

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 245

FINAL READING

Introduced by DeKay, 40.

Read first time January 14, 2025

Committee: Agriculture

1 A BILL FOR AN ACT relating to public health and welfare; to amend
2 sections 81-2,239, 81-2,244.01, 81-2,245.01, 81-2,254, 81-2,257,
3 81-2,259, 81-2,268, 81-2,270, 81-2,271, 81-2,274, 81-2,277, 89-186,
4 89-187, 89-187.02, and 89-187.05, Reissue Revised Statutes of
5 Nebraska; to change and eliminate provisions of the Nebraska Pure
6 Food Act; to change provisions of the Weights and Measures Act; to
7 harmonize provisions; to repeal the original sections; to outright
8 repeal sections 81-2,272.01, 81-2,272.10, 81-2,272.24, and
9 81-2,272.32, Reissue Revised Statutes of Nebraska; and to declare an
10 emergency.
11 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 81-2,239, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-2,239 Sections 81-2,239 to 81-2,292 and the provisions of the
4 Food Code and the Current Good Manufacturing Practice ~~In Manufacturing,~~
5 ~~Packing, or Holding Human Food~~ adopted by reference in sections
6 81-2,257.01 and 81-2,259, shall be known and may be cited as the Nebraska
7 Pure Food Act.

8 **Sec. 2.** Section 81-2,244.01, Reissue Revised Statutes of Nebraska,
9 is amended to read:

10 81-2,244.01 Food Code shall mean the 2022 ~~2017~~ Recommendations of
11 the United States Public Health Service, Food and Drug Administration,
12 except the definitions of adulterated food and food establishment, person
13 in charge, regulatory authority, and sections ~~2-102.12, 2-102.20(B),~~
14 ~~2-103.11(I) and (M), 3-301.11(B), (C), (D), and (E), 3-501.16,~~
15 ~~4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C),~~ 8-101, 8-102,
16 8-201.11, 8-201.12, 8-202.10 through 8-304.20, 8-401.10(B)(2), 8-402.20
17 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B). The term
18 Food Code does not include the annexes of such federal recommendations.

19 **Sec. 3.** Section 81-2,245.01, Reissue Revised Statutes of Nebraska,
20 is amended to read:

21 81-2,245.01 Food establishment shall mean an operation that stores,
22 prepares, packages, serves, sells, vends, ~~delivers,~~ or otherwise provides
23 food for human consumption. The term does not include:

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

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

1 (3) A food processing plant;

2 (4) A salvage operation;

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

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

11 (7) A private home where a producer of food that meets the
12 requirements of section 81-2,280 is prepared for sale directly to the
13 consumer including, but not limited to, at a farmers market, fair,
14 festival, craft show, or other public event or for pick up at or delivery
15 from such private home;

16 (8) A private home or other area where food is prepared for
17 distribution at a fundraising event for a charitable purpose if the
18 consumer is informed by a clearly visible placard at the serving location
19 that the food was prepared in a kitchen that is not subject to regulation
20 and inspection by the regulatory authority. This subdivision does not
21 apply to a caterer or other establishment providing food for the event if
22 the caterer or establishment receives compensation for providing the
23 food;

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

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

30 (11) A pharmacy as defined in section 71-425 or a similar facility
31 if the pharmacy or the similar facility only sells ~~prepackaged~~

1 pharmaceutical, medicinal, or health supplement foods that are not time/
2 temperature control for safety or foods described in subdivision (1) of
3 this section; and

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

7 **Sec. 4.** Section 81-2,254, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 81-2,254 Single event food vendor shall mean a temporary food
10 establishment that operates at no more than one event per calendar year
11 for a period of no more than four ~~two~~ days.

12 **Sec. 5.** Section 81-2,257, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 81-2,257 Priority items are designated in the Food Code ~~and sections~~
15 ~~81-2,272.01, 81-2,272.10, and 81-2,272.24.~~ Priority foundation items are
16 designated in the Food Code.

17 **Sec. 6.** Section 81-2,259, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 81-2,259 The Legislature hereby adopts by reference the federal
20 Current Good Manufacturing Practice In Manufacturing, Packing, or Holding
21 Human Food found in 21 C.F.R. 117.4 and 117.10 to 117.110 as such
22 regulations ~~part 110 as it~~ existed on April 1, 2024 ~~2015~~.

23 **Sec. 7.** Section 81-2,268, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 81-2,268 (1) Food establishment, food processing plant, or salvage
26 operation facilities and equipment in use or new facilities and equipment
27 for which contractual obligations are incurred before September 13, 1997,
28 and which do not meet fully all the design and fabrication requirements
29 of the Nebraska Pure Food Act shall be acceptable if:

30 (a) They meet food temperature requirements;

31 (b) They ~~they~~ are in good repair and capable of being maintained in

1 a sanitary condition; and

2 (c) ~~The~~ the food-contact surfaces are of safe materials.

3 (2) A food establishment, food processing plant, or salvage
4 operation which has a change of ownership or extensive remodeling after
5 September 13, 1997, shall comply with all applicable facility and
6 equipment requirements of the act.

7 **Sec. 8.** Section 81-2,270, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 81-2,270 (1) No person shall operate without a valid permit:

10 (a) A food establishment conducting those food handling activities
11 authorized by such permit;

12 (b) A food processing plant; or

13 (c) A salvage operation.

14 (2) Application for a permit shall be made to the director on forms
15 prescribed and furnished by the department. Such application shall
16 include (a) the applicant's full name and mailing address and the names
17 and addresses of any partners, members, or corporate officers, (b)
18 whether the applicant is an individual, partnership, limited liability
19 company, corporation, or other legal entity, (c) the location and type of
20 proposed establishment or operation, and (d) the signature of the
21 applicant. Application for a permit shall be made prior to the operation
22 of a food establishment, food processing plant, or salvage operation. The
23 application shall be accompanied by an initial permit fee and an initial
24 ~~inspection~~ fee in the same amount as the annual ~~inspection~~ fee if
25 inspections are required to be done by the department. If any food
26 establishment, food processing plant, or salvage operation is operating
27 without a valid permit, such establishment, plant, or operation shall pay
28 an additional fee of sixty dollars prior to the issuance of a valid
29 permit.

30 (3) Payment of the initial permit fee, the initial annual ~~inspection~~
31 fee, and the fee for operating without a valid permit shall not preclude

1 payment of the annual ~~inspection~~ fees due on August 1 of each year.
2 Except as provided in subsections (7) through (10) of this section and
3 subsection (2) of section 81-2,281, a permitholder shall pay annual
4 ~~inspection~~ fees on or before August 1 of each year regardless of when the
5 initial permit was obtained.

6 (4)(a) The director shall set the initial permit fee and the annual
7 ~~inspection~~ fees on or before July 1 of each fiscal year to meet the
8 criteria in this subsection. The director may raise or lower the fees
9 each year, but the fees shall not exceed the maximum fees listed in
10 subdivision (4)(b) of this section. The director shall determine the fees
11 based on the estimated annual revenue and fiscal year-end cash fund
12 balance as follows:

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

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

19 (iii) All fee increases or decreases shall be equally distributed
20 between all categories to the nearest dollar.

21 (b) The maximum fees are:

| | | | | |
|----|-------------|---------|---------------------------|------------------------------|
| 22 | | | Secondary | |
| 23 | | | or | |
| 24 | | | Additional | |
| 25 | | | Food | Secondary |
| 26 | | | Preparation | Unit |
| 27 | | | Area | Or |
| 28 | | Base | Annual | Units |
| 29 | | Initial | Annual | Inspection Annual |
| 30 | | Permit | Inspection Fee | Inspection |
| 31 | Permit Type | Fee | Fee | (per area) Fee |

| | | | | | |
|----|-------------------------------------|--------------------|---------------------|--------------------|--------------------|
| 1 | Limited Retail | | | | |
| 2 | <u>Food Establishment</u> | <u>\$122.00</u> | <u>\$122.00</u> | <u>\$61.00</u> | <u>N/A</u> |
| 3 | Food Establishment | \$86.19 | \$86.19 | \$43.09 | N/A |
| 4 | <u>Itinerant Food Vendor</u> | <u>\$122.00</u> | <u>\$122.00</u> | <u>\$61.00</u> | <u>N/A</u> |
| 5 | Itinerant Food Vendor | \$86.19 | \$86.19 | \$43.09 | N/A |
| 6 | Limited Food Service | | | | |
| 7 | <u>Establishment</u> | <u>\$122.00</u> | <u>\$122.00</u> | <u>\$61.00</u> | <u>N/A</u> |
| 8 | Establishment | \$86.19 | \$86.19 | \$43.09 | N/A |
| 9 | Mobile Food Unit | | | | |
| 10 | <u>(for each unit)</u> | <u>\$122.00</u> | <u>N/A</u> | <u>N/A</u> | <u>\$61.00</u> |
| 11 | (for each unit) | \$86.19 | N/A | N/A | \$43.09 |
| 12 | <u>Pushcart (for each unit)</u> | <u>\$122.00</u> | <u>N/A</u> | <u>N/A</u> | <u>\$24.00</u> |
| 13 | Pushcart (for each unit) | \$86.19 | N/A | N/A | \$17.23 |
| 14 | Vending Machine | | | | |
| 15 | <u>Operations:</u> | <u>\$122.00</u> | | | |
| 16 | Operations: | \$86.19 | | | |
| 17 | <u>One to ten units</u> | | <u>N/A</u> | <u>N/A</u> | <u>\$24.00</u> |
| 18 | One to ten units | | N/A | N/A | \$17.23 |
| 19 | <u>Eleven to twenty units</u> | | <u>N/A</u> | <u>N/A</u> | <u>\$49.00</u> |
| 20 | Eleven to twenty units | | N/A | N/A | \$34.46 |
| 21 | Twenty-one to thirty | | | | |
| 22 | <u>units</u> | | <u>N/A</u> | <u>N/A</u> | <u>\$73.00</u> |
| 23 | units | | N/A | N/A | \$51.69 |
| 24 | Thirty-one to forty | | | | |
| 25 | <u>units</u> | | <u>N/A</u> | <u>N/A</u> | <u>\$98.00</u> |
| 26 | units | | N/A | N/A | \$68.92 |
| 27 | <u>Over forty units</u> | | <u>N/A</u> | <u>N/A</u> | <u>\$122.00</u> |
| 28 | Over forty units | | N/A | N/A | \$86.15 |
| 29 | <u>Food Processing Plant</u> | <u>\$122.00</u> | <u>\$171.00</u> | <u>\$61.00</u> | <u>N/A</u> |
| 30 | Food Processing Plant | \$86.19 | \$120.64 | \$43.09 | N/A |

| | | | | | |
|---|------------------------------|--------------------|---------------------|--------------------|----------------|
| 1 | <u>Salvage Operation</u> | <u>\$122.00</u> | <u>\$171.00</u> | <u>\$61.00</u> | <u>N/A</u> |
| 2 | Salvage Operation | \$86.19 | \$120.64 | \$43.09 | N/A |
| 3 | <u>Commissary</u> | <u>\$122.00</u> | <u>\$171.00</u> | <u>\$61.00</u> | <u>N/A</u> |
| 4 | Commissary | \$86.19 | \$120.64 | \$43.09 | N/A |
| 5 | All Other Food | | | | |
| 6 | <u>Establishment</u> | <u>\$122.00</u> | <u>\$171.00</u> | <u>\$61.00</u> | <u>N/A.</u> |
| 7 | Establishment | \$86.19 | \$120.64 | \$43.09 | N/A |

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

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

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

- 1 (i) Any educational institution;
- 2 (ii) Any health care facility;
- 3 (iii) Any nursing home; or
- 4 (iv) Any governmental organization.

5 (b) If any entity described in subdivision (a) of this subsection
6 utilizes an outside food service provider, such outside food service
7 provider shall pay any applicable fee regardless of whether the entity
8 described in subdivision (a) of this subsection is listed as the owner on
9 the permit.

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

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

19 (10) A single event food vendor or a religious, charitable, or
20 fraternal organization operating any type of temporary food
21 establishment, mobile food unit, or pushcart is exempt from the
22 requirements of subsections (1) through (6) of this section. Any such
23 organization operating any nontemporary food establishment prior to July
24 1, 1985, is exempt from the requirements of subsection (2) of this
25 section.

26 (11) A permitholder may sell food prepared by the permitholder at
27 the location of another permitholder without obtaining a separate permit
28 at such location so long as the permitholder preparing the food is not a
29 food processing plant. Both the permitholder preparing the food and the
30 permitholder selling the food are responsible for compliance with the
31 Nebraska Pure Food Act.

1 **Sec. 9.** Section 81-2,271, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-2,271 (1) The permit required by section 81-2,270 shall be posted
4 in a conspicuous manner at the food establishment, each location where
5 food handling activity included under a permit is occurring, the food
6 processing plant, or the salvage operation. For a food establishment that
7 does not have a permanent location, the permit location shall be a
8 permanent address where the permitholder may be contacted.

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

16 (3) A permitholder shall provide information regarding the current
17 location of any food handling activity included under the permitholder's
18 permit to the regulatory authority upon request.

19 (4) Every mobile food unit or pushcart operator shall have a copy of
20 the permit to operate available at the mobile food unit or pushcart when
21 in operation.

22 **Sec. 10.** Section 81-2,274, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 81-2,274 (1) Any notice or order provided for in the Nebraska Pure
25 Food Act shall be personally served on the permitholder at ~~or on the~~
26 ~~person authorized by the permitholder to receive notices and orders of~~
27 ~~the department or shall be sent by certified mail, return receipt~~
28 ~~requested, to the last-known address of the permitholder or at the~~
29 permitted location ~~the person authorized to receive such notices and~~
30 ~~orders.~~ A copy of the notice and the order shall be filed in the records
31 of the department.

1 (2) A notice to comply provided for in section 81-2,273 shall set
2 forth the acts or omissions with which the permitholder is charged.

3 (3) A notice of the permitholder's right to a hearing provided for
4 in the act shall set forth the time and place of the hearing except as
5 provided in subsection (4) of section 81-2,273. A notice of the
6 permitholder's right to such hearing shall include notice that a
7 permitholder's right to a hearing may be waived pursuant to subsection
8 (5) of this section. A notice of the permitholder's right to a hearing to
9 show cause why the permit should not be revoked shall include notice to
10 the permitholder that the permit may be revoked or suspended, that the
11 permitholder may be subject to an order of probation, or that the permit
12 may be suspended and the permitholder subject to an order of probation,
13 if the director determines such action is more appropriate. A notice of
14 the permitholder's right to a hearing to show cause why the permit should
15 not be suspended shall include notice to the permitholder that the permit
16 may be suspended or that the permitholder may also be subject to an order
17 of probation if the director determines such action is more appropriate.

18 (4) The hearings provided for in the act shall be conducted by the
19 director at the time and place he or she designates. The director shall
20 make a final finding based upon the complete hearing record and issue an
21 order. If the director has suspended a permit pursuant to subsection (4)
22 of section 81-2,273, the director shall sustain, modify, or rescind the
23 order. All hearings shall be in accordance with the Administrative
24 Procedure Act.

25 (5) A permitholder shall be deemed to waive the right to a hearing
26 if such permitholder does not come to the hearing at the time and place
27 set forth in the notice described in subsection (3) of this section
28 without requesting the director at least two days before the designated
29 time to change the time and place for the hearing, except that before an
30 order of the director becomes final, the director may designate a
31 different time and place for the hearing if the permitholder shows the

1 director that the permitholder had a justifiable reason for not coming to
2 the hearing and not timely requesting a change in the time and place for
3 such hearing. If the permitholder waives the right to a hearing, the
4 director shall make a final finding based upon the available information
5 and issue an order. If the director has suspended a permit pursuant to
6 subsection (4) of section 81-2,273, the director shall sustain, modify,
7 or rescind the order.

8 (6) Any person aggrieved by the finding of the director shall have
9 ten days from the entry of the director's order to request a new hearing
10 if such person can show that a mistake of fact has been made which
11 affected the director's determination. Any order of the director shall
12 become final upon the expiration of ten days after its entry if no
13 request for a new hearing is made.

14 **Sec. 11.** Section 81-2,277, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 81-2,277 Food processing plants and salvage operations shall comply
17 with the federal Current Good Manufacturing Practice ~~In Manufacturing,~~
18 ~~Packing, or Holding Human Food~~ adopted in section 81-2,259.

19 **Sec. 12.** Section 89-186, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 89-186 (1) The Legislature hereby adopts by reference the following:

22 (a) The standards of the National Conference on Weights and Measures
23 published in National Institute of Standards and Technology Handbook 44
24 entitled Specifications, Tolerances, and Other Technical Requirements for
25 Weighing and Measuring Devices as it existed on January 1, 2025 ~~2019~~,
26 except Section 3.31. Vehicle - Tank meters. UR.2.2. Ticket Printer,
27 Customer Ticket, Section 2.20. Scales, N.3. Minimum Test Weights and Test
28 Loads; and Table 4, are not adopted. In addition to the language found in
29 Section 3.30. Liquid-Measuring Devices, S.1.6.4., S.1.6.5., UR.3.2., and
30 UR.3.3. of such handbook, any computing device in which a product or
31 grade is offered for sale at more than one unit price may also compute at

1 the lowest possible unit price for such transaction. All prices shall
2 still be displayed or posted on the face of the dispenser. Such handbook
3 shall govern all commercial and law enforcement weighing and measuring
4 devices in the state;

5 (b) The Uniform Regulation for the Method of Sale of Commodities of
6 the National Conference on Weights and Measures published in National
7 Institute of Standards and Technology Handbook 130 entitled Uniform Laws
8 and Regulations in the Areas of Legal Metrology and Engine Fuel Quality
9 as it existed on January 1, 2025 ~~2019~~. Such handbook shall be used to
10 determine the proper units of measurement to be used in the keeping for
11 sale or sale of commodities;

12 (c) The Uniform Packaging and Labeling Regulation of the National
13 Conference on Weights and Measures published in National Institute of
14 Standards and Technology Handbook 130 entitled Uniform Laws and
15 Regulations in the Areas of Legal Metrology and Engine Fuel Quality as it
16 existed on January 1, 2025 ~~2019~~. Such handbook shall govern the packaging
17 and labeling by weight, measure, or count of commodities kept for sale or
18 sold in this state; and

19 (d) The procedures designated in National Institute of Standards and
20 Technology Handbook 133 entitled Checking the Net Contents of Packaged
21 Goods as it existed on January 1, 2025 ~~2019~~.

22 (2) Copies of the handbooks adopted by reference in this section
23 shall be filed with the Secretary of State, Clerk of the Legislature, and
24 Department of Agriculture. Copies filed with the Clerk of the Legislature
25 shall be filed electronically.

26 (3) Whenever there exists an inconsistency between the provisions of
27 the Weights and Measures Act other than this section and any of the
28 handbooks adopted by reference, the requirements of such provisions of
29 the act shall control.

30 **Sec. 13.** Section 89-187, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 89-187 For purposes of administering and enforcing the Weights and
2 Measures Act, the director is authorized to:

3 (1) Maintain traceability of the primary standards to the National
4 Institute of Standards and Technology;

5 (2) Enforce the provisions of the Weights and Measures Act;

6 (3) Adopt and promulgate reasonable rules and regulations for the
7 enforcement of the act including the following:

8 (a) Requirements for the voluntary registration of sales and repair
9 personnel for commercial weighing and measuring devices including:

10 (i) Registration fees for such personnel which shall not exceed the
11 actual cost to defray the operation of the voluntary registration
12 program;

13 (ii)(A) Qualifications for registration, which may include
14 examinations, (B) performance standards to maintain registration, (C)
15 types of equipment necessary for the work to be performed by the
16 personnel, (D) responsibilities and privileges of registration, and (E)
17 revocation and suspension of such registration and probation of the
18 registrant; and

19 (iii) Minimum standards for the installation and maintenance of
20 commercial weighing and measuring devices;

21 (b) Additional standards not specifically provided for in the act;

22 (c) Standards for (i) attachments or parts entering into the
23 construction or installation of commercial weighing and measuring devices
24 which shall tend to secure correct results in the use of such devices and

25 (ii) the setting of laboratory fees which shall not exceed the actual
26 cost for testing, correcting, calibrating, and verifying secondary
27 standards and the establishment of standard laboratory operating
28 procedures;

29 (d) Requirements for the suitable use of commercial weighing and
30 measuring devices; and

31 (e) Guidelines for the appropriate method of weighing or measuring

1 whenever the director determines that such guidelines would further the
2 purpose of the act;

3 (4) Establish standards of weight, measure, or count, reasonable
4 standards of fill, and standards for the presentation of cost-per-unit
5 information for any commodity;

6 (5) Upon an application filed with the department by the applicant,
7 grant exemptions, including specific exemptions for single-use commercial
8 weighing and measuring devices, from the provisions of the act or the
9 rules and regulations when the applicant on such application provides
10 assurances, acceptable to the director, that such exemption is
11 appropriate to the maintenance of good commercial practices within the
12 state. Notwithstanding any other provision of the act, meters used by a
13 public utility system for the measurement of electricity, natural or
14 manufactured gas, water, or the usage of communication services, the
15 appliances or accessories associated with such meters, and all weighing
16 and measuring devices inspected or tested by the Public Service
17 Commission shall be exempt from the registration, inspection, and testing
18 requirements of the act, except that this exemption shall not apply to
19 meters which determine the weight or measurement of motor fuel;

20 (6) Conduct investigations to insure compliance with the act;

21 (7) Delegate to appropriate personnel any of these responsibilities
22 for the proper administration of the director's office;

23 (8) In his or her discretion, inspect and test weighing and
24 measuring devices kept for sale or sold;

25 (9) Inspect and test annually and from time to time, as in the
26 director's judgment seems necessary, to ascertain whether commercial
27 weighing and measuring devices are correct;

28 (10) Register and test as far as practical all commercial weighing
29 and measuring devices used in checking the receipt or disbursement of
30 supplies in every institution for which funds are appropriated by the
31 Legislature;

1 (11) Test annually and at the request of the Nebraska State Patrol
2 all weighing and measuring devices used for the enforcement of sections
3 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such
4 weighing and measuring devices shall pay the department for the actual
5 cost of such tests. The department shall bill test fees to such agency
6 upon completion of the test;

7 (12) Approve for use and may mark commercial weighing and measuring
8 devices which the director finds to be correct and shall reject and mark
9 or tag as rejected such commercial weighing and measuring devices which
10 the director finds to be not correct or not registered and inspected in
11 accordance with the Weights and Measures Act. Commercial weighing and
12 measuring devices that have been rejected may be seized if not made
13 correct within the time specified or if used or disposed of in a manner
14 not specifically authorized. The director shall condemn and may seize
15 commercial weighing and measuring devices which are found not to be
16 correct and not capable of being made correct;

17 (13) Weigh, measure, or inspect commodities kept for sale, sold, or
18 in the process of delivery to determine whether they contain the amounts
19 represented and whether they are kept for sale or sold in accordance with
20 the act or the rules and regulations. When commodities are found not to
21 contain the amounts represented or are found to be kept for sale, sold,
22 or in the process of delivery in violation of the act, the director may
23 issue stop-sale, hold, or removal orders and may mark or tag such
24 commodities as being in violation of the act. In carrying out the
25 provisions of this section, the director shall employ recognized
26 procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

27 (14) Provide for the weights and measures training of inspection
28 personnel and adopt and promulgate by rule and regulation minimum
29 training requirements which shall be met by all inspection personnel;

30 (15) Adopt and promulgate rules and regulations prescribing the
31 appropriate term or unit of measurement to be used whenever the director

1 determines in the case of a specific commodity that an existing practice
2 of declaring the quantity by weight, measure, numerical count, or
3 combination thereof does not facilitate value comparisons by consumers or
4 offers an opportunity for consumer confusion;

5 (16) Allow reasonable variations from the stated quantity of
6 contents which shall include those caused by loss or gain of moisture
7 during the course of good distribution practice or by unavoidable
8 deviations in good manufacturing practice only after the commodity has
9 entered intrastate commerce;

10 (17) Verify advertised prices, price representations, and point-of-
11 sale systems, as deemed necessary, to determine: (a) The accuracy of
12 prices, quantity, and computations; (b) the correct use of the equipment;
13 and (c) if such systems utilize scanning or coding means in lieu of
14 manual entry, the accuracy of prices and quantity printed or recalled
15 from a database;

16 (18) On or before July 1 of each year, notify all persons who have
17 registered any commercial weighing or measuring device of the amount of
18 fees which are due and that the fees are due on August 1 and shall be
19 delinquent after such date;

20 (19) Require all persons who operate a weighing and measuring
21 establishment to obtain a permit to operate such establishment pursuant
22 to section 89-187.01 and to pay to the department an application permit
23 fee pursuant to section 89-187.02;

24 (20) Require all persons who operate a weighing and measuring
25 establishment to, on or before August 1 of each year:

26 (a) Register each commercial weighing and measuring device with the
27 department upon forms furnished by the director;

28 (b) Pay to the department a registration fee of four dollars; and

29 (c) Pay to the department a device inspection fee.

30 (i) The device inspection fee shall be due each August 1 and shall
31 be set by the director on or before July 1 of each year. The director may

1 raise or lower the device ~~inspection~~ fees each year to meet the criteria
2 in this subdivision, but the fee shall not be greater than the amount in
3 column B of subdivision (20)(c)(ii) of this section. The same percentage
4 shall be applied to each device category for all device ~~inspection~~ fee
5 increases or decreases to the nearest one-half dollar. The director shall
6 use the amounts in column A of subdivision (20)(c)(ii) of this section as
7 a base for future fee increases or decreases. The director shall
8 determine the fees based on the estimated annual revenue and fiscal year-
9 end cash fund balances as follows:

10 (A) The estimated annual revenue shall not be greater than one
11 hundred seven percent of program cash fund appropriations allocated for
12 the Weights and Measures Act; and

13 (B) The estimated fiscal year-end cash fund balance shall not be
14 greater than seventeen percent of program cash fund appropriations
15 allocated for the act.

16 (ii)

| | | |
|---|------------------|-------------------|
| 17 Scales: | A | B |
| 18 <u>Up through 35 pounds capacity</u> | <u>15.00</u> | <u>20.00</u> |
| 19 Up through 35 pounds capacity | 7.96 | 14.34 |
| 20 <u>Multiunit Scales</u> | <u>84.00</u> | <u>114.00</u> |
| 21 Multiunit Scales | 51.00 | 80.37 |
| 22 <u>Over 35 through 1,000 pounds capacity</u> | <u>27.00</u> | <u>36.00</u> |
| 23 Over 35 through 1,000 pounds capacity | 15.13 | 25.35 |
| 24 <u>Over 1,000 through 4,000 pounds capacity</u> | <u>54.00</u> | <u>72.00</u> |
| 25 Over 1,000 through 4,000 pounds capacity | 31.87 | 51.03 |
| 26 <u>Over 4,000 through 50,000 pounds capacity</u> | <u>61.00</u> | <u>83.00</u> |
| 27 Over 4,000 through 50,000 pounds capacity | 36.65 | 58.36 |
| 28 <u>Over 50,000 through 150,000 pounds capacity</u> | <u>65.00</u> | <u>88.00</u> |
| 29 Over 50,000 through 150,000 pounds capacity | 39.04 | 62.03 |
| 30 <u>Over 150,000 pounds capacity</u> | <u>142.00</u> | <u>192.00</u> |
| 31 Over 150,000 pounds capacity | 86.87 | 135.40 |

| | | | |
|----|---|------------------|--------------------|
| 1 | Length Measuring Devices: | | |
| 2 | <u>Cordage or fabric</u> | <u>29.00</u> | <u>40.00</u> |
| 3 | Cordage or fabric | 16.56 | 27.55 |
| 4 | Pumps: | | |
| 5 | Service Station Dispensers—per | | |
| 6 | <u>measuring element</u> | <u>10.00</u> | <u>14.00</u> |
| 7 | measuring element | 5.09 | 9.94 |
| 8 | High-capacity service station | | |
| 9 | dispensers over 20 gallons per | | |
| 10 | <u>minute—per dispensing element</u> | <u>30.00</u> | <u>41.00</u> |
| 11 | minute—per dispensing element | 17.52 | 29.02 |
| 12 | Compressed natural gas—per | | |
| 13 | <u>dispensing element</u> | <u>150.00</u> | <u>202.00</u> |
| 14 | dispensing element | 91.65 | 142.74 |
| 15 | Meters: | | |
| 16 | <u>Vehicle tank meters</u> | <u>25.00</u> | <u>34.00</u> |
| 17 | Vehicle tank meters | 14.17 | 23.88 |
| 18 | <u>Loading rack meters</u> | <u>54.00</u> | <u>72.00</u> |
| 19 | Loading rack meters | 31.87 | 51.03 |
| 20 | <u>Liquid petroleum gas meters</u> | <u>67.00</u> | <u>90.00</u> |
| 21 | Liquid petroleum gas meters | 40.00 | 63.50 |
| 22 | <u>Liquid fertilizer and herbicide meters</u> | <u>61.00</u> | <u>83.00</u> |
| 23 | Liquid fertilizer and herbicide meters | 36.65 | 58.36 |
| 24 | <u>Liquid feed meters</u> | <u>61.00</u> | <u>83.00</u> |
| 25 | Liquid feed meters | 36.65 | 58.36 |
| 26 | <u>Cryogenic</u> | <u>88.00</u> | <u>119.00</u> |
| 27 | Cryogenic | 53.39 | 84.04 |
| 28 | Mass Flow Metering Systems: | | |
| 29 | <u>Mass flow meters (all liquid)</u> | <u>128.00</u> | <u>173.00;</u> |
| 30 | Mass flow meters (all liquid) | 78.26 | 122.19; |

1 and

2 (21) Require persons delinquent under subdivision (20) of this
3 section to pay an administrative fee of fifty ~~twenty-five~~ percent of the
4 annual fees due for each month any such fees are delinquent not to exceed
5 one hundred percent of such fees. Such administrative fees paid shall be
6 in addition to the annual fees due. The purpose of the additional
7 administrative fee is to cover the administrative costs associated with
8 collecting fees. All money collected as an additional administrative fee
9 shall be remitted to the State Treasurer for credit to the Weights and
10 Measures Administrative Fund. If any fee remains unpaid at the end of the
11 ninetieth day after the original due date for such fee, the weighing and
12 measuring establishment permit relating to such fee is void.

13 **Sec. 14.** Section 89-187.02, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 89-187.02 Application for a permit to operate a weighing and
16 measuring establishment shall be made to the director on forms prescribed
17 and furnished by the department. Such application shall include the full
18 name and mailing address of the applicant; the names and addresses of any
19 partners, members, or corporate officers; the name and address of the
20 person authorized by the applicant to receive notices and orders of the
21 department as provided in the Weights and Measures Act; whether the
22 applicant is an individual, partnership, limited liability company,
23 corporation, or other legal entity; and the location and type of all
24 commercial weighing and measuring devices. An application for a permit
25 shall be made prior to the operation of a weighing and measuring
26 establishment. The application shall be accompanied by ~~a one-time permit~~
27 ~~fee of five dollars and~~ the annual device registration and device
28 ~~inspection~~ fees required in section 89-187. The full annual device
29 registration and device ~~inspection~~ fees are required regardless of when
30 during the year the device is put into operation.

31 **Sec. 15.** Section 89-187.05, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 89-187.05 (1) A weighing and measuring establishment which has a
3 permanent location for commercial weighing and measuring devices shall
4 have a valid permit posted in a conspicuous place at the establishment,
5 and there shall not be a change in ownership, location, or business name
6 without the permitholder obtaining a new permit. Any permit for such
7 establishment shall lapse automatically upon a change of ownership,
8 location, or business name.

9 (2) A weighing and measuring establishment which does not have a
10 permanent location for commercial weighing and measuring devices shall
11 have a copy of a valid permit posted on or about each device and shall
12 not have a change in ownership, business name, or permanent mailing
13 address without the permitholder obtaining a new permit. Any permit for
14 such establishment shall lapse automatically upon a change of ownership,
15 business name, or permanent mailing address.

16 (3) The holder of any weighing and measuring establishment permit
17 shall notify the department in writing at least thirty days prior to any
18 change requiring a new permit under subsection (1) or (2) of this
19 section. A permitholder shall notify the department in writing before
20 there is a change of the name or address of the person authorized to
21 receive notices and orders of the department. ~~When an establishment is to~~
22 ~~be permanently closed, the permitholder shall return the permit to the~~
23 ~~department within one week after the closing.~~

24 **Sec. 16.** Original sections 81-2,239, 81-2,244.01, 81-2,245.01,
25 81-2,254, 81-2,257, 81-2,259, 81-2,268, 81-2,270, 81-2,271, 81-2,274,
26 81-2,277, 89-186, 89-187, 89-187.02, and 89-187.05, Reissue Revised
27 Statutes of Nebraska, are repealed.

28 **Sec. 17.** The following sections are outright repealed: Sections
29 81-2,272.01, 81-2,272.10, 81-2,272.24, and 81-2,272.32, Reissue Revised
30 Statutes of Nebraska.

31 **Sec. 18.** Since an emergency exists, this act takes effect when

1 passed and approved according to law.