

Dedicated to the promotion of high standards in environmental health for the general welfare of the public



NEBRASKA
Environmental Health Association

February 20, 2015

Honorable Senator Johnson
District 23
State Capitol, Room # 1022
P.O. Box 94604
Lincoln, Nebraska 68509
jjohnson@leg.ne.gov

RE: Opposition to LB558– Provide an exception for certain food operations under the Nebraska Pure Food Act and provide a duty for the Department of Agriculture

Dear Senator:

The Nebraska Environmental Health Association strongly opposes LB558. Our primary concern is that LB558 will put Nebraskan's health at risk by allowing foods prepared in private homes to be sold in commercial establishments without proper safeguards.

LB558 would revise Nebraska statute 81-2,245.01 and allow non-potentially hazardous food to be sold by a third party at a retail level. In this context the term "non-potentially hazardous" can be very misleading. These foods can still spread pathogens and allergens if not prepared using appropriate practices and safeguards. When a product is defined as "non-potentially hazardous" it means that the food does not require time or temperature control for safety in order to limit pathogenic microorganism growth or toxin formation. It doesn't mean the food cannot make an individual seriously ill.

In fact, there was a multistate outbreak of listeriosis linked to caramel apples that began in October 2014 and ended January 6, 2015. During this outbreak 35 people were made sick and 3 people died as a result of eating caramel apples. History shows us that even baked goods have the potential to be dangerous. In 1999, 150 school age children contracted Norovirus from cookies that were served at their school. These types of outbreaks would become more prevalent if this bill passes. Before voting to advance this bill other serious consequences must be considered. If an outbreak were to occur, what kind of recourse would there be for victims? These facilities would not be licensed so they will not be required to carry any type of insurance. If a facility is linked to an outbreak, how would the regulatory authority prevent them from continuing to sell their products?

Allergens and allergen labeling is another serious concern. Current food code requires products to have a label including the major food allergens. These allergens are milk, egg, fish, wheat, peanuts, tree nuts, and soybeans. Food produced at home based facilities would be exempt from allergen labeling which could lead to patrons having an allergic reaction. For example, Pam cooking spray contains soy and is not likely to be included on a home based producers packaging label.

There is also a very serious concern of cross-contamination at home based facilities. The producer could be baking bread and peanut brittle in same work space and unintentionally contaminate the bread with peanuts. In the example of a Farmer's Market, the producer is available onsite and can be questioned about the presence of these allergens in their home. If these products are sold in a retail environment there isn't anyone present for the consumer to question. A phone number isn't required to be placed on these products so there is no easy way to ensure consumer safety.

Currently, licensed food operations must demonstrate their knowledge of safe food handling and sanitation principles. This is supported by asking questions of the operator and observation of their facility. Just because an individual is able to pass an online food handler training does not mean best practices are being used. The regulatory authority would have no way of know if the facility the food is prepared in is constructed properly, clean, or has running water to wash hands.

The Association also has serious concerns regarding the enforcement of the statute if these revisions are made. This revision requires that the facilities register with the Department of Agriculture, but without the authority to do an inspection what is the purpose of the registration? It does not appear that registration could be revoked, so even if a producer was deemed "a public health concern" what action could the regulatory authority take to protect Nebraskans?

We respectfully ask that for the good of Nebraska, the health of our citizens, and the protection of our environment, that you vote against LB558.

For the Board,

A handwritten signature in black ink that reads "Allen Brown REHS". The signature is written in a cursive, flowing style.

Allen Brown, REHS

President

Nebraska Environmental Health Association

1111 S 41st Street

Omaha, Nebraska 68105

Phone: (402)444-7489