

LEGISLATIVE BILL 358

Approved by the Governor April 5, 1991

Introduced by Agriculture Committee:

Rogers, 41, Chairperson; Coordsen, 32;
Cudaback, 36; Elmer, 38; Hefner, 19;
Morrissey, 1; Schellpeper, 18

AN ACT relating to the Department of Agriculture; to amend sections 2-1802, 2-1803, 2-3407, 54-1350, 54-1902, 81-201.03, 81-201.04, 81-216.03 to 81-216.13, 81-216.15 to 81-216.32, and 81-216.34 to 81-216.37, Reissue Revised Statutes of Nebraska, 1943, and sections 81-216.01, 81-216.02, 81-216.33, 81-216.38, and 81-216.39, Revised Statutes Supplement, 1990; to change the titles of certain division heads; to define, redefine, and eliminate terms; to transfer and change provisions for the application for, posting of, and retention of permits, for fees, and for disciplinary actions under the Nebraska Pure Food Act; to change provisions for inspections by the department as prescribed; to change provisions relating to the lease, loan, trade, or sale of certain swine; to change provisions relating to administrative services in the department; to change provisions relating to a fund; to provide sanitary and safety provisions for food establishments as prescribed; to provide duties for certain permitholders, the department, and county attorneys; to harmonize provisions; to change provisions relating to penalties; to eliminate a fund; and to repeal the original sections, and also sections 81-201.01, 81-201.02, and 81-216.14, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 2-1802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1802. There is hereby established a Division of Potato Development in the Department of Agriculture. ~~The head of such division shall be known as the Chief of the Division of Potato Development.~~ The

Director of Agriculture shall appoint the ~~chief and such deputies and division head and any~~ assistants as may be necessary to carry out the provisions of ~~sections 2-1801 to 2-1811~~ the Nebraska Potato Development Act.

Sec. 2. That section 2-1803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1803. With the exception of the ex officio member, the Governor shall appoint an advisory committee to be known as the Nebraska Potato Development Committee. The committee shall be composed of three shippers and four growers from the industry and the Vice Chancellor of the Institute of Agriculture and Natural Resources of the University of Nebraska, who shall be an ex officio member, ~~thereof.~~ The Director of Agriculture shall be the chairperson. ~~The thereof.~~ This committee shall adopt and provide rules and regulations for the conduct of the affairs of the Division of Potato Development and advise with the director ~~relative to~~ regarding the appointment of the ~~chief~~ of the division head and ~~such deputies any assistants~~ as may be appointed. The members of the Nebraska Potato Development Committee committee shall serve without pay but shall receive actual and necessary expenses incurred while on official business as provided in sections 81-1174 to 81-1177. As for state employees- Within thirty days after April 19, 1947, two shippers and two growers shall be appointed for a term of one year, and one shipper and two growers appointed for a period of two years, and as the terms of office of such appointees shall expire, their expire, successors shall be appointed by the Governor for a period of two years and until their successors are appointed and qualified.

Sec. 3. That section 2-3407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3407. It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the poultry and egg industry and the economy of the areas producing poultry and eggs. The department shall be the agency of the State of Nebraska for such purpose. In connection therewith with and in furtherance thereof of such policy and purpose, such department, shall, only upon the approval of a majority of the advisory committee, have the authority to may:

(1) Formulate the general policies and programs of the State of Nebraska respecting the

discovery, promotion, and development of markets and industries for the utilization of poultry, eggs, and the products thereof;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, regional, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Poultry and Egg Resources Act and to enter into such agreements as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the Nebraska Poultry and Egg Resources Act;

(5) Conduct, in addition, any other program that would enhance the image of poultry, eggs, and the products thereof. Such programs may include, but not be limited to, consumer education, research, information, advertising, promotion, and market development of poultry, eggs, and the products thereof;

(6) Make refunds for overpayment of fees according to rules and regulations adopted by the department;

(7) Appoint the chief head of the division Division of Poultry and Egg Development, Utilization, and Marketing and such deputies and assistants as may be necessary to carry out the intent and purposes of the Nebraska Poultry and Egg Resources Act;

(8) Develop a biennial budget with fiscal year estimates of requirements to conduct the affairs of the division;

(9) Establish annually the fees to be collected; and

(10) Establish an administrative office, suitable for the furtherance of the intent and purposes of the Nebraska Poultry and Egg Resources Act, with Nebraska Poultry Industries, Inc.

Sec. 4. That section 54-1350, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-1350. No person shall lease, loan, trade, or sell female swine or boars ~~four~~ six months of age and over, except swine consigned for immediate slaughter, or offer or receive the services of any male swine for breeding purposes, unless (1) such swine have been given an official brucellosis test by an authorized representative of the bureau within thirty days prior to the date of such transaction and found free of brucellosis, ~~or originate~~ (2) such swine originated from a validated herd, or (3) Nebraska is a validated

brucellosis-free state for swine in accordance with the terms of 9 C.F.R. 78.1 in effect on January 1, 1990.

Sec. 5. That section 54-1902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-1902. As used in sections 54-1901 to 54-1915 For purposes of the Nebraska Meat and Poultry Inspection Law, unless the context otherwise requires:

(1) Director shall mean the Director of Agriculture;

(2) Department shall mean the Department of Agriculture;

(3) Person shall include individuals, partnerships, corporations, and associations and any officer, agent, or employee thereof;

(4) Intrastate commerce shall mean commerce within this state;

(5) Livestock shall mean any cattle, sheep, swine, goats, horses, mules, other equines, and other mammalian species as the director may determine, either living or dead;

(6) Livestock product shall mean any carcass, part thereof, meat, or meat food product of any livestock;

(7) Meat food product shall mean any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, ~~excepting~~ except products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry; and which are ~~exempted~~ exempt from definition as a meat food product by the director under such conditions as he or she may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines or other mammalian species as designated by the director shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats;

(8) Poultry shall mean any domesticated bird or other avian species as the director may designate, either living or dead;

(9) Poultry product shall mean any poultry carcass or part thereof, or any product which is made wholly or in part from any poultry carcass or part thereof, ~~excepting~~ except products which contain poultry

ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted exempt by the director from definition as a poultry product under such conditions as he or she may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products;

(10) ~~The term capable~~ Capable of use as human food shall apply to any wholesome livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the director to preclude its use as human food, or ~~if~~ it is naturally inedible by humans;

(11) Prepared shall mean slaughtered, canned, salted, stuffed, rendered, boned, cut up, frozen, or otherwise manufactured or processed in any manner;

(12) ~~The term adulterated~~ Adulterated shall apply to any livestock product or poultry product under one or more of the following circumstances:

(a) If it fails to conform to the requirements established by the Nebraska Pure Food Act, ~~sections 81-216-01 to 81-216-37~~ and the codes adopted by reference in sections ~~81-216-15 to 81-216-19~~ 26 to 30 of this act;

(b) If it has been subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug and Cosmetic Act, approved June 25, 1938, (52 Stat. 1040), and acts amendatory thereof or supplementary thereto; or

(c) If it is margarine containing animal fat and any of the raw material used therein consists in whole or in part of any filthy, putrid, or decomposed substance;

(13) ~~The term misbranded~~ Misbranded shall apply to any livestock product or poultry product under one or more of the following circumstances:

(a) If it fails to conform to the requirements established by the Nebraska Pure Food Act; or

(b) If it fails to bear, directly thereon and on its containers, as the director may by regulation prescribe, the official inspection legend and establishment number of the establishment where the product was prepared, and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public

will be informed of the manner of handling required to maintain the article in a wholesome condition. Exemptions ~~7 PROVIDED; exemptions~~ as to livestock products not in containers may be established by regulations prescribed by the director and exemptions as to small packages may be established for livestock products or poultry products in the same manner;

(14) Label shall mean a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article;

(15) Labeling shall mean all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers; or (b) accompanying such article;

(16) Container or package shall mean any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover;

(17) Shipping container shall mean any container used or intended for use in packaging the product packed in an immediate container;

(18) Immediate container shall mean any consumer package; or any other container in which livestock products or poultry products; which are not consumer packaged; are packed;

(19) Federal Meat Inspection Act shall mean the act so entitled approved March 4, 1907, (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584), ~~7~~ Federal Poultry Products Inspection Act shall mean the act so entitled approved August 28, 1957, (71 Stat. 441), ~~7~~ as amended by the Wholesome Poultry Products Act (82 Stat. 791), ~~7~~ and federal acts shall mean these two federal laws the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act;

(20) ~~The terms pesticide~~ Pesticide chemical, food additive, color additive, and raw agricultural commodity shall have the same meanings for purposes of sections 54-1901 to 54-1915 the Nebraska Meat and Poultry Inspection Law as under the Federal Food, Drug and Cosmetic Act approved June 25, 1938, (52 Stat. 1040);

(21) Official mark shall mean the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article, ~~or~~ livestock, ~~or~~ poultry under sections 54-1901 to 54-1915 the Nebraska Meat and Poultry Inspection Law;

(22) Official inspection legend shall mean any symbol prescribed by regulations of the director showing

that an article was inspected and passed in accordance with ~~sections 54-1901 to 54-1915~~ the Nebraska Meat and Poultry Inspection Law;

(23) Official certificate shall mean any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under ~~sections 54-1901 to 54-1915~~ the Nebraska Meat and Poultry Inspection Law;

(24) Official device shall mean any device prescribed or authorized by the director for use in applying any official mark;

(25) Establishment shall mean any building or structure in which slaughtering, butchering, meat canning, meat packing, meat manufacturing, poultry canning, poultry packing, poultry manufacturing, pet feed manufacturing, or rendering is carried on, except where such operations are under federal inspection, and the ground upon which such building or structure is erected and so much ground adjacent thereto as is used in carrying on the business of such establishment, including drains, gutters, and cesspools used in connection with the establishment and any place or vehicle where livestock, poultry, livestock products, poultry products, meat food products, or poultry food products are prepared, manufactured, stored, sold, offered for sale, or exposed for sale;

(26) Rendering shall mean the business of processing livestock or poultry or carcasses or parts thereof not intended or capable for use as human food;

(27) Pet feed manufacturing shall mean the business of processing livestock or poultry or carcasses or parts thereof into small animal feed;

(28) Official establishment shall mean any establishment as determined by the director at which ante mortem and post mortem inspection of livestock or poultry or the inspection of the manufacturing of livestock products or poultry products for human consumption is maintained under the authority of ~~sections 54-1901 to 54-1915~~ the Nebraska Meat and Poultry Inspection Law;

(29) Inspector shall mean an employee or official or agent of the State of Nebraska authorized by the director, or any employee or official of the federal government or any governmental subdivision of this state, authorized by the director, to perform any inspection functions under ~~sections 54-1901 to 54-1915~~ the Nebraska Meat and Poultry Inspection Law under an agreement between the director and any governmental subdivision or other governmental agency;

(30) License shall mean a license issued under sections 54-1901 to 54-1915 the Nebraska Meat and Poultry Inspection Law by the director;

(31) Licensed establishment shall mean any of the establishments as defined in this section which are licensed under the terms of sections 54-1901 to 54-1915 the Nebraska Meat and Poultry Inspection Law or pursuant to the terms of any other act administered by the director; and

(32) Reinspection shall include inspection of the preparation of livestock products and poultry products, as well as reexamination of articles previously inspected.

Sec. 6. That section 81-201.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-201.03. The Department of Agriculture, through its administrative division, may conduct a consolidated or joint-use system of computer services, statistical services, printing services, and other related office management services in cooperation with, on behalf of, or for the other divisions or bureaus of the department and any boards or political subdivisions of the state administering commodity checkoff programs, in order to enhance the ability of the division to efficiently and economically perform its duties and responsibilities may provide (1) data and word processing services, (2) accounting and auditing services, (3) personnel services, (4) records management services, (5) printing, sorting, and mailing services, (6) statistical services, (7) such services necessary to carry out any duties or responsibilities placed upon the department by the Legislature, and (8) other related services in cooperation with, on behalf of, or for any board, commission, or political subdivision of the state or any other agency of the state or federal government.

Sec. 7. That section 81-201.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-201.04. In conjunction with providing services authorized pursuant to section 81-201.03, the Department of Agriculture shall develop a system of equitable billings and charges for such services. Such system of charges shall reflect, as nearly as may be practical, the actual share of costs incurred on behalf of or for such services to any board, commission, or political subdivision of the state or any other agency of the state or federal government. Any board, commission, or political subdivision of the state or any

other agency of the state or federal government which uses such services shall pay for the services out of appropriated or available funds. the conduct of the system of office management services authorized under section 81-201-03, the Department of Agriculture shall develop a system of equitable billings and charges for computer services, statistical services, printing services, and other related office management services provided by the administrative division in its consolidated or joint-use system of services. Such system of charges shall reflect, as nearly as may be practical, the actual share of costs incurred on behalf of or for such services to each division, bureau, board, or political subdivision provided services from the division's services system. All divisions, bureaus, boards, or political subdivisions which use such services shall pay for such services out of appropriated or available funds.

There is hereby created the Management Services Expense Revolving Fund. All gifts, grants, and fees or charges collected for such services from any source, including federal, state, public, or private sources, and any appropriation by the Legislature for such purpose shall be credited to such fund. 7 to which all collections for payment of service expenses and any appropriation by the Legislature shall be credited. Expenditures shall be made from the fund Management Services Expense Revolving Fund for the payment of service expenses. Such payments shall be made by the Director of Agriculture. All money in the Management Services Expense Revolving Fund fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 8. That section 81-216.01, Revised Statutes Supplement, 1990, be amended to read as follows:

81-216-01- Sections 81-216-01 to 81-216-39 8 to 61 of this act and the provisions of the Food Service Code, Retail Food Code, Food Salvage Code, Food Vending Code, and Food Processing and Storage Code adopted by reference in sections 81-216-15 to 81-216-19 26 to 30 of this act shall be known and may be cited as the Nebraska Pure Food Act.

Sec. 9. That section 81-216.02, Revised Statutes Supplement, 1990, be amended to read as follows:

81-216-02- For purposes of the Nebraska Pure Food Act, unless the context otherwise requires, the definitions found in sections 81-216-03 to 81-216-14 and

~~81-216-39~~ 10 to 25 of this act shall be used. In addition, the definitions found in the codes adopted by reference in sections ~~81-216-15 to 81-216-19~~ 26 to 30 of this act shall be used.

Sec. 10. That section 81-216.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-11-~~ Advertising shall mean all representations disseminated in any manner, other than labeling, intended or likely to induce the purchase or use of food, including a menu.

Sec. 11. That section 81-216.39, Revised Statutes Supplement, 1990, be amended to read as follows:

~~81-216-39-~~ Bed and breakfast establishment shall mean any place of lodging that provides rented rooms to ten or fewer people, that is the personal residence of the owner, that is occupied by the owner at the time of rental, and in which the only meal served to renters is breakfast.

Sec. 12. That section 81-216.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-08-~~ Department shall mean the Department of Agriculture.

Sec. 13. That section 81-216.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-09-~~ Director shall mean the Director of Agriculture or his or her duly designated employee, representative, or authorized agent.

Sec. 14. Food establishment shall mean a food service establishment, a mobile food unit, a pushcart, or a food processing establishment as defined in the Food Service Code, a retail food store as defined in the Retail Food Code, a salvage processing plant or salvage distributor as defined in the Food Salvage Code, or a food storage establishment.

Sec. 15. That section 81-216.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-07-~~ Food Processing and Storage Code shall mean the Current Good Manufacturing Practice In Manufacturing, Processing, Packing, or Holding Human Food, 21 C.F.R. part 110, as it exists on August 1, 1981, except sections 110.35(d) and (e) of such code.

Sec. 16. That section 81-216.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-05-~~ Food Salvage Code shall mean the 1984 Recommendation of the Association of Food and Drug Officials and ~~W-8-~~ United States Department of Health and Human Services entitled Model Food Salvage Code, as it exists on June 8, 1985, except sections 6-401, 6-501, 8-101, 8-201, 11-101, 12-101 through 12-106, 12-201, 12-202, 12-301, 12-401, and 12-402, and 12-601 of such code.

Sec. 17. That section 81-216.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-03-~~ Food Service Code shall mean the 1976 Recommendations of the Food and Drug Administration entitled Food Service Sanitation Manual Including A Model Food Service Sanitation Ordinance as it exists on August 1, 1981, except sections 1-102(aa), 4-208, 6-401 through 6-404, 6-501 through 6-504, 7-701 through 7-706, 10-101 through 10-107, 10-201, 10-202, 10-205, 10-301, 10-401, 10-402, 10-601, and 10-602 of such code.

Sec. 18. That section 81-216.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-13-~~ Food storage establishment shall mean a commercial establishment or warehouse used for the purpose of storing food with or without artificially cooled accommodations.

Sec. 19. That section 81-216.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-06-~~ Food Vending Code shall mean the 1978 Recommendations of the Food and Drug Administration entitled The Vending Of Food And Beverages Including A Model Sanitation Ordinance as it exists on August 1, 1981, except sections 6-102 through 6-107, 6-204, 6-301, 6-601, and 6-602 of such code.

Sec. 20. That section 81-216.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-10-~~ Labeling shall mean the display of written, printed, or graphic matter upon the immediate container of an article of food, or which accompanies the article at the time of sale.

Sec. 21. That section 81-216.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-12-~~ Regulatory authority shall mean the department or a political subdivision under contract with the department to perform regulatory functions authorized pursuant to ~~sections 81-216-81 to 81-216-87~~

the Nebraska Pure Food Act.

Sec. 22. That section 81-216.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-04-~~ Retail Food Code shall mean the 1982 Recommendation of the Association of Food and Drug Officials and U-S- United States Department of Health and Human Services entitled Retail Food Store Sanitation Code, as it exists on June 8, 1985, except sections 1-102(w)(x), 5-103(a)(f), 6-401 through 6-404, 6-501 through 6-504, 7-701 through 7-706, 8-101 through 8-107, 8-201, 8-202, 8-205, 8-301, 8-401, 8-402, 8-601, 8-602, 9-102, 9-103, and 9-105 and Parts II and III of such code.

Sec. 23. Service area shall mean a location in a food establishment where the food is handled by the permitholder or his or her employees in the process of distributing food to the customer.

Sec. 24. Utensil shall mean any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

Sec. 25. Warewashing shall mean the cleaning or sanitizing of food-contact surfaces of equipment or utensils.

Sec. 26. That section 81-216.19, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-19-~~ The Legislature hereby adopts by reference the Food Processing and Storage Code.

Sec. 27. That section 81-216.17, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-17-~~ The Legislature hereby adopts by reference the Food Salvage Code.

Sec. 28. That section 81-216.15, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-15-~~ The Legislature hereby adopts by reference the Food Service Code.

Sec. 29. That section 81-216.18, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-18-~~ The Legislature hereby adopts by reference the Food Vending Code.

Sec. 30. That section 81-216.16, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-16-~~ The Legislature hereby adopts by reference the Retail Food Code.

Sec. 31. That section 81-216.20, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-20-~~ Certified copies of the codes adopted by reference pursuant to sections ~~81-216-15 to 81-216-19~~ 26 to 30 of this act shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department. The department shall also insure that a copy of 21 C.F.R. part 110 is duly filed in such offices.

Sec. 32. Whenever there exists an inconsistency between sections 10 to 25 and 33 to 61 of this act and any of the codes adopted by reference, the requirements of the sections shall control.

Sec. 33. (1) A food establishment shall have at least one toilet facility conveniently located and accessible to employees at all times. If customers are allowed to use the toilet, the toilet shall be located so that the customer does not enter the food preparation, food storage, or warewashing areas.

(2) Toilets or urinals shall be designed to be easily cleanable. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors except for louvers that may be necessary for ventilation systems. Doors to toilet rooms shall not open directly into areas where food is exposed to air-borne contamination except when some additional precaution has been taken.

(3) Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times and shall be kept in a dispenser. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

Sec. 34. (1) A food establishment shall have at least the number of handwashing facilities necessary to meet the requirements of this section. Handwashing facilities shall be conveniently located to permit use by employees in food preparation, warewashing, and service areas. Handwashing facilities shall be accessible to employees at all times. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms or vestibules. Sink compartments used for food preparation or for warewashing shall not be used for handwashing or for any other purpose.

(2) Each handwashing facility shall be provided with hot and cold water tempered by means of a

mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Steam-mixing valves shall be prohibited at handwashing facilities.

(3) A supply of hand-cleansing soap or detergent shall be available at each handwashing facility.

(4) A supply of sanitary towels kept in a dispenser or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels shall be prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facility. Handwashing facilities, hand-cleansing soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Sec. 35. (1) Only those poisonous or toxic materials necessary and intended for the maintenance of the food establishment, including the cleaning and sanitization of equipment and utensils and the control of insects and rodents, shall be present in food establishments except for those items being stored or displayed for retail sale.

(2) Containers of poisonous or toxic materials necessary for operational maintenance of the establishment shall be prominently and distinctly labeled. Small working containers of bulk cleaning agents shall be individually labeled for easy identification of contents.

(3) Poisonous or toxic materials necessary for maintenance of the food establishment shall consist of the following categories:

(a) Insecticides and rodenticides; and

(b) Detergents, sanitizers, related cleaning or drying agents, caustics, acids, and polishes.

Materials in each of these categories (i) shall be stored and located physically separate from each other, (ii) shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose, and (iii) shall not be stored above or intermingled with food, food equipment, utensils, or single-service articles to preclude potential contamination, except that the convenient availability of detergents and sanitizers at warewashing facilities shall not be prohibited as long as the requirements of this section are not violated.

(4) Sanitizers, cleaning compounds, or other

compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or in a way that constitutes a hazard to employees or other persons. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils or in a way other than in full compliance with the manufacturer's labeling.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated from food and single-service articles by spacing, partitions, or dividers. Poisonous or toxic materials shall not be stored or displayed above food or single-service articles.

(6) Employee first-aid supplies and personal medication shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

Sec. 36. Prior to construction of a food establishment, conversion to a food establishment, or remodeling of a food establishment which affects the facilities or equipment required by the Nebraska Pure Food Act, properly prepared plans and specifications for such construction, conversion, or remodeling shall be submitted to the regulatory authority for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, type and model of proposed fixed equipment and facilities, and description of the type of food to be served or sold. The regulatory authority shall treat such plans and specifications as confidential or trade secret information and shall approve the plans and specifications if they meet the requirements of the act. No food establishment shall be constructed, converted, or remodeled except in accordance with plans and specifications approved by the regulatory authority.

Sec. 37. Food establishment facilities and equipment in use or new facilities and equipment for which contractual obligations are incurred before the effective date of this act and which do not meet fully all the design and fabrication requirements of the Nebraska Pure Food Act shall be acceptable if they are in good repair and capable of being maintained in a sanitary condition and the food-contact surfaces are of safe materials as defined in the Retail Food Code.

Sec. 38. A retail food store shall have a sink with at least three compartments which shall be used for manual cleaning, rinsing, and sanitizing of equipment and utensils whenever possible. Sink compartments shall be large enough to accommodate the

immersion of most equipment and utensils in each compartment of the sink, and such sink shall be supplied with hot and cold potable running water. When immersion in a sink is not practical, equipment and utensils may be manually cleaned, rinsed, and sanitized outside the sink or by pressure spray methods.

Sec. 39. That section 81-216.21, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216-21. (1) Permits shall be required of those persons specified in the codes adopted by reference pursuant to sections 81-216-15 to 81-216-19, in addition; food processing establishments as defined in the Food Service Code and food storage establishments shall be required to hold permits. The procedures applicable to the issuance, suspension, or revocation of permits for food processing establishments and food storage establishments shall be as prescribed for food service establishments in Chapter 10 of the Food Service Code. Permits may be suspended or revoked for violation of the applicable provisions of sections 81-216-01 to 81-216-37 and the Food Processing and Storage Code.

(2) As a condition precedent to the issuance of permits required pursuant to sections 81-216-01 to 81-216-37, an applicant shall pay an initial permit fee of fifty dollars. No person shall operate: (a) A food service establishment; (b) a mobile food unit or pushcart; (c) a temporary food service establishment; (d) a food processing establishment; (e) a food storage establishment; (f) a retail food store; (g) a salvage processing plant; (h) as a salvage distributor; or (i) one or more vending machines other than controlled location vending machines, as defined in the Food Vending Code, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food

establishment or vending machines and shall be accompanied by an initial permit fee of fifty dollars and an initial inspection fee in the same amount as is annually required pursuant to subsection (3) of this section if inspections are required to be done by the department. If the food establishment or vending machine operation has been in operation prior to applying for a permit, the applicant shall pay an additional fee of fifty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (6) through (9) of this section and subsection (1) of section 81-216-27 50 of this act, permit holders shall pay annual inspection fees on or before August 1 of each year as follows:

(a) Food service establishments, nontemporary, fifty dollars plus fifteen dollars for each separate and distinct food preparation area within the establishment other than the first such area;

(b) Mobile food units or pushcarts, fifty dollars plus five dollars per unit or pushcart;

(c) Temporary food service establishment, fifty dollars plus fifteen dollars for each additional food handling operation;

(d) Food processing establishment, fifty dollars plus fifteen dollars for each additional food handling operation within the establishment;

(e) Food storage establishment, fifty dollars plus fifteen dollars for each additional food handling operation within the establishment;

(f) Retail food store, fifty dollars plus fifteen dollars for each food preparation area within the store except the meat processing and produce handling areas;

(g) Salvage processing ~~facility plant~~, fifty dollars plus fifteen dollars for each additional food handling operation within the establishment;

(h) Salvage distributor, fifty dollars plus fifteen dollars for each additional food handling operation within the establishment; and

(i) One to ten vending machines, ten dollars; eleven to twenty vending machines, twenty dollars; twenty-one to thirty vending machines, thirty dollars; thirty-one to forty vending machines, forty dollars; and over forty vending machines, fifty dollars.

(4) Whenever an establishment is engaged in

more than one of the food handling activities listed under subsection (3) of this section, the inspection fee charged shall be based upon the primary activity conducted within the establishment as determined by the department.

(5) The department may impose a penalty for inspection fees which are more than one month delinquent. Such penalty may not exceed twenty percent of the fee for each month of delinquency.

(6) Educational institutions, health care facilities, nursing homes, and governmental organizations operating any type of food service establishment other than a mobile food unit or pushcart shall be exempt from the requirements in subsections (1) ~~to~~ through (5) of this section.

(7) Persons whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who are validly licensed and paying fees pursuant to such act shall be exempt from the permit and inspection fee requirements of ~~sections 81-216-01 to 81-216-37~~ the Nebraska Pure Food Act.

(8) Persons holding permits or licenses and regulated under the Nebraska Manufacturing Milk Act or the Nebraska Pasteurized Milk Law or the Nebraska Manufacturing Milk Act and egg handlers licensed and regulated under the Nebraska Graded Egg Act shall be exempt from the provisions of ~~sections 81-216-01 to 81-216-37~~ the Nebraska Pure Food Act.

(9) Religious, charitable, and fraternal organizations operating any type of temporary food service establishment, mobile food unit, or pushcart shall be exempt from the requirements of subsections (1) ~~to~~ through (5) of this section. Any such organization operating any nontemporary food service establishment prior to July 1, 1985, shall be exempt from the requirements of subsection (2) of this section.

Sec. 40. (1) The permit required by section 39 of this act shall be posted in a location in the food establishment which is conspicuous to the public. Salvage processing plants and salvage distributors shall have a copy of the permit in each vehicle.

(2) The permit shall not be transferable to any other person or location. Any permit issued shall lapse automatically upon a change of ownership or location except as provided in subsection (3) of this section. The permit holder shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A permit holder shall

notify the department in writing before there is a change of the name or address of the person authorized to receive the notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

(3) Mobile food units, pushcarts, and vending machines may be moved if the permitholder is able to provide the location of such units, pushcarts, and machines to the regulatory authority upon request and the person authorized by the permitholder to receive the notices and orders of the department maintains a permanent mailing address on file with the department.

Sec. 41. Before approving an application for a permit pursuant to section 39 of this act, the regulatory authority shall inspect the food establishment or vending machine operation to determine whether the applicant qualifies to hold a permit pursuant to subsection (1) of section 42 of this act. An applicant found to qualify to hold a permit pursuant to such subsection shall be issued a permit. An applicant who does not receive a permit shall be afforded the opportunity of a hearing to present evidence that the applicant is qualified to hold a permit pursuant to such subsection and should be issued a permit. All such hearings shall be in accordance with the Administrative Procedure Act.

Sec. 42. (1) A holder of a permit issued under the Nebraska Pure Food Act shall comply with the act, the rules and regulations adopted pursuant thereto, and any order of the director issued pursuant thereto. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why an order of probation should not be issued; and (c) the director finds that issuing an order of probation is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and

written notice of the right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's food establishment or vending machine operation closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in the permitholder's food establishment or is caused by the permitholder's vending machine operation; and (b) the permitholder receives the written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permitholder may request, in writing, a date for a hearing and the director shall consider the interests of the permitholder when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and shall notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(6) Any food establishment or vending machine operation for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any food establishment or vending machine operation for which the permit has been revoked shall close and remain closed until a new permit is issued.

(7) The director may terminate proceedings to suspend or revoke a permit or to subject a permitholder to an order of probation at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated, a person with a revoked permit may be issued a new permit, or a

permitholder may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings for suspension, revocation, or probation shall not preclude the department from pursuing other civil or criminal actions.

Sec. 43. (1) Any notice or order provided for in the Nebraska Pure Food Act shall be personally served on the permitholder or on the person authorized by the permitholder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permitholder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply provided for in section 42 of this act shall set forth the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing provided for in the act shall set forth the time and place of the hearing except as provided in subsection (4) of section 42 of this act. A notice of the permitholder's right to such hearing shall include notice that a permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of probation, or that the permit may be suspended and the permitholder subject to an order of probation, if the director determines such action is more appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended or that the permitholder may also be subject to an order of probation if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 42 of this act, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A permitholder shall be deemed to waive

the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder shows the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 42 of this act, the director shall sustain, modify, or rescind the order.

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

Sec. 44. It shall be unlawful for a person to operate a food establishment or vending machine operation in any manner which is not in conformity with the Nebraska Pure Food Act or the rules and regulations adopted and promulgated pursuant thereto or to interfere with the duties of the department or any final order of the director pursuant to such act.

Sec. 45. That section 81-216.22, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216-22- It shall be unlawful for a food service establishment to operate in a manner not in conformity with the provisions of the Food Service Code. It shall be the responsibility of the department to regulate the operation of food service establishments in the manner set out in the Food Service Code.

Sec. 46. That section 81-216.23, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216-23- It shall be unlawful for a retail food store to operate in a manner not in conformity with the provisions of the Retail Food Code. It shall be the responsibility of the department to regulate the operation of retail food stores in the manner set out in

the Retail Food Code.

Sec. 47. That section 81-216.24, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-24-~~ It shall be unlawful for a salvage distributor or salvage processing facility plant to operate in a manner not in conformity with the provisions of the Food Salvage Code. It shall be the responsibility of the department to regulate the operation of salvage distributors and salvage processing facilities plants in the manner set out in the Food Salvage Code.

Sec. 48. That section 81-216.25, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-25-~~ It shall be unlawful for a person to engage in business as an operator of food vending machines in a manner not in conformity with the provisions of the Food Vending Code. It shall be the responsibility of the department to regulate the operation of food vending machines in the manner set out in the Food Vending Code.

Sec. 49. That section 81-216.26, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-26-~~ It shall be unlawful for a food processing establishment or a food storage establishment to operate in a manner not in conformity with the provisions of the Food Processing and Storage Code. It shall be the responsibility of the department to regulate food processing establishments and food storage establishments through a program of inspection and sampling. An inspection of each establishment shall be conducted at least once a year. The department shall have access to feed processing establishments and feed storage establishments for inspection purposes, and may sample feed as often as necessary. Reports of inspection shall be prepared and shall include all violations found as a result of the inspection. A copy of the report shall be left with the person in charge of the establishment. The inspection report shall specify a reasonable time within which to correct violations found. The report shall also state that failure to comply may result in the permit holder being placed on probation or the establishment's permit being suspended or revoked. suspension or revocation of the establishment's permit.

Sec. 50. That section 81-216.27, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

81-216-27. (1) The department shall enforce the Nebraska Pure Food Act. The department may contract with any political subdivision it deems qualified to conduct any or all regulatory functions authorized pursuant to sections 81-216-01 to 81-216-37, the act except those functions relating to the issuance, suspension, or revocation of permits or any order of probation. Holders of permits issued pursuant to sections 81-216-01 to 81-216-37 the act who are regularly inspected by political subdivisions under contract with the department shall be exempt from the annual inspection fees prescribed in sections 81-216-01 to 81-216-37 section 39 of this act if such holders pay license or inspection fees to the political subdivision performing the inspections.

(2) It shall be the responsibility of the regulatory authority to inspect food establishments and vending machine operations. An inspection of a food service establishment or a retail food store shall be performed at least once every one hundred eighty days each establishment or store is in operation. An inspection of a salvage processing plant, a salvage distributor's operation, a food processing establishment, or a food storage establishment shall be performed at least once every three hundred sixty-five days each plant, operation, or establishment is in operation. Vending machines shall be inspected pursuant to the Food Vending Code. Additional inspections shall be performed as often as is necessary for the efficient and effective enforcement of the act.

(3) All inspections conducted pursuant to sections 81-216-01 to 81-216-37 the act shall be performed by persons who are registered sanitarians or sanitarians-in-training as defined in section 71-3702.

{3} (4) Duly authorized personnel of the regulatory authority after showing proper identification shall have access at all reasonable times to food establishments holding permits issued pursuant to sections 81-216-01 to 81-216-37, and vending machine operations required by the act to obtain a permit to perform authorized regulatory functions. Such functions shall include, but not be limited to, inspections, checking records maintained in the establishment or other locations to obtain information pertaining to food and supplies purchased, received, used, sold, or distributed, copying and photographing violative conditions, and examining and sampling food. When samples are taken, the inspectors shall pay or offer to

pay for samples taken. The authorized personnel shall also have access to the records of salvage processing plants and salvage distributors pertaining to distressed salvageable and salvaged merchandise purchased, received, used, sold, or distributed.

(4) (5) Regulatory activities performed by a political subdivision under contract shall conform with the provisions of ~~sections 81-216-01 to 81-216-37~~ the act and such activities shall have the same effect as those performed by the department. Any interference with the regulatory authority's duty to inspect shall be an interference with the department's duties for the purposes of section 42 of this act.

Sec. 51. That section 81-216.28, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-28-~~ (1) It shall be unlawful for any person to adulterate any food; or for any person to manufacture, distribute, offer for sale, or sell any adulterated food.

(2) Food shall be deemed to be adulterated if:

(a) It bears or contains any substance which may render it injurious to health, considering the quantity of such substance in or on the food;

(b) It consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance; or is otherwise unsafe for use as food;

(c) It has been manufactured, processed, packaged, stored, or held under insanitary conditions where it may have become unsafe for use as food;

(d) It is the product of a diseased animal or one that has died by any means other than slaughter;

(e) Its container is so constructed as to render the food unsafe or otherwise injurious to health; or

(f) Any valuable constituent of the food has been wholly or partially omitted or abstracted.

Sec. 52. That section 81-216.29, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-29-~~ (1) It shall be unlawful for any person to misbrand any food or distribute, offer for sale, or sell any misbranded food.

(2) A food shall be deemed to be misbranded if:

(a) It does not bear labeling clearly stating (i) the identity of the food in terms likely to be easily and accurately understood by the consumer, (ii) the net quantity of contents of the food in terms

authorized under sections 89-183 to 89-1,103, and (iii) the name and address of the manufacturer, distributor, or seller of the food; or

(b) Its labeling is false or misleading in any manner.

Sec. 53. That section 81-216.30, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-30-~~ (1) It shall be unlawful for any person to deceptively pack or package any food; or for any person to distribute, offer for sale, or sell any food that has been deceptively packed or packaged.

(2) A food shall be deemed to be deceptively packed or packaged if:

(a) Any substance has been added to, mixed, or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear to be better or of greater value than it actually is; or

(b) Any inferiority or damage to the food has been concealed in any manner.

(3) It shall be unlawful for any person to offer for sale in the same display case or refrigerated cabinet at any retail establishment any meat, fish, or poultry, including any meat, fish, or poultry product, containing binders, blenders, or extenders, together with the display of any natural food product in such manner that the purchaser may be misled or in any way deceived in the selection of such product. Notwithstanding any other provision of this subsection, the same display case or refrigerated cabinet may be used for both meat, fish, or poultry or the products made from such meat, fish, or poultry; and meat, fish, or poultry products containing binders, blenders, or extenders if (a) notice to purchasers is conspicuously posted on the display case or refrigerated cabinet that the case or cabinet contains both natural product and natural product with binders, blenders, or extenders added; and (b) the meat, fish, or poultry; or meat, fish, or poultry products containing binders, blenders, or extenders are correctly and conspicuously labeled with the term product containing binders, product containing blenders, or product containing extenders, or a comparable term, when applicable, in print of the same size used to identify the product. Such label shall contain a detailed statement of the ingredients and nutritional value together with pricing information in compliance with section 89-191.

Sec. 54. That section 81-216.31, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-31-~~ (1) It shall be unlawful for any person engaged in the sale, merchandising, or distribution of food to cause, with intent to deceive, the dissemination of a false advertisement regarding a food.

(2) An advertisement of a food shall be deemed to be false if it is false or misleading in any manner, including the following:

(a) The advertising of food as that of another;

(b) The advertising of food in a manner causing the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of such food;

(c) The advertising of food in a manner causing the likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by another;

(d) The advertisement of food by use of deceptive representations or deceptive designation of geographic origin in connection with such food;

(e) The advertisement of food by way of representations that the food has sponsorship, approval, characteristics, ingredients, benefits, uses, or qualities that it does not have or that a person or company has a sponsorship, approval status, affiliation, or connection that he, she, or it does not have;

(f) The advertisement of food by way of a representation that the food is of a particular standard, quality, or grade, when it is not;

(g) The advertisement of food by disparaging the food of another by false or misleading representations of fact;

(h) The advertisement of food with an intent not to sell it as advertised, or an intent to sell an alternative food in substitution for the advertised food;

(i) The advertisement of food with the intent not to supply a reasonably expectable public demand, unless the advertisement imposes a limitation of quantity; or

(j) The advertisement of food by making false or misleading statements of fact concerning the reasons for, existence of, or amounts of, price reductions.

Sec. 55. That section 81-216.32, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216-32- In determining whether food is being manufactured, processed, transported, distributed, offered for sale, or sold in violation of the adulteration, misbranding, deceptive packaging, or false advertising provisions of sections 81-216-28 to 81-216-31 51 to 54 of this act or any other requirement of the Nebraska Pure Food Act which affects such food, the regulatory authority may utilize the appropriate definitions, standards, tolerances, standards of identity, standards of quality, or standards of fill of containers set out in the duly promulgated federal regulations applicable to food and food products if the regulatory authority finds that such federal regulations will adequately protect against the adulteration, misbranding, deceptive packaging, and false advertising of foods.

Sec. 56. That section 81-216.33, Revised Statutes Supplement, 1990, be amended to read as follows:

81-216-33- If a regulatory authority finds that food is being manufactured, processed, distributed, offered for sale, or sold in violation of the adulteration, misbranding, deceptive packaging, or false advertising provisions of sections 81-216-28 to 81-216-31 51 to 54 of this act or any other requirement of the Nebraska Pure Food Act which affects such food, such regulatory authority may issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such food if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. No food subject to any such order shall be used, sold, or moved without permission from the regulatory authority. Such an order shall specifically describe the nature of the violation found, and the precise actions needed to be taken to bring the food into compliance with the applicable provisions of ~~sections 81-216-01 to 81-216-37~~ the act. Such order shall clearly advise the person in charge of the food that he or she may request an immediate hearing before the director or his or her designee on the matter. No such order may direct the involuntary and immediate disposal or destruction of any food until the person in charge of such food has been afforded an opportunity to be heard on the matter and an opportunity to appeal any order of the director or his or her designee from such a hearing in accordance with the Administrative Procedure Act. The regulatory authority may issue a stop-sale, stop-use, or removal order against articles of food that are perishable, even if

the practical result of such an order is to bring about the involuntary disposal of such food, when, in the opinion of the person issuing the order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

Sec. 57. That section 81-216.34, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-34.~~ (1) The department may adopt and promulgate rules and regulations to aid in the administration and enforcement of ~~sections 81-216-01 to 81-216-37~~ the Nebraska Pure Food Act.

(2) The department may contract with agencies of the federal government for the performance by the department of inspections and other regulatory functions at food establishments within the state which are subject to federal jurisdiction, and may receive federal funds for work performed under such contracts.

(3) Except as provided in subsection (2) of this section, the provisions of ~~sections 81-216-01 to 81-216-37~~ the act shall not apply to establishments or specific portions of establishments regularly inspected for proper sanitation by an agency of the federal government.

Sec. 58. That section 81-216.35, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-35.~~ (1) The department may apply for a restraining order or a temporary or permanent injunction against any person violating or threatening to violate ~~sections 81-216-01 to 81-216-37 or the Nebraska Pure Food Act,~~ the rules and regulations adopted pursuant to ~~sections 81-216-01 to 81-216-37, in order to insure compliance with their provisions. the act, or a final order of the director.~~ The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the county attorney of the county in which any violation of ~~sections 81-216-01 to 81-216-37~~ the act occurs or is about to occur, when notified of such violation or threatened violation by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay.

Sec. 59. That section 81-216.36, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-36-~~ (1) Any person violating any provision of ~~sections 81-216-01 to 81-216-37 or the Nebraska Pure Food Act~~, the rules and regulations adopted pursuant to ~~sections 81-216-01 to 81-216-37, the act, or a final order of the director~~ shall be guilty of a Class IV misdemeanor notwithstanding the existence of any other remedy at law.

(2) It shall be the duty of the county attorney of the county in which any violation of the Nebraska Pure Food Act occurs or is about to occur, when notified of such violation by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in a court of competent jurisdiction.

Sec. 60. That section 81-216.37, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-216-37-~~ All fees paid to the department in accordance with the provisions of ~~sections 81-216-01 to 81-216-37 the Nebraska Pure Food Act~~ shall be paid to the state treasury and credited by the State Treasurer remitted to the State Treasurer. The State Treasurer shall credit the fees to the Pure Food Cash Fund, which fund is hereby created. All money credited to such fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the provisions of sections 81-216-01 to 81-216-37 the act.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 61. That section 81-216.38, Revised Statutes Supplement, 1990, be amended to read as follows:

~~81-216-38-~~ The Nebraska Pure Food Act shall not apply to bed and breakfast establishments.

Sec. 62. That original sections 2-1802, 2-1803, 2-3407, 54-1350, 54-1902, 81-201.03, 81-201.04, 81-216.03 to 81-216.13, 81-216.15 to 81-216.32, and 81-216.34 to 81-216.37, Reissue Revised Statutes of Nebraska, 1943, and sections 81-216.01, 81-216.02, 81-216.33, 81-216.38, and 81-216.39, Revised Statutes Supplement, 1990, and also sections 81-201.01, 81-201.02, and 81-216.14, Reissue Revised Statutes of Nebraska, 1943, are repealed.