

# Legislative Analysis



## CERTIFICATES OF FREE SALE

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5742 as enacted**  
**Public Act 124 of 2022**  
**Sponsor: Rep. Sara Cambensy**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5743 as enacted**  
**Public Act 125 of 2022**  
**Sponsor: Rep. Richard M. Steenland**

**House Bill 5747 as enacted**  
**Public Act 128 of 2022**  
**Sponsor: Rep. Bryan Posthumus**

**House Bill 5744 as enacted**  
**Public Act 126 of 2022**  
**Sponsor: Rep. Julie Alexander**

**House Bill 5748 as enacted**  
**Public Act 129 of 2022**  
**Sponsor: Rep. Graham Filler**

**House Bill 5745 as enacted**  
**Public Act 127 of 2022**  
**Sponsor: Rep. Ken Borton**

**Senate Bill 1058 as enacted**  
**Public Act 130 of 2022**  
**Sponsor: Sen. Kevin Daley**

**House Committee: Agriculture**  
**Senate Committee: Agriculture**  
**Complete to 7-15-22**

## SUMMARY:

Taken together, the bills amend several different acts to allow for a certificate of free sale from the Michigan Department of Agriculture and Rural Development (MDARD) for the following products:

- HB 5742: pesticides
- HB 5743: fertilizer
- HB 5744: food
- HB 5745: commercial feed
- HB 5747: milk and dairy
- HB 5748: grade A milk
- SB 1058: nursery stock (plants)

All of the bills include similarly worded provisions that allow MDARD to inspect, audit, or certify locations where the products described above are processed or manufactured in Michigan, either at the request of the entity the bill applies to or based on records voluntarily supplied by that entity. MDARD also may issue a **certificate of free sale** upon application from such an entity.

The bills define **certificate of free sale** as a document issued by MDARD that verifies that the product listed is registered, manufactured, grown, or processed in Michigan and is legally sold or distributed in Michigan and on the open market with the approval of MDARD.

Application for a certificate of free sale must be made on a form and in a manner prescribed by MDARD, and the department must grant or deny an application for a certificate within 10 business days after receiving a completed application and the application fee. MDARD must issue the certificate of free sale if it determines that the application meets all of the applicable requirements of the underlying act and rules promulgated under that act. MDARD must deny an application not meeting those requirements and provide written notice to the applicant stating the reasons for the denial.

The fee for a certificate of free sale under all of the bills is \$60. The bills also provide for an additional \$10 fee for a duplicate copy. A certificate of free sale is valid for one year.

**[Note:** The bills require MDARD to grant or deny an application for a certificate within 10 business days after MDARD receives the application *and fee*. However, they also require the relevant entity to pay an “application fee” *only after MDARD has approved and issued the certificate*. This seems potentially unclear.]

**House Bill 5742** amends Part 83 (Pesticide Control) of the Natural Resources and Environmental Protection Act (NREPA) and applies to registrants under that part. A certificate of free sale under the bill verifies that the pesticide listed is registered with MDARD and is legally sold or distributed in Michigan. Fees collected under the bill are deposited in the Agriculture Licensing and Inspection Fees Fund created under the Insect Pest and Plant Disease Act.

MCL 324.8308a (added)

**House Bill 5743** amends Part 85 (Fertilizers) of NREPA and applies to fertilizer licensees. A certificate of free sale under the bill verifies that the fertilizer listed is manufactured in Michigan and is legally sold or distributed in Michigan. Fees collected under the bill are deposited in the Fertilizer Control Fund.

MCL 324.8507a (added)

**House Bill 5744** amends the Food Law and applies to food processors. A certificate of free sale verifies that the food listed is processed or manufactured in Michigan and is legally sold or distributed in Michigan. Fees collected under the bill are deposited in the Dairy and Food Safety Fund. (Additionally, the bill removes provisions providing for a \$60 fee for a free-sale letter.)

MCL 289.2125 (amended) and MCL 289.2124 (added)

**House Bill 5745** amends the Feed Law and applies to manufacturers of commercial feed. The bill revises the certificate of free sale process for feed and feed ingredients to apply to *commercial* feed and *commercial* feed ingredients. A certificate of free sale under the bill verifies that the commercial feed or commercial feed ingredient listed is manufactured in Michigan and is legally sold or distributed in Michigan. Fees collected under the bill are deposited in the Feed Control Fund.

MCL 287.539 (amended)

**House Bill 5747** would amend the Manufacturing Milk Law and would apply to milk and dairy processors. A certificate of free sale under the bill would verify that the milk or dairy product listed is processed, pasteurized, or aseptically processed in Michigan and is legally sold or distributed in Michigan. Fees collected under the bill would be deposited in the Dairy and Food Safety Fund created under the Food Law.

MCL 288.652 (added)

**House Bill 5748** amends the Grade A Milk Law and applies to processors or producers of grade A milk and milk products. A certificate of free sale under the bill verifies that the grade A milk or milk product listed is processed, pasteurized, or aseptically processed in Michigan and is legally sold or distributed in Michigan. Fees collected under the bill are deposited in the Dairy and Food Safety Fund created under the Food Law.

MCL 288.506 (added)

**Senate Bill 1058** amends the Insect Pest and Plant Disease Act and applies to nursery dealers, nursery growers, or plant growers. A certificate of free sale under the bill verifies that the nursery stock (plant) listed is propagated, grown, or cultivated in Michigan and is legally sold or distributed in Michigan. Fees collected under the bill are deposited in the Agriculture Licensing and Inspection Fees Fund.

MCL 286.217a (added)

## **BACKGROUND:**

As described above, the bills amend acts that establish various licensing and regulatory programs under the authority of MDARD. Specifically, the bills establish a fee for the issuance of a “certificate of free sale” by MDARD.

Note that a certificate of free sale does not mean that the product is to be sold or distributed free of charge. Instead, “certificate of free sale” is a term used in trade to indicate that a product meets regulatory requirements and is free to be sold. The New York Department of Agriculture and Markets states:

A Certificate of Free Sale is a document required by certain countries or foreign governments for commodities which certifies that the imported food items are normally and freely sold in New York State and are approved for export. In New York, a Certificate of Free Sale is a document prepared by the Department containing information about a product’s regulatory or marketing status. This certificate is for food and dairy products that may be legally marketed in the United States.<sup>1</sup>

MDARD issued certificates of free sale before the bills were enacted and had done so for a number of years. But only the Food Law previously recognized “free-sale letters.”<sup>2</sup>

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<sup>1</sup> <https://agriculture.ny.gov/food-safety/certificate-free-sale-food-products>.

<sup>2</sup> Specifically, section 2125 of the Food Law established a fee for “free-sale letters.” The fee was \$25 under the Food Law as originally enacted in 2000 and through September 30, 2015. The fee was increased to \$60 under 2015 amendments to the Food Law. See <http://legislature.mi.gov/doc.aspx?2015-HB-4470>

## **BRIEF DISCUSSION:**

According to committee testimony, certificates of free sale are increasingly required for exported goods to clear foreign customs. Some of the top exports from Michigan to other countries in 2021 included processed foods, soybeans, dairy products, wood and wood products, and cereal, totaling \$2.5 billion. Supporters of the bills hope that expanding Michigan's certificates of free sale will increase the exports allowed to other countries. No one testified or voted against the bills in House committee.

## **FISCAL IMPACT:**

Under House Bill 5744, which amends the Food Law, the \$60 fee for a "certificate of free sale" is the same as, and replaces, the \$60 fee for a "free-sale letter." The other bills in the package establish the certificate of free sale fee at the same level as in the Food Law—\$60.

MDARD incurs costs associated with the work of preparing and issuing certificates of free sale. The proposed fees would offset, at least in part, those costs.

The previous \$60 "free-sale letter" fee in the Food Law generated approximately \$88,000 annually for credit to the Dairy and Food Safety Fund, a state restricted fund that supports MDARD food and dairy regulatory and inspection programs.

The amount of additional fee revenue the bill package would generate from certificate of free sale fees issued for other MDARD licensing and regulatory programs cannot be readily estimated at this time. Revenue from those fees would be credited to the restricted funds that support each specific program area.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.