

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 321

Introduced by Brandt, 32; Aguilar, 35; Ballard, 21; Blood, 3; Hansen, B.,
16; Ibach, 44; Wishart, 27.

Read first time January 11, 2023

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Pure Food Act; to amend
- 2 sections 81-2,245.01 and 81-2,280, Revised Statutes Cumulative
- 3 Supplement, 2022; to redefine a term; to change and provide
- 4 provisions relating to certain food sales directly to consumers; to
- 5 construe intent; to provide for injunctive relief and a penalty; to
- 6 harmonize provisions; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,245.01, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

3 81-2,245.01 Food establishment shall mean an operation that stores,
4 prepares, packages, serves, sells, vends, delivers, or otherwise provides
5 food for human consumption. The term does not include:

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

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

14 (3) A food processing plant;

15 (4) A salvage operation;

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

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

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

29 (a) For food that is not time/temperature control for safety food:

30 (i) The consumer is informed by a clearly visible notification that
31 the food was prepared in a kitchen that is not subject to regulation and

1 inspection by the regulatory authority and may contain allergens. For
2 sales conducted at a farmers market, fair, festival, craft show, or other
3 public event, such notification shall be at the sale location. For sales
4 conducted for pick up at or delivery from a private home or other area,
5 such notification shall be at such private home or other area, on the
6 producer's website if one exists, and in any print, radio, television, or
7 Internet advertisement for such sales;

8 (ii) ~~(b)~~ The name and address of the producer is provided to the
9 consumer on the package or container label;

10 (iii) ~~(c)~~ Product delivery is made directly from the producer to the
11 actual customer in a person-to-person transaction or by United States
12 mail or a commercial mail delivery service;

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

17 (v) ~~(e)~~ Prior to conducting any food sales, the producer, other than
18 one selling directly to the consumer at a farmers market, has
19 successfully completed (A) ~~(i)~~ a nationally accredited food safety and
20 handling education course that covers topics such as food safety issues,
21 regulations, and techniques to maintain a food-safe environment or (B)
22 ~~(ii)~~ a certified food safety and handling training course offered at a
23 culinary school or as required by a county, city, or village to obtain a
24 food handler permit;

25 (vi) ~~(f)~~ The producer, if using private well water to produce food
26 sold under this subdivision (7)(a) ~~(7)~~, has had such well water tested
27 for contamination by nitrates or bacteria prior to conducting any food
28 production and sales; and

29 (vii) ~~(g)~~ The producer complies with section 81-2,280; or

30 (b)(i) For food that is time/temperature control for safety food,
31 such food:

1 (A) Is not alcohol, low-acid canned food, unpasteurized milk, meat,
2 meat food product, meat byproduct, poultry, poultry byproduct, poultry
3 food product, seafood, or seafood product;

4 (B) Is labeled to include the food's ingredients in descending order
5 of predominance. If the product is not packaged, the ingredients shall be
6 provided to the consumer with the product at the point of sale; and

7 (C) If delivered, is delivered only by the producer to the consumer
8 in-person. If transported by the producer before final delivery, the food
9 shall be maintained at an appropriate temperature during transport to
10 limit pathogenic microorganism growth or toxin formation, not be
11 transported more than once, and not be transported for longer than two
12 hours.

13 (ii) This subdivision (7)(b) shall not be construed to:

14 (A) Restrict the department in any investigation of a foodborne
15 illness;

16 (B) Prohibit the production or sale of food otherwise allowed by
17 federal, state, or local law;

18 (C) Apply to the sale of live animals or portions of live animals
19 before slaughter for future delivery;

20 (D) Affect the regulation of other goods and services provided where
21 food produced and sold as described under this subdivision is also
22 produced or sold; or

23 (E) Exempt producers and sellers of food described under this
24 subdivision from any applicable tax or law regulating fishing or hunting.

25 (iii) A regulatory authority shall not regulate training involved in
26 the production and sale of food described under this subdivision (7)(b)
27 beyond the authority described in this subdivision.

28 (iv) The department may seek relief under section 81-2,289 and the
29 imposition of a penalty under section 81-2,290 when a person has violated
30 this subdivision (7)(b), except that any fine imposed for such violation
31 shall not be more than seventy-five dollars;

1 (8) A private home or other area where food is prepared for
2 distribution at a fundraising event for a charitable purpose if the
3 consumer is informed by a clearly visible placard at the serving location
4 that the food was prepared in a kitchen that is not subject to regulation
5 and inspection by the regulatory authority. This subdivision does not
6 apply to a caterer or other establishment providing food for the event if
7 the caterer or establishment receives compensation for providing the
8 food;

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

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

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

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

22 Sec. 2. Section 81-2,280, Revised Statutes Cumulative Supplement,
23 2022, is amended to read:

24 81-2,280 (1) A producer of food described in subdivision (7) of
25 section 81-2,245.01 shall register with the department prior to
26 conducting any sales of food. The registration shall be made on forms
27 prescribed by the department and include (a) ~~(1)~~ the name, address, and
28 telephone number of the producer, (b) ~~(2)~~ the type of food safety and
29 handling education or training course taken and the date of its
30 successful completion, and (c) ~~(3)~~ proof of private well water testing
31 pursuant to subdivision (7)(f) of section 81-2,245.01, if applicable.

1 (2) This section shall not apply to a producer of food selling
2 directly to the consumer at a farmers market unless such producer is
3 selling food that is time/temperature control for safety food.

4 Sec. 3. Original sections 81-2,245.01 and 81-2,280, Revised
5 Statutes Cumulative Supplement, 2022, are repealed.