

**ARTICLE 4-D LIABILITY FOR CANNED, PERISHABLE
FOOD OR FARM PRODUCTS DISTRIBUTED FREE OF CHARGE**
(Revised August 30, 2010)

Section 71-y. Definitions

As used in this article:

1. "Perishable foods" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. Perishable food includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen, or otherwise require refrigeration to remain nonperishable. This definition shall not include game or wild game.
2. "Canned foods" means any canned food that has been hermetically sealed and commercially processed and prepared for human consumption, including canned or preserved fruits, vegetables or other articles of food. There is specifically excluded for purposes of this section canned goods that are rusted, leaking, swollen or canned goods that are defective or cannot be otherwise offered for sale to members of the general public.
3. "Farm products" means any agricultural, dairy or horticultural product or any product designed or intended for human consumption or prepared principally from an agricultural, dairy or horticultural product.
4. "Charitable or nonprofit organization" means any organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell such donated items of food.
5. "Organized gleaning" means the harvest of an agricultural crop that has been donated by an owner, lessee, or occupant of premises or occupant of a farm by persons who are sponsored by a charitable not-for-profit organization.
6. "Game or wild game" means any deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting.
7. "Public food service establishment" means any building, vehicle, place or structure, or any room or division in a building, vehicle, place or structure where food is prepared, served or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

Section 71-z. Liability for canned or perishable foods or farm products distributed free of charge.

1. Notwithstanding any other provision of law, a good-faith donor of any canned or perishable food, farm product, game or wild game, apparently fit for human consumption, to a bona fide charitable or nonprofit organization, for free distribution, shall not be subject to criminal penalty or civil damages arising from the condition of the food, if the said donor reasonably inspects the food at the time of donation and finds the food apparently fit for human consumption

and unless the donor has actual or constructive knowledge that the food is adulterated, tainted, contaminated or harmful to the health or well-being of the person consuming said food. Such good-faith donor shall include, but not be limited to, public food service establishments.

2. This section includes the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other considerations, but shall not be deemed or construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of such food for human consumption.
3. A not-for-profit charitable organization shall provide liability insurance to persons engaged in gleaning activities organized or sponsored by such charitable organization.