,243.01, Revised Statutes Cumulative Supplement,  
9 2018.

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

1 Section 1. Section 81-2,244.01, Revised Statutes Cumulative  
2 Supplement, 2018, is amended to read:

3 81-2,244.01 Food Code shall mean the 2017 ~~2013~~ Recommendations of  
4 the United States Public Health Service, Food and Drug Administration,  
5 except the definitions of adulterated food and food establishment, person  
6 in charge, regulatory authority, and sections 2-102.12, 2-102.20(B),  
7 2-103.11(I) and (M) ~~2-103.11(L)~~, ~~2-501.11~~, 3-301.11(B), (C), (D), and  
8 (E), 3-501.16, 4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C),  
9 5-104.11, ~~6-301.14~~, 8-101, 8-102, 8-201.11, 8-201.12, 8-202.10 ~~8-202~~  
10 through 8-304.20 ~~8-304~~, 8-401.10(B)(2), 8-402.20 through 8-403.20,  
11 8-403.50 through 8-404.12, and 8-405.20(B). The term Food Code does not  
12 include the annexes of such federal recommendations.

13 Sec. 2. Section 81-2,257, Revised Statutes Cumulative Supplement,  
14 2018, is amended to read:

15 81-2,257 Priority items are designated in the Food Code and sections  
16 81-2,272.01, 81-2,272.10, and 81-2,272.24. Priority foundation items are  
17 designated in the Food Code.

18 Sec. 3. Section 81-2,270, Revised Statutes Cumulative Supplement,  
19 2018, is amended to read:

20 81-2,270 (1) No person shall operate: (a) A food establishment; (b)  
21 a food processing plant; or (c) a salvage operation, without a valid  
22 permit which sets forth the types of operation occurring within the  
23 establishment.

24 (2) Application for a permit shall be made to the director on forms  
25 prescribed and furnished by the department. Such application shall  
26 include the applicant's full name and mailing address, the names and  
27 addresses of any partners, members, or corporate officers, the name and  
28 address of the person authorized by the applicant to receive the notices  
29 and orders of the department as provided in the Nebraska Pure Food Act,  
30 whether the applicant is an individual, partnership, limited liability  
31 company, corporation, or other legal entity, the location and type of

1 proposed establishment or operation, and the signature of the applicant.  
2 Application for a permit shall be made prior to the operation of a food  
3 establishment, food processing plant, or salvage operation. The  
4 application shall be accompanied by an initial permit fee and an initial  
5 inspection fee in the same amount as the annual inspection fee if  
6 inspections are required to be done by the department. If the food  
7 establishment, food processing plant, or salvage operation has been in  
8 operation prior to applying for a permit or notifying the regulatory  
9 authority, the applicant shall pay an additional fee of sixty dollars.

10 (3) Payment of the initial permit fee, the initial inspection fee,  
11 and the fee for failing to apply for a permit prior to operation shall  
12 not preclude payment of the annual inspection fees due on August 1 of  
13 each year. Except as provided in subsections (7) through (10) of this  
14 section and subsection (2) of section 81-2,281, a permitholder shall pay  
15 annual inspection fees on or before August 1 of each year regardless of  
16 when the initial permit was obtained.

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

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

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

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

1	(b) The maximum fees are:				
2					No Food
3				Additional	Preparation
4		First	Food	Area,	
5		Food	Preparation	Unit	
6		Preparation	Area	Or	
7		Area	Annual	Units	
8	Food	Initial	Annual	Inspection	Annual
9	Handling	Permit	Inspection	Fee	Inspection
10	Activity	Fee	Fee	(per area)	Fee
11	Convenience Store	\$86.19	\$86.19	\$43.09	N/A
12	Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A
13	Licensed Beverage				
14	Establishment	\$86.19	\$86.19	\$43.09	N/A
15	Limited Food Service				
16	Establishment	\$86.19	\$86.19	\$43.09	N/A
17	Temporary Food				
18	Establishment	\$86.19	\$86.19	\$43.09	N/A
19	Food Delivery Service	\$86.19	N/A	N/A	\$17.23
20	Mobile Food Unit				
21	(for each unit)	\$86.19	N/A	N/A	\$43.09
22	Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
23	Vending Machine				
24	Operations:	\$86.19			
25	One to ten units		N/A	N/A	\$17.23
26	Eleven to twenty units		N/A	N/A	\$34.46
27	Twenty-one to thirty				
28	units		N/A	N/A	\$51.69
29	Thirty-one to forty				
30	units		N/A	N/A	\$68.92

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

7 (5) If a food establishment is engaged in more than one food  
8 handling activity listed in subsection (4) of this section, the  
9 inspection fee charged shall be based upon the primary activity conducted  
10 within the food establishment as determined by the department and any  
11 fees assessed for each additional food preparation area within the  
12 primary establishment as determined by the department.

13 (6) If a person fails to pay the inspection fee for more than one  
14 month after the fee is due, such person shall pay a late fee equal to  
15 fifty percent of the total fee for the first month that the fee is late  
16 and one hundred percent for the second month that the fee is late. The  
17 purpose of the late fee is to cover the administrative costs associated  
18 with collecting fees. All money collected as a late fee shall be remitted  
19 to the State Treasurer for credit to the Pure Food Cash Fund.

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

24 (8) A food establishment which produces eggs and only stores,  
25 packages, sells, delivers, or otherwise provides for human consumption  
26 the eggs it produces, or only stores, packages, sells, delivers, or  
27 otherwise provides for human consumption eggs produced from no more than  
28 four producers at the same time, is exempt from the requirements of  
29 subsections (1) through (6) of this section. ~~Any food establishment with  
30 a valid egg handler license and for which all fees have been paid prior  
31 to August 24, 2017, is exempt from the permit and inspection fee~~

1 ~~requirements of the Nebraska Pure Food Act until August 1, 2018.~~

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

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

12 Sec. 4. Section 81-2,288.01, Reissue Revised Statutes of Nebraska,  
13 is amended to read:

14 81-2,288.01 (1) The regulatory authority shall document on an  
15 inspection report form:

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

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

23 (c) Whether the violations listed are priority items, priority  
24 foundation items, critical or repeated.

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

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

31 (4) The completed inspection report form is a public document that

1 shall be made available for public disclosure to any person who requests  
2 it according to law.

3       Sec. 5. Original section 81-2,288.01, Reissue Revised Statutes of  
4 Nebraska, and sections 81-2,244.01, 81-2,257, and 81-2,270, Revised  
5 Statutes Cumulative Supplement, 2018, are repealed.

6       Sec. 6. The following section is outright repealed: Section  
7 81-2,243.01, Revised Statutes Cumulative Supplement, 2018.