

LEGISLATIVE HISTORY CHECKLIST
46: 8-19 to 46: 8-21.1

NJSA: 46:8-19 to 46:8-21.1

("A Fair Yield Tenant
Security Deposit Account Act")

LAWS OF: 1985

CHAPTER: 42

Bill No: A1245

Sponsor(s): Baer and others

Date Introduced: February 6, 1984

Committee: Assembly: Commerce and Industry

Senate: Labor, Industry and Professions

Amended during passage: Yes
according to Governor's recommendations

Amendments denoted
denoted by asterisks

Date of Passage:

Assembly: May 21, 1984 Re-enacted 1-28-85

Senate: Oct. 22, 1984 Re-enacted 1-31-85

Date of Approval: February 7, 1985

Following statements are attached if available:

Sponsor statement:

Yes

Committee statement:

Assembly

Yes

Senate

Yes

Fiscal Note:

No

Veto Message:

Yes

Message on Signing:

No

Following were printed:

Reports:

No

Hearings:

No

See newspaper clipping (attached), "Renters will reap added interest yield
if bill OK'd", 2-2-85, Trenton Times.

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ASSEMBLY, No. 1245

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 6, 1984

By Assemblymen BAER, PATERO, SCHWARTZ and MAZUR

AN ACT concerning the investment of certain security deposits, amending P. L. 1971, c. 223 and amending and supplementing P. L. 1967, c. 265.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

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

17 a. ***[In the case of a person receiving money for four or more**
18 **rental premises or units,]*** (1) ***[invest]*** **Invest** that money in
19 shares of an insured money market fund established by an invest-
20 ment company based in this State and registered under the "Invest-
21 ment Company Act of 1940," 54 Stat. 789 (15 U. S. C. § 80a-1 et
22 seq.) whose shares are registered under the "Securities Act of

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

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly amendments adopted in accordance with Governor's recommendations December 13, 1984.**

23 1933," 48 Stat. 74 (15 U. S. C. § 77a. et seq.) and the only invest-
 24 ments of which fund are instruments maturing in one year or less,
 25 or (2) deposit that money in a State or federally chartered bank,
 26 savings bank or savings and loan association in this State insured
 27 by an agency of the federal government in an account bearing a
 28 variable rate of interest, which shall be established at least quar-
 29 terly, which is similar to the average rate of interest on active
 30 interest bearing money market transaction accounts paid by the
 31 bank or association under 12 C. F. R. Part 1204.108, or equal to
 32 similar accounts of an investment company described in paragraph
 33 (1) of this subsection, less an amount not to exceed 1% per annum
 34 of the amount so invested or deposited for the costs of servicing
 34A and processing the accounts***[**; and**]*** *.*

34B *This subsection shall not apply to persons receiving money for
 34C less than 10 rental units except where required by the Commissioner
 34D of Banking by rule or regulation. The commissioner shall apply
 34E the provisions of this subsection to some or all persons receiving
 34F money for less than 10 rental units where the commissioner finds
 34G that it is practicable to deposit or invest the money received with
 34H an investment company or State or federally chartered bank, sav-
 34I ings bank or savings and loan association in accordance with this
 34J subsection. Except as expressly provided herein, nothing in this
 34K subsection shall affect or modify the rights or obligations of per-
 34L sons receiving money for rental premises or units, tenants, licensees
 34M or contractees under any other law.*

35 b. ***[**In the case of a person receiving money for less than four
 36 rental premises or units**]*** *Persons not required to invest or de-
 37 posit money in accordance with subsection a. of this section* shall
 38 deposits such money in a **[**banking institution**]** State or federally
 39 chartered bank, savings bank or savings and loan association in
 40 this State insured by an agency of the federal government in an
 41 account bearing interest at the rate currently paid by such insti-
 41A tutions and associations on time or savings deposits **[**and**]**.

42 The person investing the security deposit pursuant to subsection
 43 a. or b. of this section shall thereupon notify in writing each of
 44 the persons making such security deposit or advance, giving the
 45 name and address of the **[**banking institution**]** investment com-
 46 pany, State or federally chartered bank, savings bank or savings
 47 and loan association in which the deposit or investment of security
 48 money is made, and the amount of such deposit.

49 All of the money so deposited or advanced may be deposited or
 50 invested by the person receiving the same in one interest-bearing

51 *or dividend yielding* account as long as he complies with all the
52 other requirements of this act.

53 The person receiving money so deposited or so advanced shall be
54 entitled to receive as administration expenses, a sum equivalent to
55 1% per annum thereon *or 12.5% of the aggregate interest yield on*
56 *the security deposit, whichever is greater, less the amount of any*
57 *service fee charged by an investment company, a State or federally*
58 *chartered bank, savings bank or savings and loan association for*
59 *money deposited pursuant to this section, which shall be in lieu of*
60 all other administrative and custodial expenses. The balance of the
61 interest *or earnings* paid thereon by [such banking institution] *the*
62 *investment company, State or federally chartered bank, savings*
63 *bank or savings and loan association, hereinafter referred to as*
64 tenant's portion, shall belong to the person making the deposit or
65 advance and shall be *permitted to compound to the benefit of the*
66 *tenant, or be paid to the tenant cash, or be credited toward the*
67 payments of rent due on the renewal or anniversary of said tenant's
68 lease.

69 In the event the person receiving a security deposit fails to
70 notify the tenant of the name and address of the [banking institu-
71 tion] *investment company, State or federally chartered bank, sav-*
72 *ings bank or savings and loan association in which the deposit or*
73 *investment of such security is made, and the amount thereof,*
74 within 30 days after receipt of same from the tenant, the tenant
75 may give written notice to the person receiving the same that such
76 security money be applied on account of rent payment or payments
77 due or to become due from the tenant, and thereafter the tenant
78 shall be without obligation to make any further security deposit
79 and the person receiving the money so deposited shall not be en-
80 titled to make further demand for a security deposit.

1 2. Section 2 of P. L. 1967, c. 265 (C. 46:8-20) is amended to read
2 as follows:

3 2. Any person, whether the owner or lessee of the property
4 ***[lease]*** **leased**, who or which has or hereafter shall have re-
5 ceived from a tenant or licensee a sum of money as a deposit or
6 advance of rental as security for the full performance by such tenant
7 or licensee of the terms of his contract, lease or license agreement,
8 or who or which has or shall have received the same from a former
9 owner or lessee, shall, upon conveying such property or assigning
10 his or its lease to another, or upon the conveyance of such property
11 to another person by a court in an action to foreclose a mortgage
12 thereon, at the time of the delivery of the deed or instrument or
13 assignment, or within five days thereafter, or in the event of the

14 insolvency or bankruptcy of the person receiving said deposit,
 15 within five days after the making and entry of an order of the court
 16 discharging the receiver or trustee, deal with the security deposit
 17 by turning over to his or its grantee or assignee, or to the pur-
 18 chaser at the foreclosure sale the sum so deposited, plus the
 19 tenant's portion of the interest [earned] *or earnings accumulated*
 20 thereon, and notify the tenant or licensee by registered or certified
 21 mail of such turning over and the name and address of such
 22 grantee, assignee or purchaser.

1 3. Section 3 of P. L. 1967, c. 265 (C. 46:8-21) is amended to read
 2 as follows:

3 3. Any owner or lessee turning over to his or its grantee, as-
 4 signee, or to a purchaser of the leased premises at a foreclosure
 5 sale the amount of such security deposit, plus the tenant's portion
 6 of the interest [earned] *or earnings accumulated* thereon, is hereby
 7 relieved of and from liability to the tenant or licensee for the re-
 8 payment thereof; and the transferee of such security deposit, plus
 9 the tenant's portion of the interest [earned] *or earnings accumu-*
 10 *lated* thereon, is hereby made responsible for the return thereof
 11 to the tenant or licensee, in accordance with the terms of the con-
 12 tract, lease, or agreement unless he or it shall thereafter and before
 13 the expiration of the term of the tenant's lease or licensee's agree-
 14 ment, transfer such security deposit to another, pursuant to section
 15 2 hereof and give the requisite notice in connection therewith as
 16 provided thereby.

1 4. Section 3 of P. L. 1971, c. 223 (C. 46:8-21.1) is amended to
 2 read as follows:

3 3. Within 30 days after the expiration of the term of the tenant's
 4 lease or licensee's agreement, the owner or lessee shall return by
 5 personal delivery, registered or certified mail the sum so deposited
 6 plus the tenant's portion of the interest [earned] *or earnings ac-*
 7 *cumulated* thereon, less any charges expended in accordance with
 8 the terms of a contract, lease, or agreement. The interest *or earn-*
 9 *ings* and any such deductions shall be itemized and the tenant
 10 ***[of]*** *or** licensee notified thereof by personal delivery, regis-
 11 tered or certified mail.

12 Within five business days after a. the tenant is caused to be dis-
 13 placed by fire, flood, condemnation, or evacuation, and b. an
 14 authorized public official posts the premises with a notice prohibi-
 15 ting occupancy, or c. any building inspector, in consultation with a
 16 relocation officer where applicable, has certified within 48 hours
 17 that displacement is expected to continue longer than seven days
 18 and has so notified the owner or lessee in writing, the owner or

19 lessee shall have available and return to the tenant or the tenant's
20 designated agent upon his demand the sum so deposited plus the
21 tenant's portion of the interest **[earned]** *or earnings accumulated*
22 thereon, less any charges expended in accordance with the terms
23 of the contract, lease or agreement and less any rent due and owing
24 at the time of displacement.

25 Such net sum shall continue to be available to be returned upon
26 demand during normal business hours for a period of 30 days at
27 a location in the same municipality in which the subject leased
28 property is located and shall be accompanied by an itemized state-
29 ment of the interest *or earnings* and any deductions. The owner or
30 lessee may, by mutual agreement with the municipal clerk*,* have
31 the municipal clerk of the municipality in which the subject leased
32 property is located return said net sum in the same manner. Within
33 three business days after receiving notification of the displacement,
34 the owner or lessee shall provide written notice to a displaced
35 tenant by personal delivery or mail to the tenant's last known
36 address. Such notice shall include, but not be limited to, the loca-
37 tion at which and the hours and days during which said net sum
38 shall be available to him. The owner or lessee shall provide a
39 duplicate notice in the same manner to the relocation officer. Where
40 a relocation officer has not been designated, the duplicate notice
41 shall be provided to the municipal clerk. When the last known
42 address of the tenant is that from which he was displaced and the
43 mailbox of that address is not accessible during normal business
44 hours, the owner or lessee shall also post such notice at each ex-
45 terior public entrance of the property from which the tenant was
46 displaced. Any such net sum not demanded by and returned to the
47 tenant or the tenant's designated agent within the period of 30
48 days shall be redeposited *or reinvested* by the owner or lessee in
49 an appropriate interest bearing *or dividend yielding* account in
50 the same **[banking institution]** *investment company, State or fed-*
51 *erally chartered bank, savings bank* or savings and loan association
52 from which it was withdrawn.

53 In the event that said displaced tenant resumes occupancy of the
54 premises, said tenant shall redeliver to the owner or lessee one-
55 third of the security deposit immediately, one-third in 30 days and
56 one-third 60 days from the date of reoccupancy. Upon the failure
57 of said tenant to make such payments of the security deposit, the
58 owner or lessee may institute legal action for possession of the
59 premises in the same manner that is authorized for nonpayment
60 of rent.

61 In any action by a tenant or licensee for the return of moneys

62 due under this section, the court upon finding for the tenant or
63 licensee shall award recovery of double the amount of said moneys,
64 together with full costs of any action and, in the court's discretion,
65 reasonable attorneys' fees.

1 5. (New section) The Commissioner of Banking may, in his dis-
2 cretion, promulgate rules and regulations with respect to the estab-
3 lishment of the method of computing the interest due to either the
4 person receiving the money as a security deposit or to the tenant
5 pursuant to the provisions of P. L. 1967, c. 265 (C. 46:8-19 et seq.)
6 or P. L. 1971, c. 223 (C. 46:8-21.1 et seq.) if the money is deposited
7 in an account or in shares of an investment company upon which
8 the interest varies on a periodic basis.

1 6. This act shall take effect the first day of the sixth month
2 following enactment.

STATEMENT

This bill can be called the "Fair Yield Tenant Security Deposit Account Act." It would increase the yield most residential tenants receive from security deposits by requiring that new and existing security deposit accounts be deposited or invested in money market accounts at banks or savings and loan associations, or in government insured investment accounts. Because of the substantial minimum balances commonly required in most such accounts the account would only apply to premises with four or more units.

Under current law adopted over a decade ago when interest rates were much lower, security deposits must be placed in accounts where they yield only 5% interest. In the years since the original law was adopted, interest rates have increased so that money deposited or invested in other government insured accounts commonly yields two to two three times as much. This represents a loss of 50% to 70% of the annual yield New Jersey tenants could earn on their nearly one-half billion dollars deposited in security deposit accounts. This gain for tenants would not be at the expense of landlords since this legislation would not reduce the statutory amount of interest landlords now receive for their administrative expenses in connection with security deposits.

A1245(1985)

ASSEMBLY COMMERCE AND INDUSTRY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1245

STATE OF NEW JERSEY

DATED: MAY 7, 1984

This bill would require landlords receiving money for four or more rental units to place security deposits in a money market fund offered by an investment company or in a money market account of a state or federally chartered bank, savings bank, or savings and loan association whose deposits are federally insured. The investment company or depository institution would be permitted a service charge of 1% on the account. Landlords who receive money for fewer than four rental units would be required to deposit the security deposits in a time or savings account at a federally chartered depository institution.

Landlords would be permitted to take a fee of 1% per annum on the security deposit, or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, but this fee would be offset by the fee charged by the investment company or the depository institution.

The Commissioner of Banking would be permitted to issue rules and regulations with respect to the method to be used to compute the interest due to the tenant and to the landlord.

This bill is intended to provide for higher yields for tenants whose security deposits are held by landlords. At present, landlords are required to place security deposits in time and savings accounts, which are lower-yielding instruments than the money market funds provided for in the bill.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1245

STATE OF NEW JERSEY

DATED: JUNE 28, 1984

This bill would require landlords receiving moneys for four or more rental units to place security deposits in an insured money market fund offered by an investment company which is based in the State and whose investments have a maturity of one year or less or in a money market account of a State or federally chartered bank, savings bank, or savings and loan association in this State whose deposits are federally insured. The investment company or depository institution would be permitted a service charge of 1% on the account. Landlords who receive money for fewer than four rental units would be required to deposit the security deposits in a time or savings account at a State or federally chartered depository institution whose deposits are federally insured.

Landlords would be permitted to take a fee of 1% per annum on the security deposits, or 12.5% of the aggregate interest yield on the security deposits, whichever is greater, but this fee would be offset by the fee charged by the investment company or the depository institution.

The Commissioner of Banking would be permitted to issue rules and regulations with respect to the method to be used to compute the interest due to the tenant and to the landlord.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 13, 1984

ASSEMBLY BILL NO. 1245

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 1245 with my recommendations for reconsideration.

Assembly Bill No. 1245 would require landlords owning four or more rental premises or units to deposit tenants' security money in a federally registered insured money market fund established by an investment company, or in a federally insured account bearing a variable rate of interest or money market account of a State or federally chartered bank, a savings bank or savings and loan association of this State. Current law requires landlords to place security deposits in bank accounts bearing interest at the rate paid by financial institutions on time or savings deposits. A-1245 will enable tenants of landlords owning four or more rental premises or units to realize an enhanced return on their security deposits.

I support the concept expressed within Assembly Bill No. 1245. Tenants should realize the highest rates of return on their security deposits. Despite my support for the concept expressed within Assembly Bill No. 1245, I must return it to you with my recommendations for amendment to further refine the scope of the bill.

Assembly Bill No. 1245 will apply to landlords owning four or more rental premises or units. A landlord owning four rental premises or units will find it difficult to comply with the provisions of this bill. These landlords are likely to experience difficulty in maintaining the minimum balances required on these accounts until January 1, 1986. In particular, this will cause hardship for low to moderate income tenants. Some landlords accommodate their tenants by allowing them to pay their security deposits in installments or by allowing them to borrow against their security deposits during a time of financial crisis. Landlords owning four rental premises or units will be unable to help their tenants in these areas if forced to comply with Assembly Bill No. 1245 due to the necessity of maintaining minimum balances in these accounts.

I recommend that Assembly Bill No. 1245 be amended to raise the rental threshold from four rental premises or units to 10 rental units. Landlords

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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owning 10 or more rental units are commercial landlords. This group will not find money market funds or variable interest rate bank accounts difficult to administer and will have sufficient funds to maintain minimum balances in the accounts.

I also recommend that Assembly Bill No. 1245 be amended to require the Commissioner of Banking to adjust the rental unit threshold for some or all persons receiving money for less than ten rental units where the Commissioner finds that it is practicable to deposit or invest the money received with an investment company or State or federally chartered bank, savings bank or saving and loan association in accordance with this act.

Amending Assembly Bill No. 1245 in this fashion will insure that all landlords will be able to maintain their current level of service to their tenants.

Accordingly, I herewith return Assembly Bill No. 1245 and recommend that it be amended as follows:

Page 1, Section 1, Lines 17-18: Delete "In the case of a person receiving money for four or more rental premises or units,"

Page 1, Section 1, Line 18: Delete "invest" insert "Invest"

Page 2, Section 1, Lines 34-34A: Delete "; and" insert "."

Page 2, Section 1, After Line 34A: Insert new paragraph which shall read as follows:

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

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other law."

Page 2, Section 1, Line 35: Delete "In the case of a person receiving money for less than four rental premises or units" insert "Persons not required to invest or deposit money in accordance with subsection a. of this section"

Page 3, Section 2, Line 4: Delete "lease" insert "leased"

Page 4, Section 4, Line 9: Delete "of" insert "or"

Page 4, Section 4, Line 30: After "clerk" insert ","

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

Chief Counsel