

ASSEMBLY, No. 2549

STATE OF NEW JERSEY

INTRODUCED DECEMBER 9, 1996

By Assemblymen KAVANAUGH and DiGAETANO

1 AN ACT authorizing the sale, assignment and transfer of State tax and  
2 motor vehicle surcharge indebtedness and lien, supplementing  
3 chapter 50 of Title 54 of the Revised Statutes and amending  
4 P.L.1983, c.65.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8

9 1. (New section) a. The State Treasurer shall have the authority  
10 to sell, transfer or assign all right, title and interest in any State tax  
11 indebtedness and lien represented by any certificate of debt including  
12 any statutory fee for the cost of collection imposed pursuant to  
13 section 8 of P.L.1987, c.76 (C.54:49-12.1), issued pursuant to  
14 R.S.54:49-12 to any person for a fair, adequate and reasonable  
15 consideration; provided however, that the underlying State tax  
16 indebtedness and lien represented by the certificate is fixed and  
17 constitutes a final determination of the Director of the Division of  
18 Taxation not subject to protest or appeal pursuant to the provisions  
19 of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

20 b. After a sale pursuant to this section and for the purpose of the  
21 proper administration of this section and to prevent untimely protests  
22 or appeals of the underlying tax indebtedness, it shall be presumed that  
23 the tax indebtedness is fixed and constitutes a final determination of  
24 the director not subject to protest or appeal unless the taxpayer or the  
25 taxpayer's authorized representative can establish by clear and  
26 convincing evidence that the contrary is true. If the taxpayer contests  
27 the underlying tax indebtedness after the sale, transfer or assignment  
28 of the State tax indebtedness and lien represented by any certificate of  
29 debt, then the taxpayer shall first file a protest with the director  
30 pursuant to R.S.54:49-18 before bringing an appeal to the tax court  
31 pursuant to chapter 51A of Title 54 of the Revised Statutes; provided  
32 however, that the director shall be joined as the primary party in  
33 interest with the person to whom the State tax indebtedness and lien  
34 has been sold, transferred or assigned in any action or proceeding

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 brought to challenge the underlying tax indebtedness. The director  
2 shall advise by written notice the clerk of the court which has entered  
3 the certificate on its record of docketed judgments that the sale,  
4 transfer or assignment has been made in the name and address of the  
5 purchaser. Thereupon, the clerk shall, without cost, enter a notation  
6 of the sale and the name and address of the purchaser in the record of  
7 docketed judgments. This written notice shall also be given by the  
8 director to the taxpayer in accordance with R.S.54:50-6.

9  
10 2. (New section) All sales, transfers or assignments of  
11 indebtedness and lien represented by certificates of debt shall be on  
12 such terms and conditions as the State Treasurer may determine  
13 appropriate. In setting these terms, conditions and the fair, adequate  
14 and reasonable consideration, the State Treasurer shall consider what  
15 will be most advantageous to the State based upon a present value  
16 analysis taking into account the likelihood of the State collecting the  
17 indebtedness within a reasonable time and other factors as the State  
18 Treasurer may determine.

19  
20 3. (New section) The purchaser, transferee or assignee of any State  
21 tax indebtedness and lien represented by a certificate of debt shall be  
22 entitled to exercise all the remedies and may take all of the  
23 proceedings for the collection of the indebtedness represented by the  
24 certificate that are available pursuant to the laws of this State to any  
25 judgment creditor, and shall be entitled to the same priority as the  
26 State may have respecting the certificate and underlying indebtedness  
27 and lien. Interest shall accrue at the rate provided by R.S.54:49-3.

28  
29 4. (New section) Notwithstanding the provisions of subsection a.  
30 of R.S.54:50-8 to the contrary, the Director of the Division of  
31 Taxation may provide the purchaser, transferee or assignee of the  
32 indebtedness and lien represented by the certificate of debt such  
33 taxpayer information as is necessary for the purchaser to collect the  
34 indebtedness represented by the certificate, provided that such  
35 disclosure is not contrary to the provisions of subsection (a) of section  
36 26 of the federal Internal Revenue Code of 1986, 26 U.S.C. §6103 or  
37 other State or federal law. Such purchaser, transferee or assignee and  
38 its employees shall be specifically subject to the confidentiality  
39 provisions of R.S.54:50-8; and the purchaser shall furnish the director  
40 with the affidavit of each of its principals and employees in which each  
41 such principal and employee shall acknowledge receipt of a copy of the  
42 confidentiality provisions of the State Tax Uniform Procedure Law,  
43 R.S.54:48-1 et seq., understanding of the obligation to maintain, and  
44 agreement to maintain, the confidentiality of taxpayer information, and  
45 awareness that violation of the confidentiality provisions is punishable  
46 by law.

1       5. (New section) The purchaser, transferee or assignee of the  
2 indebtedness and lien represented by the certificate of debt shall  
3 promptly file any warrant of satisfaction with the clerk, and such  
4 warrant of satisfaction shall be recorded in the office of any recording  
5 officer in which such certificate has been filed.

6  
7       6. (New section) All proceeds received by the State Treasurer  
8 from the sale, transfer or assignment of State tax indebtedness and lien  
9 represented by certificates of debt pursuant to sections 1 through 5 of  
10 P.L. , c. (C. )(now pending before the Legislature as this  
11 bill) shall be deposited in the designated fund, if any, as may be  
12 provided by law for deposit of the proceeds collected pursuant to the  
13 State tax under which the indebtedness arises, including but not limited  
14 to the indebtedness pursuant to the “New Jersey Gross Income Tax  
15 Act,” N.J.S.54A:1-1 et seq., the proceeds of which sale, transfer or  
16 assignment of indebtedness and lien shall be deposited to the Property  
17 Tax Relief Fund established pursuant to N.J.S.54A:9-25.

18  
19       7. (New section) The Director of the Division of Taxation is  
20 authorized to promulgate regulations and take other necessary or  
21 useful measures for the purpose of efficiently administering sections  
22 1 through 6 of this act, securing the largest possible revenue for the  
23 State, ensuring the integrity of the collection program and assuring  
24 fairness to taxpayers.

25  
26       8. (New Section) Under no circumstances shall any purchaser,  
27 transferee, or designee have any legal recourse against the State or its  
28 officers or employees for any damages of any sort whatsoever that  
29 might arise on account of or in connection with any sale, transfer or  
30 assignment made or proposed to be made pursuant to the provisions  
31 of sections 1 through 7 of P.L. , c. (C. )(now pending  
32 before the Legislature as this bill).

33  
34       9. Section 6 of P.L.1983, c.65, (C.17:29A-35) is amended to read  
35 as follows:

36       6. a. A merit rating accident surcharge system for private  
37 passenger automobiles may be used in the voluntary market, by the  
38 New Jersey Automobile Full Insurance Underwriting Association  
39 created pursuant to section 16 of P.L.1983, c.65 (C. 17:30E-4), by the  
40 Market Transition Facility created pursuant to section 88 of P.L.1990,  
41 c.8 (C.17:33B-11), and by any insurance plan established to provide  
42 private passenger automobile insurance pursuant to section 1 of  
43 P.L.1970, c.215 (C.17:29D-1). No surcharges shall be imposed on or  
44 after the operative date of this act, unless there is an at-fault accident  
45 within a three-year period immediately preceding the effective date of  
46 coverage which results in payment by the insurer of at least a

1 ~~[\$300.00]~~ \$300 claim. All moneys collected under this subsection  
2 shall be retained by the insurer assessing the surcharge. Accident  
3 surcharges shall be imposed for a three-year period and shall, for each  
4 filer, be uniform on a Statewide basis without regard to classification  
5 or territory.

6 b. There is created a New Jersey Merit Rating Plan which shall  
7 apply to all drivers and shall include, but not be limited to, the  
8 following provisions:

9 (1) (a) Plan surcharges shall be levied, beginning on or after  
10 January 1, 1984, by the Division of Motor Vehicles on any driver who  
11 has accumulated, with the immediately preceding three year period,  
12 beginning on or after February 10, 1983, six or more motor vehicle  
13 points, as provided in Title 39 of the Revised Statutes, exclusive of  
14 any points for convictions for which surcharges are levied under  
15 paragraph (2) of this subsection; except that the allowance for a  
16 reduction of points in Title 39 of the Revised Statutes shall not apply  
17 for the purpose of determining surcharges under this paragraph.  
18 Surcharges shall be levied for each year in which the driver possesses  
19 six or more points. Surcharges assessed pursuant to this paragraph  
20 shall be ~~[\$100.00]~~ \$100 for six points, and ~~[\$25.00]~~ \$25 for each  
21 additional point.

22 (b) (Deleted by amendment, P.L.1984, c.1.)

23 (2) Plan surcharges shall be levied for convictions (a) under  
24 R.S.39:4-50 for violations occurring on or after February 10, 1983,  
25 and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for  
26 offenses committed in other jurisdictions of a substantially similar  
27 nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512  
28 (C.39:4-50.4a), for violations occurring on or after January 26, 1984.  
29 Except as hereinafter provided, surcharges under this paragraph shall  
30 be levied annually for a three year period, and shall be ~~[\$1,000.00]~~  
31 \$1,000 per year for each of the first two convictions, for a total  
32 surcharge of \$3,000 for each conviction, and ~~[\$1,500.00]~~ \$1,500 per  
33 year for the third conviction occurring within a three year period, for  
34 a total surcharge of \$4,500 for the third conviction. If a driver is  
35 convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512  
36 (C.39:4-50.4a) for offenses arising out of the same incident, the driver  
37 shall be assessed only one surcharge for the two offenses.

38 If, upon written notification from the Division of Motor Vehicles,  
39 mailed to the last address of record with the division, a driver fails to  
40 pay a surcharge levied under this subsection, the license of the driver  
41 shall be suspended forthwith until the surcharge is paid to the Division  
42 of Motor Vehicles; except that the Division of Motor Vehicles may  
43 authorize payment of the surcharge on an installment basis over a  
44 period not to exceed 12 months. If a driver fails to pay the surcharge  
45 or any installments on the surcharge, the total surcharge shall become  
46 due immediately.

1 The director may authorize any person to pay the surcharge levied  
2 under this section by use of a credit card, and the director is  
3 authorized to require the person to pay all costs incurred by the  
4 division in connection with the acceptance of the credit card.

5 In addition to any other remedy provided by law, the director is  
6 authorized to utilize the provisions of the SOIL (Setoff of Individual  
7 Liability) program established pursuant to P.L.1981, c.239 (C.54A:9-  
8 8.1 et seq.) to collect any surcharge levied under this section that is  
9 unpaid on or after the effective date of this act. As an additional  
10 remedy, the director may issue a certificate to the Clerk of the  
11 Superior Court stating that the person identified in the certificate is  
12 indebted under this surcharge law in such amount as shall be stated in  
13 the certificate. The certificate shall reference the statute under which  
14 the indebtedness arises. Thereupon the clerk to whom such certificate  
15 shall have been issued shall immediately enter upon the record of  
16 docketed judgments the name of such person as debtor; the State as  
17 creditor; the address of such person, if shown in the certificate; the  
18 amount of the debt so certified; a reference to the statute under which  
19 the surcharge is assessed; and the date of making such entries. The  
20 docketing of the entries shall have the same force and effect as a civil  
21 judgment docketed in the Superior Court, and the director shall have  
22 all the remedies and may take all of the proceedings for the collection  
23 thereof which may be had or taken upon the recovery of a judgment  
24 in an action, but without prejudice to any right of appeal. Upon entry  
25 by the clerk of the certificate in the record of docketed judgments in  
26 accordance with this provision, interest in the amount specified by the  
27 court rules for post-judgment interest shall accrue from the date of the  
28 docketing of the certificate, however payment of the interest may be  
29 waived by the director. In the event that the surcharge remains unpaid  
30 following the issuance of the certificate of debt and the director takes  
31 any further collection action including referral of the matter to the  
32 Attorney General or his designee, the fee imposed, in lieu of the actual  
33 cost of collection, may be 20 percent of the surcharge or \$200,  
34 whichever is greater. The director shall provide written notification  
35 to a driver of the proposed filing of the certificate of debt 10 days  
36 prior to the proposed filing; such notice shall be mailed to the driver's  
37 last address of record with the division.

38 All moneys collectible under this subsection b. shall be billed and  
39 collected by the Division of Motor Vehicles. Of the moneys collected:  
40 10% or the actual cost of administering the collection of the surcharge,  
41 whichever is less, shall be retained by the Division of Motor Vehicles  
42 until August 31, 1996; five percent, or the actual cost of administering  
43 the cancellation notification system established pursuant to section 50  
44 of P.L.1990, c.8 (C.17:33B-41), whichever is less, shall be retained by  
45 the Division of Motor Vehicles until August 31, 1996; and prior to  
46 October 1, 1991, the remainder shall be remitted to the New Jersey

1 Automobile Full Insurance Underwriting Association and on or after  
2 October 1, 1991 until August 31, 1996, the remainder shall be remitted  
3 to the New Jersey Automobile Insurance Guaranty Fund created  
4 pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5). Commencing  
5 on September 1, 1996, or such earlier time as the Commissioner of  
6 Banking and Insurance shall certify to the State Treasurer that  
7 amounts on deposit in the New Jersey Automobile Insurance Guaranty  
8 Fund are sufficient to satisfy the current and anticipated financial  
9 obligations of the New Jersey Automobile Full Insurance Underwriting  
10 Association, all plan surcharges collected by the Division of Motor  
11 Vehicles under this subsection b. shall be remitted to the Division of  
12 Motor Vehicles Surcharge Fund for transfer to the Market Transition  
13 Facility Revenue Fund, as provided in section 12 of P.L.1994, c.57  
14 (C.34:1B-21.12), for the purposes of section 4 of P.L.1994, c.57  
15 (C.34:1B-21.4) until such a time as all the Market Transition Facility  
16 bonds, notes and obligations issued pursuant to that section 4 of that  
17 act and the costs thereof are discharged and no longer outstanding.  
18 From the date of certification by the Commissioner of Banking and  
19 Insurance that the moneys collectible under this subsection are no  
20 longer needed to fund the association or at such a time as all Market  
21 Transition Facility bonds, notes and obligations issued pursuant to  
22 section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are  
23 discharged and no longer outstanding moneys collectible under this  
24 subsection shall, subject to appropriation, be remitted to the New  
25 Jersey Property-Liability Insurance Guaranty Association created  
26 pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used for  
27 payment of any loans made by that association to the New Jersey  
28 Automobile Insurance Guaranty Fund pursuant to paragraph (10) of  
29 subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8); provided  
30 that all such payments shall be subject to and dependent upon  
31 appropriation by the State Legislature.

32 (3) In addition to any other authority provided in P.L.1983, c.65  
33 (C.17:29A-33 et al.), the commissioner, after consultation with the  
34 Director of the Division of Motor Vehicles, is specifically authorized  
35 (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in  
36 accordance with paragraph (1)(a) of this subsection, surcharges for  
37 motor vehicle violations or convictions for which motor vehicle points  
38 are not assessed under Title 39 of the Revised Statutes, or (c) to  
39 reduce the number of points for which surcharges may be assessed  
40 below the level provided in paragraph (1) (a) of this subsection, except  
41 that the dollar amount of all surcharges levied under the New Jersey  
42 Merit Rating Plan shall be uniform on a Statewide basis for each filer,  
43 without regard to classification or territory. Surcharges adopted by  
44 the commissioner on or after January 1, 1984 for motor vehicle  
45 violations or convictions for which motor vehicle points are not  
46 assessable under Title 39 of the Revised Statutes shall not be

1 retroactively applied but shall take effect on the date of the New  
2 Jersey Register in which notice of an adoption appears or the effective  
3 date set forth in that notice, whichever is later.

4 c. No motor vehicle violation surcharges shall be levied on an  
5 automobile insurance policy issued or renewed on or after January 1,  
6 1984, except in accordance with the New Jersey Merit Rating Plan,  
7 and all surcharges levied thereunder shall be assessed, collected and  
8 distributed in accordance with subsection b. of this section.

9 d. (Deleted by amendment, P.L.1990, c.8).

10 e. The Commissioner of Banking and Insurance and the Director  
11 of the Division of Motor Vehicles as may be appropriate, shall adopt  
12 any rules and regulations necessary or appropriate to effectuate the  
13 purposes of subsections a. through e. of this section.

14 f. The State Treasurer shall have the authority to sell, transfer or  
15 assign all rights, title and interest in any State indebtedness and lien  
16 represented by any certificate of debt issued pursuant to subsection b.  
17 of this section, including any statutory fee for the cost of collection  
18 imposed pursuant to subsection b. of this section, to any person for a  
19 fair, adequate and reasonable consideration; provided however, that  
20 the underlying indebtedness represented by the certificate is fixed and  
21 constitutes a final determination of the director not subject to protest  
22 or appeal pursuant to the provisions of this section. After a sale as  
23 provided in this section and for the purpose of the proper  
24 administration of this section and to prevent untimely protests or  
25 appeals of the underlying indebtedness, it shall be presumed that the  
26 indebtedness is fixed and constitutes a final determination of the  
27 director not subject to protest or appeal unless the driver can establish  
28 by clear and convincing evidence that the contrary is true. If the driver  
29 contests the underlying indebtedness after the sale, transfer or  
30 assignment of the State indebtedness and lien represented by any  
31 certificate of debt, then the driver shall first file a protest with the  
32 director; provided however, that the director shall be joined as the  
33 primary party in interest with the person to whom the indebtedness and  
34 lien has been sold, transferred or assigned, in any action or proceeding  
35 brought to challenge the underlying indebtedness. The director shall  
36 advise by written notice the clerk of the court which has entered the  
37 certificate on its record of docketed judgements, that the sale, transfer  
38 or assignment has been made and the name and address of the  
39 purchaser. Thereupon, the clerk shall, without cost, enter a notation  
40 of such sale and the name and address of the purchaser in the record  
41 of docketed judgments. This written notice shall also be sent by the  
42 director by regular mail to the driver to the last address of the driver  
43 on file with the director.

44 g. All sales, transfers or assignments of the indebtedness and lien  
45 represented by certificates of debt shall be on such terms and  
46 conditions as the State Treasurer may determine appropriate. In

1 setting these terms, conditions and the fair, adequate and reasonable  
2 consideration, the State Treasurer shall consider what will be most  
3 advantageous to the State based upon a present value analysis taking  
4 into account the likelihood of the State collecting the indebtedness  
5 within a reasonable time and other factors as the State Treasurer may  
6 determine.

7 h. The purchaser, transferee or assignee of any indebtedness and  
8 lien represented by a certificate of debt shall be entitled to exercise all  
9 the remedies and may take all of the proceedings for the collection of  
10 the indebtedness represented by the certificate that are available  
11 pursuant to the laws of this State to any judgment creditor, and shall  
12 be entitled to the same priority as the State may have respecting the  
13 certificate and underlying indebtedness. Interest shall accrue at the  
14 rate provided by the Rules Governing the Courts of the State of New  
15 Jersey.

16 i. The director may provide the purchaser, transferee or assignee  
17 of the indebtedness and lien represented by the certificate of debt such  
18 driver information as is necessary for the purchaser to collect the  
19 indebtedness represented by the certificate, provided that such  
20 disclosure is not contrary to the provisions of other State or federal  
21 law.

22 j. The purchaser, transferee or assignee of the indebtedness and lien  
23 shall promptly file any warrant of satisfaction with the clerk, and such  
24 warrant of satisfaction shall be recorded in the office of any recording  
25 officer in which such certificate has been filed.

26 k. All proceeds received by the State Treasurer from the sale,  
27 transfer or assignment of State indebtedness and lien represented by  
28 certificates of debt pursuant to this section shall be deposited in such  
29 fund as may be provided by law, including P.L.1994, c.57 (C.34:1B-  
30 21.1 et al.), for deposit of such proceeds; provided however, that  
31 those proceeds shall be used only to provide for the redemption or  
32 retirement of any existing Market Transition Facility bonds, notes and  
33 obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-  
34 21.4), in accordance with, and to the extent permitted by, the terms  
35 and conditions of those Market Transition Facility bonds, notes and  
36 obligations and thereafter, subject to appropriation, as provided  
37 pursuant to subsection b. of this section.

38 l. The Commissioner of Banking and Insurance or the State  
39 Treasurer, as appropriate, shall adopt regulations and take other  
40 necessary or useful measures for the purpose of efficiently  
41 administering subsections f. through m. of this section, securing the  
42 largest possible revenue for the State, ensuring the integrity of the  
43 collection program and assuring fairness to drivers.

44 m. Under no circumstances shall any purchaser, transferee, or  
45 designee have any legal recourse against the State or its officers or  
46 employees for any damages of any sort whatsoever that might arise on



1 account of or in connection with any sale, transfer or assignment made  
2 or proposed to be made pursuant to the provisions of subsections f.  
3 through l. of this section.

4 (cf: P.L.1994, c.64, s.1)

5  
6 10. This act shall take effect immediately.

7  
8  
9 STATEMENT

10  
11 This bill authorizes the State Treasurer to sell State tax  
12 indebtedness and merit rating surcharge indebtedness.

13 The bill authorizes the State Treasurer to sell debt that has been  
14 reduced to a lien under a certificate of debt filed with the clerk of the  
15 Superior Court, a filing that has the same legal effect as the entry of  
16 a court judgement of indebtedness. Taxpayers and those assessed  
17 surcharges may still appeal the underlying indebtedness, but must  
18 establish their lack of liability by presentation of clear and convincing  
19 evidence.

20 The bill allows the Treasurer to determine the appropriate terms  
21 and conditions for all sales of debt, based on what will be most  
22 advantageous to the State, a present value analysis of the probability  
23 and time lapse involved in collecting the debt, and other relevant  
24 factors. The Director of the Division of Taxation, in the case of tax  
25 indebtedness, and the Director of the Division of Motor Vehicles, in  
26 the case of surcharge indebtedness, must notify the court and the  
27 debtor of the purchaser of debt when debt is sold. The purchaser of  
28 debt is entitled to all of the remedies, and may take all of the  
29 proceedings for collecting the indebtedness, that are available under  
30 State law to a judgement creditor. The "indebtedness" includes  
31 interest at statutory rates and the provision for certain collection costs.

32 To protect debtors, purchasers of debt must file promptly any  
33 warrant of satisfaction of the debt. Purchasers of tax indebtedness and  
34 their employees are subject to the confidentiality provisions of the  
35 State Tax Uniform Procedure Law, and are subject to criminal  
36 penalties and fine if purchasers or their employees use tax information  
37 for purposes other than the collection of the debt. Purchasers of merit  
38 rating surcharge indebtedness will be provided with information  
39 necessary to collect the debt if disclosure of the information does not  
40 violate State or federal law.

41 The bill requires that, if the underlying tax or surcharge must be  
42 deposited to a dedicated fund then the proceeds of the sale of the  
43 indebtedness relating to the tax or surcharge must be deposited to the  
44 same dedicated fund.

1

\_\_\_\_\_

2

3 Authorizes State Treasurer to sell State tax indebtedness and merit  
4 rating surcharge indebtedness.