

Legislative Analysis



CERTIFICATES OF FREE SALE

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<http://www.house.mi.gov/hfa>

House Bill 5742 as reported from committee
Sponsor: Rep. Sara Cambensy

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

House Bill 5743 as reported
Sponsor: Rep. Richard M. Steenland

House Bill 5746 as reported
Sponsor: Rep. Robert J. Bezotte

House Bill 5744 as reported
Sponsor: Rep. Julie Alexander

House Bill 5747 as reported
Sponsor: Rep. Bryan Posthumus

House Bill 5745 as reported
Sponsor: Rep. Ken Borton

House Bill 5748 as reported
Sponsor: Rep. Graham Filler

Committee: Agriculture
Revised 7-15-22

SUMMARY:

Taken together, House Bills 5742 through 5748 would amend several different acts to provide for a certificate of free sale for certain products. Specifically, the bills would 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 5746: nursery stock (plants)
- HB 5747: milk and dairy
- HB 5748: grade A milk

All of the bills include similarly worded provisions that would 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 could issue a *certificate of free sale* upon application from such an entity.

The bills would 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 would have to be made on a form and in a manner prescribed by MDARD, and the department would have to grant or deny an application for a certificate within 10 business days after receiving a completed application and the application fee. MDARD would have to 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 would have to 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 would be \$60. The bills also provide for an additional \$10 fee for a duplicate copy.

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

A certificate of free sale would be valid for one year.

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

Proposed MCL 324.8308a

House Bill 5743 would amend Part 85 (Fertilizers) of NREPA and would apply to fertilizer licensees. A certificate of free sale under the bill would verify that the fertilizer listed is manufactured in Michigan and is legally sold or distributed in Michigan. Fees collected under the bill would be deposited in the Fertilizer Control Fund.

Proposed MCL 324.8507a

House Bill 5744 would amend the Food Law and would apply to food processors. A certificate of free sale would verify that the food listed is processed or manufactured 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. (Additionally, the bill would remove provisions that now provide for a \$60 fee for a free-sale letter.)

MCL 289.2125 and proposed MCL 289.2124

House Bill 5745 would amend the Feed Law and would apply to manufacturers of commercial feed. The bill would update the current certificate of free sale process for feed and feed ingredients to instead apply to *commercial* feed and *commercial* feed ingredients. A certificate of free sale under the bill would verify 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 would be deposited in the Feed Control Fund.

MCL 287.539

House Bill 5746 would amend the Insect Pest and Plant Disease Act and would apply to nursery dealers, nursery growers, or plant growers. A certificate of free sale under the bill

would verify 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 would be deposited in the Agriculture Licensing and Inspection Fees Fund.

Proposed MCL 286.217a

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.

Proposed MCL 288.652

House Bill 5748 would amend the Grade A Milk Law and would apply to processors or producers of grade A milk and milk products. A certificate of free sale under the bill would verify 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 would be deposited in the Dairy and Food Safety Fund created under the Food Law.

Proposed MCL 288.506

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 committee.

FISCAL IMPACT:

As described in detail above, House Bills 5742 to 5748 amend acts that establish various licensing and regulatory programs under the authority of MDARD. Specifically, the bills would 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.¹

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

MDARD currently issues certificates of free sale and has done so for a number of years. But only the Food Law currently recognizes “free sale letters.”²

Under House Bill 5744, which would amend the Food Law, the \$60 fee for a “certificate of free sale” would be the same as, and would replace, the current \$60 fee for a “free sale letter.” The other bills in the package would establish the certificate of free sale fee at the same level as in the Food Law—\$60.

MDARD currently 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 current \$60 “free sale letter” fee in the Food Law generates 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.

We have not yet determined how much additional fee revenue the bill package would generate for certificate of free sale fees issued for other MDARD licensing and regulatory programs. Revenue from those fees would be credited to the restricted funds that support each specific program area.

POSITIONS:

Representatives of the Department of Agriculture and Rural Development testified in support of the bills. (3-9-22)

The Michigan Farm Bureau indicated support for the bills. (3-9-22)

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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.

² Specifically, section 2125 of the Food Law establishes 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. <http://legislature.mi.gov/doc.aspx?2015-HB-4470>