

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 732

Introduced by Vargas, 7; Blood, 3.

Read first time January 23, 2019

Committee:

- 1 A BILL FOR AN ACT relating to food; to amend section 81-2,270, Revised
- 2 Statutes Cumulative Supplement, 2018; 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 2018, 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
			First	Food	Area,
			Food	Preparation	Unit
			Preparation	Area	Or
			Area	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. Any food establishment with
14 a valid egg handler license and for which all fees have been paid prior
15 to August 24, 2017, is exempt from the permit and inspection fee
16 requirements of the Nebraska Pure Food Act until August 1, 2018.

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

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

27 Sec. 2. Sections 2 to 10 of this act shall be known and may be
28 cited as the Mobile Food Unit Act.

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

30 (1) Department means the Department of Agriculture;

31 (2) Mobile food unit means a self-contained, self-supporting,

1 enclosed vehicle designed to be readily movable that returns to a
2 commissary daily for cleaning and service and that is permitted to
3 prepare, sell, or serve food or beverage;

4 (3) Mobile food unit operator means a person that owns, manages, or
5 controls the operation of a mobile food unit and possesses a current
6 state mobile food unit registration certificate;

7 (4) Mobile food unit vendor means a person who prepares, sells, or
8 serves food or beverage from a mobile food unit; and

9 (5) State mobile food unit registration means registration with the
10 Department of Agriculture that authorizes a mobile food unit to operate
11 in the state.

12 Sec. 4. (1) Beginning July 1, 2020, no person shall operate a
13 mobile food unit in this state without first registering the mobile food
14 unit with the department. An application for a state mobile food unit
15 registration or renewal shall be made to the department on forms adopted
16 by the department and accompanied by a fee, not to exceed seventy-five
17 dollars, as set out in section 81-2,270. An inspection fee not to exceed
18 forty dollars may be required by the department.

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

20 (a) The name and permanent address of the applicant, including the
21 name and permanent address of a person who is in charge of the operations
22 on behalf of the applicant;

23 (b) Evidence of the motor vehicle registration and proof of
24 financial responsibility as defined in section 60-346 for the mobile food
25 unit; and

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

28 (3) An applicant operating more than one mobile food unit shall
29 apply separately for each unit.

30 (4) In the event the action by the department is to deny or not
31 renew an application for registration, the department shall notify the

1 applicant and advise, in writing, the reason for the denial or
2 nonrenewal. The applicant may make written demand for an appeal to the
3 department within thirty days of such denial or nonrenewal.

4 (5) In addition to or in lieu of any applicable denial, suspension,
5 or revocation of a registration, a person may, after hearing, be subject
6 to an administrative penalty not to exceed three hundred dollars.

7 (6) The department shall retain the authority to enforce the
8 provisions of and impose any penalty or remedy authorized by the Mobile
9 Food Unit Act against any person or entity who is in violation of the act
10 even if the registration is surrendered or lapsed.

11 (7) The department may determine any fee for initial registration,
12 renewal, and penalties in accordance with section 81-2,270. The
13 department may adopt and promulgate rules and regulations regarding the
14 issuance and renewal of an application under this section.

15 (8) A registration under this section shall be valid for one year
16 from the date of issuance or another period as determined by the
17 department.

18 Sec. 5. If the department has reason to believe any person is
19 conducting activities requiring registration under the Mobile Food Unit
20 Act without current and valid registration, the department may issue an
21 order to appear before the department at a hearing to be held no sooner
22 than ten days nor later than twenty days after issuance of the order and
23 show cause why the department should not issue an order to cease and
24 desist from a violation of the Mobile Food Unit Act.

25 Sec. 6. (1) A city, county, or other local government shall not:

26 (a) Impose more stringent requirements on a mobile food unit
27 operator before issuing authorization to operate a mobile food unit
28 within the city, county, or local government;

29 (b) Charge a fee greater than the fees required under section
30 81-2,270;

31 (c) Issue a permit for operation of a mobile food unit that expires

1 on a date different than the expiration date of the state mobile food
2 unit registration under section 4 of this act; or

3 (d) Require additional permits or fees for the operation of the
4 mobile food unit in more than one location or on more than one day within
5 the same county, city, or local government.

6 (2) If a county, city, or local government elects to conduct an
7 inspection of a mobile food unit:

8 (a) Any inspection fee shall not exceed the inspection fee allowed
9 under section 81-2,270; and

10 (b) Any inspection shall occur within thirty days of authorization
11 to operate and shall not occur during peak hours of operation.

12 (3) Nothing in this section shall prevent a city, county, or local
13 government from:

14 (a) Requiring an organizer of an event where a mobile food unit will
15 be present to obtain a permit for the event;

16 (b) Denying, suspending, or revoking a permit issued by the city,
17 county, or local government, for violations of land use or zoning
18 regulations or other ordinances regarding mobile food units;

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

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

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

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

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

29 (4) A city, county, or local government authorizing the operation of
30 a mobile food unit shall not:

31 (a) Restrict the duration of operation of such mobile food unit on

1 private property;

2 (b) Prohibit or restrict a mobile food unit from operating on public
3 property; or

4 (c) Require a mobile food unit to operate more than fifty feet from
5 the perimeter of an existing retail establishment or restaurant.

6 Sec. 7. (1) A mobile food unit shall comply with any applicable
7 fire safety code.

8 (2) The department shall inspect a mobile food unit registered under
9 section 4 of this act not more than twice during the period of
10 registration unless the mobile food unit receives more than two critical
11 violations, as defined by the city, county, or local government where the
12 mobile food unit is operating at the time of inspection, upon inspection
13 by a certified health inspector, in which case the mobile food unit shall
14 be subject to inspection at any time and as often as determined necessary
15 by a certified health inspector for the remainder of the registration
16 period.

17 (3) Upon receipt of a written complaint, at the request of the State
18 Fire Marshal, or on its own initiative, the department may suspend,
19 revoke, or refuse to issue or renew a mobile food unit registration or
20 may levy a penalty, or any combination of such actions, for any one or
21 more of the following:

22 (a) Providing incorrect, misleading, incomplete, or materially
23 untrue information in the registration application;

24 (b) Violating any law, rule, regulation, ordinance, or policy
25 applicable to the safe operation of a mobile food unit, including any
26 applicable fire code;

27 (c) Obtaining or attempting to obtain a mobile food unit
28 registration through misrepresentation or fraud;

29 (d) Evidence of fraudulent, coercive, or dishonest practices or
30 demonstrating incompetence, untrustworthiness, or financial
31 irresponsibility in this state or another jurisdiction;

1 (e) Having a mobile food unit registration or its equivalent denied,
2 suspended, or revoked in this state or any other jurisdiction; or

3 (f) Operating a mobile food unit without a current and valid
4 registration.

5 Sec. 8. If a mobile food unit operator is a corporation, limited
6 liability company, or partnership, it is sufficient cause for the
7 suspension or revocation of a registration under the Mobile Food Unit Act
8 that any officer, director, manager, or trustee of the corporation or any
9 member or manager of the limited liability company, or any partner of the
10 partnership, has been found by the department to have engaged in any act
11 or omission that would be cause for denying, suspending, or revoking a
12 registration to such person. Each person applying for registration under
13 the act shall be responsible for the acts of any person working on a
14 mobile food unit in her or his operation or any person acting as the
15 agent for such person and for the acts of any chef or other employee
16 acting as the agent for such person.

17 Sec. 9. All fees collected by the department under the Mobile Food
18 Unit Act shall be remitted to the State Treasurer for credit to the
19 Mobile Food Unit Cash Fund, which is created. All money credited to such
20 fund shall be appropriated to the department for use in administering the
21 act. Any money in the Mobile Food Unit Cash Fund available for investment
22 shall be invested by the state investment officer pursuant to the
23 Nebraska Capital Expansion Act and the Nebraska State Funds Investment
24 Act.

25 Sec. 10. The department may adopt and promulgate rules and
26 regulations for the implementation of the Mobile Food Unit Act and the
27 registration of mobile food units.

28 Sec. 11. Original section 81-2,270, Revised Statutes Cumulative
29 Supplement, 2018, is repealed.