

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 584

Introduced by Vargas, 7.

Read first time January 19, 2021

Committee:

- 1 A BILL FOR AN ACT relating to food; to amend section 81-2,270, Revised
- 2 Statutes Cumulative Supplement, 2020; to adopt the Mobile Food Unit
- 3 Act; to change provisions relating to fees; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,270, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 81-2,270 (1) No person shall operate: (a) A food establishment; (b)
4 a food processing plant; or (c) a salvage operation, without a valid
5 permit which sets forth the types of operation occurring within the
6 establishment.

7 (2) Application for a permit shall be made to the director on forms
8 prescribed and furnished by the department. Such application shall
9 include the applicant's full name and mailing address, the names and
10 addresses of any partners, members, or corporate officers, the name and
11 address of the person authorized by the applicant to receive the notices
12 and orders of the department as provided in the Nebraska Pure Food Act,
13 whether the applicant is an individual, partnership, limited liability
14 company, corporation, or other legal entity, the location and type of
15 proposed establishment or operation, and the signature of the applicant.
16 Application for a permit shall be made prior to the operation of a food
17 establishment, food processing plant, or salvage operation. The
18 application shall be accompanied by an initial permit fee and an initial
19 inspection fee in the same amount as the annual inspection fee if
20 inspections are required to be done by the department. If the food
21 establishment, food processing plant, or salvage operation has been in
22 operation prior to applying for a permit or notifying the regulatory
23 authority, the applicant shall pay an additional fee of sixty dollars.

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

31 (4)(a) The director shall set the initial permit fee and the annual

1 inspection fees on or before July 1 of each fiscal year to meet the
2 criteria in this subsection. The director may raise or lower the fees
3 each year, but the fees shall not exceed the maximum fees listed in
4 subdivision (4)(b) of this section. The director shall determine the fees
5 based on estimated annual revenue and fiscal year-end cash fund balance
6 as follows:

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

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

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

15 (b) The maximum fees are:

				No Food Additional Preparation Area, Preparation Unit Or Annual Units	
22 Food	Initial	Annual	Inspection	Annual	
23 Handling	Permit	Inspection	Fee	Inspection	
24 Activity	Fee	Fee	(per area)	Fee	
25 Convenience Store	\$86.19	\$86.19	\$43.09	N/A	
26 Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A	
27 Licensed Beverage					
28 Establishment	\$86.19	\$86.19	\$43.09	N/A	
29 Limited Food Service					
30 Establishment	\$86.19	\$86.19	\$43.09	N/A	
31 Temporary Food					

1	Establishment	\$86.19	\$86.19	\$43.09	N/A
2	Food Delivery Service	\$86.19	N/A	N/A	\$17.23
3	Mobile Food Unit				
4	<u>(for each unit)</u>	<u>\$75.00</u>	<u>N/A</u>	<u>N/A</u>	<u>\$40.00</u>
5	(for each unit)	\$86.19	N/A	N/A	\$43.09
6	Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
7	Vending Machine				
8	Operations:	\$86.19			
9	One to ten units		N/A	N/A	\$17.23
10	Eleven to twenty units		N/A	N/A	\$34.46
11	Twenty-one to thirty				
12	units		N/A	N/A	\$51.69
13	Thirty-one to forty				
14	units		N/A	N/A	\$68.92
15	Over forty units		N/A	N/A	\$86.15
16	Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
17	Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
18	Commissary	\$86.19	\$120.64	\$43.09	N/A
19	All Other Food				
20	Establishments	\$86.19	\$120.64	\$43.09	N/A

21 (5) If a food establishment is engaged in more than one food
 22 handling activity listed in subsection (4) of this section, the
 23 inspection fee charged shall be based upon the primary activity conducted
 24 within the food establishment as determined by the department and any
 25 fees assessed for each additional food preparation area within the
 26 primary establishment as determined by the department.

27 (6) If a person fails to pay the inspection fee for more than one
 28 month after the fee is due, such person shall pay a late fee equal to
 29 fifty percent of the total fee for the first month that the fee is late
 30 and one hundred percent for the second month that the fee is late. The

1 purpose of the late fee is to cover the administrative costs associated
2 with collecting fees. All money collected as a late fee shall be remitted
3 to the State Treasurer for credit to the Pure Food Cash Fund.

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

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

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

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

24 Sec. 2. Sections 2 to 9 of this act shall be known and may be cited
25 as the Mobile Food Unit Act.

26 Sec. 3. For purposes of the Mobile Food Unit Act:

27 (1) Department means the Department of Agriculture;

28 (2) Event means a private or public gathering for which a person has
29 ordered or commissioned the operation of four or more mobile food units;

30 (3) Local authority has the same meaning as defined in section
31 60-628;

1 (4) Local health department means a county, district, or city-county
2 health department as defined in section 71-1626;

3 (5) Mobile food unit means a self-contained, self-supporting,
4 enclosed vehicle designed to be readily movable that returns to a
5 commissary daily for cleaning and service;

6 (6) Operator means a person that owns, manages, or controls the
7 operation of a mobile food unit;

8 (7) Permit means the authorization issued by the department for a
9 mobile food unit to operate in the state; and

10 (8) Top-level violation means a critical or priority violation that
11 poses an immediate threat to food safety.

12 Sec. 4. (1) No person shall operate a mobile food unit in Nebraska
13 after July 1, 2022, without a permit for each mobile food unit. An
14 application for a permit or renewal of a permit shall be made to the
15 department on a form provided by the department and accompanied by a fee
16 set pursuant to section 81-2,270. The department may require an
17 inspection fee not to exceed forty dollars.

18 (2) The application shall include the following information:

19 (a) The name and address of the applicant, including the name and
20 address of an individual who is in charge of the mobile food unit on
21 behalf of the applicant;

22 (b) Evidence of the motor vehicle registration and evidence of
23 insurance or proof of financial responsibility as described in section
24 60-387 for the mobile food unit; and

25 (c) Evidence of compliance with any other applicable state law as
26 required by the department.

27 (3) An applicant operating more than one mobile food unit shall
28 apply for a separate permit for each unit.

29 (4) If the department denies or refuses renewal of an application
30 for a permit, the department shall notify the applicant and provide, in
31 writing, the reason for the denial or refusal of renewal. The applicant

1 may make written demand for an appeal to the department within thirty
2 days after such denial or refusal of renewal.

3 (5) The department shall retain the authority to enforce and impose
4 any penalty or remedy authorized by the Mobile Food Unit Act against any
5 person in violation of the act even if the permit is surrendered or
6 lapsed.

7 (6) A permit under this section shall be valid for one year after
8 the date of issuance or another period as determined by the department.

9 Sec. 5. (1) A local authority shall not:

10 (a) Impose more stringent requirements on a mobile food unit before
11 issuing authorization to operate a mobile food unit within the
12 jurisdiction of such local authority;

13 (b) Charge a fee for operation of a mobile food unit greater than
14 the fees required under section 81-2,270; or

15 (c) Require additional permits or fees for the operation of the
16 mobile food unit in more than one location or on more than one day within
17 the same city, county, or locality.

18 (2) If a local health department conducts an inspection of a mobile
19 food unit:

20 (a) The inspection fee charged by a local health department located
21 in a city of the metropolitan class or a city of the primary class shall
22 not exceed three hundred dollars;

23 (b) In a county within which a city of the metropolitan or primary
24 class is located, the local health department with jurisdiction over such
25 inspections shall enter into a reciprocity agreement with each local
26 health department in such county to provide for the mutual recognition
27 and reciprocal operation of a mobile food unit within a respective
28 jurisdiction pursuant to such inspection. Such reciprocity agreement
29 shall include standards for permits, inspection, and food safety
30 consistent with the Mobile Food Unit Act; and

31 (c) In any county other than a county subject to subdivision (b) of

1 this subsection, the local health department with jurisdiction over such
2 inspections may enter into a reciprocity agreement with other local
3 health departments to provide for the mutual recognition and reciprocal
4 operation of a mobile food unit within a respective jurisdiction pursuant
5 to such inspection. Such reciprocity agreement shall include standards
6 for permits, inspection, and food safety consistent with the Mobile Food
7 Unit Act.

8 (3) Nothing in this section shall prevent a local authority from:

9 (a) Requiring an organizer of an event to obtain a permit for the
10 event;

11 (b) Denying, suspending, or revoking a permit issued by the local
12 authority for violations of land-use or zoning regulations or other
13 ordinances regarding mobile food units;

14 (c) Imposing operating hours if they are nondiscriminatory as to all
15 food service businesses in the jurisdiction;

16 (d) Restricting the noise produced by a mobile food unit during
17 specific times of the day;

18 (e) Restricting or prohibiting the operation of a mobile food unit
19 in an area zoned and used for residential purposes;

20 (f) Prohibiting a mobile food unit that is operating on private
21 property from blocking ingress to and egress from such property; or

22 (g) Prohibiting a mobile food unit from blocking or inhibiting the
23 use of a roadway or the use of a public sidewalk by pedestrians.

24 (4) A local authority authorizing the operation of a mobile food
25 unit shall not restrict the duration of operation of such mobile food
26 unit on private property.

27 Sec. 6. (1) A mobile food unit shall comply with any applicable
28 fire safety code.

29 (2) If a local health department conducts an inspection at an event:

30 (a) Such inspection shall begin one hour and thirty minutes before
31 the official start of the event; and

1 (b) A mobile food unit may be inspected at any time during an event
2 if the mobile food unit is not available for an inspection at least one
3 hour prior to the start of the event.

4 (3) For a violation of the Mobile Food Unit Act, in addition to or
5 in lieu of any applicable denial, refusal of renewal, suspension, or
6 revocation of a permit, a person may, after hearing, be subject to an
7 administrative penalty not to exceed three hundred dollars.

8 Sec. 7. If an operator is a corporation, limited liability company,
9 or partnership, it is sufficient cause for the suspension or revocation
10 of a permit if any officer, director, manager, or trustee of the
11 corporation, any member or manager of the limited liability company, or
12 any partner of the partnership has been found by the department to have
13 engaged in any act or omission that would be cause for denying,
14 suspending, or revoking a permit held by such person. Each person
15 applying for a permit shall be responsible for the actions of any person
16 working on the mobile food unit or any person acting as the agent for
17 such person and for the actions of any chef or other employee acting as
18 the agent for such person.

19 Sec. 8. The department shall remit fees collected under the Mobile
20 Food Unit Act to the State Treasurer for credit to the Mobile Food Unit
21 Cash Fund, which is created. The fund shall be appropriated to the
22 department for use in administering the act. Any money in the Mobile Food
23 Unit Cash Fund available for investment shall be invested by the state
24 investment officer pursuant to the Nebraska Capital Expansion Act and the
25 Nebraska State Funds Investment Act.

26 Sec. 9. The department may adopt and promulgate rules and
27 regulations for the implementation of the Mobile Food Unit Act and the
28 permit process for mobile food units.

29 Sec. 10. Original section 81-2,270, Revised Statutes Cumulative
30 Supplement, 2020, is repealed.