

MICHIGAN TOBACCO SETTLEMENT FINANCE AUTHORITY ACT (EXCERPT)
Act 226 of 2005

129.268 Sale of state's tobacco receipts; terms; agreement; refunding, refinancing, and sale of residual interests; purchase price; remedies; approval by resolution adopted by state administrative board; absolute transfer; limitation on use of net proceeds and earnings.

Sec. 8. (1) The state budget director with the approval of the state administrative board may sell to the authority, and the authority may purchase, for cash or other consideration and in 1 or more installments, all or a portion of the state's tobacco receipts pursuant to the terms of 1 or more sale agreements. In the alternative, the state budget director with the approval of the state administrative board may sell all or a portion of the state's tobacco receipts for cash or other consideration to a person or persons other than the authority, if the terms of the sale agreement to sell the state's tobacco receipts are in the best interests of this state and the net proceeds of the sale will not exceed \$400,000,000.00. If the sale to a person or persons other than the authority is in the best interests of this state, the state administrative board shall approve the terms of the sale agreement. The sale agreement or combined sale agreements shall provide for the sale of that portion of the state's tobacco receipts sufficient to provide net proceeds to the state in the amount of \$815,000,000.00, of which \$400,000,000.00 shall be deposited to and held, used, and expended by the state treasurer in the manner provided for in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, \$207,800,000.00 shall be deposited in the state school aid fund established by section 11 of article IX of the state constitution of 1963, and the balance shall be deposited in the general fund.

(2) A sale agreement or combined sale agreements under this section may also provide for refunding, refinancing, and the sale by this state of residual interests sufficient to provide net proceeds to the state in the amount of \$60,000,000.00. Any net proceeds resulting from a refunding or refinancing of bonds issued under this act prior to the effective date of the amendatory act that added this subsection or the sale of residual interests existing on or after the effective date of the amendatory act that added this subsection shall be deposited in the general fund.

(3) Any sale agreement shall provide that the purchase price payable by the authority to the state for TSRs shall consist of the net proceeds and the residual interests, if any. In addition, any sale shall be pursuant to 1 or more sale agreements that may contain the terms and conditions considered appropriate by the state budget director to carry out and effectuate the purposes of this section, including without limitation covenants binding this state in favor of the authority and its assignees, including without limitation the owners of the bonds and benefited parties, including a requirement that the state enforce the provisions of the master settlement agreement that require the payment of the TSRs, a requirement that the state enforce the provisions of the qualifying statute, a provision authorizing inclusion of the state's pledge and agreement, as set forth in section 11, in any agreement with owners of the bonds or any benefited parties, and covenants with respect to the application and use of the proceeds of the sale of the state's tobacco receipts to preserve the tax exemption of the interest on any bonds, if issued as tax-exempt. The state budget director in any sale agreement may agree to, and the authority may provide for, the assignment of the authority's right, title, and interest under the sale agreement for the benefit and security of the owners of bonds and benefited parties.

(4) A sale agreement may provide that the remedies available to the authority and the bondholders for any breach of the pledges and agreements of this state set forth in subsection (3) shall be limited to injunctive relief and that this state shall be considered to have diligently enforced the qualifying statute if there has been no judicial determination by a court of competent jurisdiction in this state, in an action commenced by a participating tobacco manufacturer under the master settlement agreement, that this state has failed to diligently enforce the qualifying statute.

(5) The approval of the state administrative board shall be made by a resolution adopted by the state administrative board and that approval together with the sale agreement made pursuant to that approval shall be conclusively presumed to be valid for all purposes unless challenged in an action brought in the court of appeals within 30 days after the adoption of the resolution. All challenges shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Consideration by the court of appeals shall be based solely on the record before the state administrative board and briefs to the court shall be limited to whether the resolution conforms to the constitution and laws of this state and the United States and is within the authority of the state administrative board under this act.

(6) A sale of all or a portion of the state's tobacco receipts to the authority under a sale agreement shall be treated as a true sale and absolute transfer of the state's tobacco receipts transferred and not as a pledge or other security interest for any borrowing. A sale agreement that expressly states that the transfer of all or a portion of the state's tobacco receipts to the authority is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the

authority. The characterization of a sale as an absolute transfer by the participants shall not be negated or adversely affected by the fact that only a portion of the state's tobacco receipts are transferred, or by the acquisition or retention by this state of a residual interest, or by the participation by any state official as a member or officer of the authority, or by whether the state is responsible for collecting the TSRs or otherwise enforcing the master settlement agreement or retains legal title to the portion of the state's tobacco receipts for the purposes of these collection activities, or by any characterization of the authority or its obligations for purposes of accounting, taxation, or securities regulation, or by any other factor whatsoever. A true sale under this act exists regardless of whether the authority has any recourse against this state, or any other term of the sale agreement, including the fact that this state acts as a collector of the state's tobacco receipts or the treatment of the transfer as a financing for any purpose.

(7) On and after the effective date of each sale of TSRs, the state shall have no right, title, or interest in or to the TSRs sold, and the TSRs sold shall be property of the authority and not of this state, and shall be owned, received, held, and disbursed by the authority and not this state. On or before the effective date of a sale described in this subsection, this state through the state treasurer shall notify the escrow agent under the master settlement agreement that this state has sold all or a portion of the state's tobacco receipts to the authority, including, if applicable, a statement as to the percentage sold and shall irrevocably instruct the escrow agent that, subsequent to the date specified in the notice, that portion of the state's tobacco receipts are to be paid directly to the authority or the trustee under the applicable authority resolution, trust agreement, or trust indenture for the benefit of the owners of the bonds and benefited parties until the authority's bonds and ancillary facilities are no longer outstanding. Once the bonds or ancillary facilities are no longer outstanding, an officer or agent of this state who shall receive any TSRs shall hold them in trust for the authority or the trustee, as applicable, and shall promptly remit the same to the authority or the trustee, as applicable.

(8) The net proceeds and any earnings on the net proceeds shall never be pledged to, or made available for, payment of the bonds or ancillary facilities or any interest or redemption price or any other debt or obligation of the authority.

History: 2005, Act 226, Imd. Eff. Nov. 21, 2005;—Am. 2007, Act 18, Imd. Eff. June 12, 2007;—Am. 2008, Act 101, Imd. Eff. Apr. 18, 2008.