

ASSEMBLY, No. 218

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman WEINBERG and Assemblyman ZISA

1 AN ACT concerning certain security deposits and amending P.L.1967,
2 c.265.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 1 of P.L.1967, c.265 (C.46:8-19) is amended to read as
8 follows:

9 1. Whenever money or other form of security shall heretofore or
10 hereafter be deposited or advanced on a contract, lease or license
11 agreement for the use or rental of real property as security for
12 performance of the contract, lease or agreement or to be applied to
13 payments upon such contract, lease or agreement when due, such
14 money or other form of security, until repaid or so applied including
15 the tenant's portion of the interest or earnings accumulated thereon as
16 hereinafter provided, shall continue to be the property of the person
17 making such deposit or advance and shall be held in trust by the person
18 with whom such deposit or advance shall be made for the use in
19 accordance with the terms of the contract, lease or agreement and shall
20 not be mingled with the personal property or become an asset of the
21 person receiving the same.

22 The person having received or receiving money so deposited or
23 advanced shall invest or deposit it to earn the highest return pursuant
24 to paragraph (1) of subsection a. as follows:

25 a. (1) (a) Invest that money in shares of an insured money market
26 fund established by an investment company based in this State and
27 registered under the "Investment Company Act of 1940," 54 Stat. 789
28 (15 U.S.C. §80a-1 et seq.) whose shares are registered under the
29 "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. §77a. et seq.) and the
30 only investments of which fund are instruments maturing in one year
31 or less, or ~~[(2)]~~ (b) deposit that money in a State or federally chartered
32 bank, savings bank or savings and loan association in this State insured

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 by an agency of the federal government in an account bearing a
2 variable rate of interest, which shall be established at least quarterly,
3 which is similar to the average rate of interest on active
4 interest-bearing money market transaction accounts paid by the bank
5 or association [under 12 C.F.R. Part 1204.108, or equal to similar
6 accounts of an investment company described in paragraph (1) of this
7 subsection,] or which rate of interest is at least equal to a three-, six-,
8 nine- or twelve-month certificate of deposit account of that bank or
9 association; less an amount not to exceed 1% per annum of the amount
10 so invested or deposited for the costs of servicing and processing the
11 account to be paid to the person receiving that money as hereinafter
12 provided.

13 (2) Prior to making an investment of a tenant's security deposit
14 pursuant to paragraph (1) of this subsection a., the person having
15 received or receiving the security deposit shall inquire of that tenant
16 concerning the fund or account into which the tenant would like the
17 money invested or deposited. The investment made pursuant to
18 subparagraph (a) or the deposit made pursuant to subparagraph (b) of
19 paragraph (1) of this subsection a. shall be made in accordance with
20 the tenant's choice if requested in writing by the tenant.

21 This subsection shall not apply to persons receiving money for less
22 than 10 rental units except where required by the Commissioner of
23 Banking by rule or regulation. The commissioner shall apply the
24 provisions of this subsection to some or all persons receiving money
25 for less than 10 rental units where the commissioner finds that it is
26 practicable to deposit or invest the money received with an investment
27 company or State or federally chartered bank, savings bank or savings
28 and loan association in accordance with this subsection. Except as
29 expressly provided herein, nothing in this subsection shall affect or
30 modify the rights or obligations of persons receiving money for rental
31 premises or units, tenants, licensees or contractees under any other
32 law.

33 b. Persons not required to invest or deposit money in accordance
34 with subsection a. of this section shall deposit such money in a State
35 or federally chartered bank, savings bank or savings and loan
36 association in this State insured by an agency of the federal
37 government in an account bearing interest at the rate currently paid by
38 such institutions and associations on time or savings deposits.

39 The person investing the security deposit pursuant to subsection a.
40 or b. of this section shall thereupon notify in writing each of the
41 persons making such security deposit or advance, giving the name and
42 address of the investment company, State or federally chartered bank,
43 savings bank or savings and loan association in which the deposit or
44 investment of security money is made, and the amount of such deposit
45 or investment.

46 [All of the] The money so deposited or advanced may be deposited

1 or invested by the person receiving the same in [one] similar
2 interest-bearing or dividend yielding [account] accounts as long as he
3 complies with all the other requirements of this act.

4 The person receiving money so deposited or so advanced shall be
5 entitled to receive as administrative expenses, a sum equivalent to 1%
6 per annum thereon or 12.5% of the aggregate interest yield on the
7 security deposit, whichever is greater, less the amount of any service
8 fee charged by an investment company, a State or federally chartered
9 bank, savings bank or savings and loan association for money
10 deposited pursuant to this section, which shall be in lieu of all other
11 administrative and custodial expenses. The balance of the interest or
12 earnings paid thereon by the investment company, State or federally
13 chartered bank, savings bank or savings and loan association,
14 hereinafter referred to as tenant's portion, shall belong to the person
15 making the deposit or advance and shall be permitted to compound to
16 the benefit of the tenant, or be paid to the tenant in cash, or be
17 credited toward the payment of rent due on the renewal or anniversary
18 of said tenant's lease.

19 In the event the person receiving a security deposit fails to invest
20 or deposit the security money in the manner required under this section
21 or notify the tenant of the name and address of the investment
22 company, State or federally chartered bank, savings bank or savings
23 and loan association in which the deposit or investment of such
24 security is made, and the amount thereof, within 30 days after receipt
25 of same from the tenant, [or within 30 days after the effective date of
26 this 1990 amendatory act, whichever occurs later,]the tenant may give
27 written notice to the person receiving the same that such security
28 money be applied on account of rent payment or payments due or to
29 become due from the tenant, and thereafter the tenant shall be without
30 obligation to make any further security deposit and the person
31 receiving the money so deposited shall not be entitled to make further
32 demand for a security deposit.

33 The provisions of this section requiring that the security advanced
34 be deposited or invested in a money market fund, or in an interest
35 bearing account in a State or federally chartered bank, savings bank or
36 savings and loan association shall not apply to any security advanced
37 on a contract, lease or license agreement for the seasonal use or rental
38 of real property. For purposes of this paragraph "seasonal use or
39 rental" means use or rental for a term of not more than 60 consecutive
40 days for residential purposes by a person having a permanent place of
41 residence elsewhere. "Seasonal use or rental" does not mean use or
42 rental of living quarters for seasonal, temporary or migrant farm
43 workers in connection with any work or place where work is being
44 performed. The landlord shall have the burden of proving that the use
45 or rental of the residential property is seasonal.

46 (cf: P.L.1990, c.100, s.1)

1 2. This act shall take effect on the 90th day after enactment.

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STATEMENT

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6 This bill requires a person who has received or receives a security
7 deposit from a tenant to invest or deposit it to earn the highest return
8 as follows: in shares of an insured money market fund established by
9 an investment company based in this State or in an account in a bank,
10 savings bank or savings and loan association which earns interest at
11 least as high as the average rate of interest earned on active interest
12 bearing money market transaction accounts or which is at least equal
13 to a three-, six-, nine- or twelve-month certificate of deposit. In
14 addition, the person receiving a security deposit is to inquire of the
15 tenant concerning the fund or type of account into which the tenant
16 wants the security deposit invested or deposited. If this choice is in
17 writing, the person receiving the security deposit is to invest or deposit
18 the money from the security deposit in accordance with the wishes of
19 the tenant.

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25 Makes certain changes in the management of security deposits for
residential leases.