

SENATE, No. 941

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1996

By Senator ADLER

1 AN ACT concerning interest on security deposits and amending
2 P.L.1967, 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 be deposited or
10 advanced on a contract, lease or license agreement for the use or
11 rental of real property as security for performance of the contract,
12 lease or agreement or to be applied to payments upon such contract,
13 lease or agreement when due, such money or other form of security,
14 until repaid or so applied including the tenant's portion of the interest
15 or earnings accumulated thereon as hereinafter provided, shall
16 continue to be the property of the person making such deposit or
17 advance and shall be held in trust by the person with whom such
18 deposit or advance shall be made for the use in accordance with the
19 terms of the contract, lease or agreement and shall not be mingled with
20 the personal property or become an asset of the person receiving the
21 same.

22 The person receiving money so deposited or advanced shall:

23 a. (1) Invest that money in shares of an insured money market
24 fund established by an investment company based in this State and
25 registered under the "Investment Company Act of 1940," 54 Stat.789
26 (15 U.S.C.§80a-1 et seq.) whose shares are registered under the
27 "Securities Act of 1933," 48 Stat.74 (15 U.S.C.§77a. et seq.) and the
28 only investments of which fund are instruments maturing in one year
29 or less, or (2) deposit that money in a State or federally chartered
30 bank, savings bank or savings and loan association in this State insured
31 by an agency of the federal government in an account bearing a
32 variable rate of interest, which shall be established at least quarterly,
33 which is similar to the average rate of interest on active
34 interest-bearing money market transaction accounts paid by the bank

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 or association under 12 C.F.R. Part 1204.108, or equal to similar
2 accounts of an investment company described in paragraph (1) of this
3 subsection, less an amount not to exceed 1% per annum of the amount
4 so invested or deposited for the costs of servicing and processing the
5 account.

6 This subsection shall not apply to persons receiving money for less
7 than 10 rental units except where required by the Commissioner of
8 Banking by rule or regulation. The commissioner shall apply the
9 provisions of this subsection to some or all persons receiving money
10 for less than 10 rental units where the commissioner finds that it is
11 practicable to deposit or invest the money received with an investment
12 company or State or federally chartered bank, savings bank or savings
13 and loan association in accordance with this subsection. Except as
14 expressly provided herein, nothing in this subsection shall affect or
15 modify the rights or obligations of persons receiving money for rental
16 premises or units, tenants, licensees or contractees under any other
17 law.

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

24 c. The person investing the security deposit pursuant to subsection
25 a. or b. of this section shall [thereupon] notify in writing within 30
26 days of the receipt of the security deposit from the tenant, or within 30
27 days of any change of investment, each of the persons making such
28 security deposit or advance, giving the name and address of the
29 investment company, State or federally chartered bank, savings bank
30 or savings and loan association in which the deposit or investment of
31 security money is made, and the amount of such deposit or investment.

32 All of the money so deposited or advanced may be deposited or
33 invested by the person receiving the same in one interest-bearing or
34 dividend yielding account as long as he complies with all the other
35 requirements of this act.

36 The person receiving the money so deposited or so advanced shall
37 be entitled to receive as administrative expenses, a sum equivalent to
38 1% per annum thereon or 12.5% of the aggregate interest yield on the
39 security deposit, whichever is [greater] less, less the amount of any
40 service fee charged by an investment company, a State or federally
41 chartered bank, savings bank or savings and loan association for
42 money deposited pursuant to this section, which shall be in lieu of all
43 other administrative and custodial expenses. The balance of the
44 interest or earnings paid thereon by the investment company, State or
45 federally chartered bank, savings bank or savings and loan association,
46 hereinafter referred to as tenant's portion, shall belong to the person

1 making the deposit or advance and shall, at the tenant's discretion, be
2 permitted to compound to the benefit of the tenant, or be paid directly
3 to the tenant in cash by December 31 of each year, or be credited
4 toward the payment of rent due on the renewal or anniversary of [said]
5 the tenant's lease.

6 [In the event] If the person receiving a security deposit fails to
7 invest or deposit the security money in the manner required under this
8 section or [notify the tenant of the name and address of the investment
9 company, State or federally chartered bank, savings bank or savings
10 and loan association in which the deposit or investment of such
11 security is made, and the amount thereof, within 30 days after receipt
12 of same from the tenant, or within 30 days after the effective date of
13 this 1990 amendatory act, whichever occurs later] to provide notice,
14 payment or credit pursuant to this subsection within 30 days of the
15 date required, the tenant may give written notice to [the] that person
16 [receiving the same] that such security money plus interest thereon at
17 the rate of seven percent per annum be applied on account of rent
18 payment or payments due or to become due from the tenant, and
19 thereafter the tenant shall be without obligation to make any further
20 security deposit and the person receiving the money so deposited shall
21 not be entitled to make further demand for a security deposit.

22 d. The provisions of this section requiring that the security
23 advanced be deposited or invested in a money market fund, or in an
24 interest bearing account in a State or federally chartered bank, savings
25 bank or savings and loan association shall not apply to any security
26 advanced on a contract, lease or license agreement for the seasonal use
27 or rental of real property. For purposes of this paragraph "seasonal
28 use or rental" means use or rental for a term of not more than 60
29 consecutive days for residential purposes by a person having a
30 permanent place of residence elsewhere. "Seasonal use or rental" does
31 not mean use or rental of living quarters for seasonal, temporary or
32 migrant farm workers in connection with any work or place where
33 work is being performed. The landlord shall have the burden of
34 proving that the use or rental of the residential property is seasonal.
35 (cf: P.L.1990, c.100, s.1)

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37 2. This act shall take effect on the first day of the third month after
38 enactment.

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STATEMENT

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43 This bill limits the amount of the interest on tenants' security
44 deposits that a landlord can retain for purposes of offsetting
45 administrative costs. At present, a landlord is entitled to receive 1
46 percent a year of security deposits or 12.5 percent of the aggregate

1 interest yield on the deposits, whichever is greater, less any service
2 fees of financial institutions holding the accounts.

3 Due to nearly record low interest rates on security deposit
4 accounts, landlords are now receiving up to 40 percent of the interest
5 paid on these accounts. Moreover, it is common for financial
6 institutions not to assess landlords for servicing these accounts. This
7 bill would restrict landlords to receiving the lesser amount of 1 percent
8 a year of security deposits or 12.5 percent of the aggregate interest
9 yield on the deposits, rather than the greater amount.

10 In addition, subsequent to the initial notification upon receiving the
11 security deposit, the landlord must notify the tenant of any change in
12 the nature or location of the investment. If the landlord fails to give
13 such notice, or any other notice, payment or credit required by the
14 statute, the tenant may demand that the full amount of the deposit,
15 plus interest at the annual rate of seven percent be credited toward the
16 rent due.

17 Further, the bill clarifies the option of tenants to decide if they
18 prefer their interest to accrue, be paid to them in cash, or be credited
19 toward payment of rent due.

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Specifies landlord obligations in handling tenant security deposits.