

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to rent escrow.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Viriato Manuel deMacedo	1st Plymouth
Bradley H. Jones, Jr.	20th Middlesex
George N. Peterson, Jr.	9th Worcester
Elizabeth Poirier	14th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1259 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO RENT ESCROW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 8A of chapter 239 of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by striking out the second, third and fourth paragraphs and
3 inserting in place thereof the following: -

4 Whenever any counterclaim or claim of defense under this section is based on any
5 allegation concerning the condition of the premises or the services or equipment provided
6 therein, the tenant or occupant shall not be entitled to relief under this section unless:

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8 (1) (a) the board of health or other local enforcement agency has inspected and certified that
9 the condition of the premises constitutes a violation of the standards of fitness for human
10 habitation as established in the state sanitary code, the state building code, or any other law,

11 ordinance, by-law, rule or regulation establishing such standards, and that the health, safety or
12 well-being of the persons occupying the premises is endangered or materially impaired as a
13 result of such conditions,

14 (b) the tenant or occupant, within 10 days following such certification and not less than 15
15 days before withholding any payment of rent, notified the landlord thereof in writing, and

16 (c) the landlord fails to remedy such conditions substantially within 15 days following such
17 written notice to the tenant, or such longer period as may be required, in the exercise of due
18 diligence, to substantially remedy such conditions;

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20 (2) the landlord fails to show that such conditions were caused by the tenant or occupant or
21 any other person acting under his control, except that the tenant or occupant shall have the
22 burden of proving that any violation appearing solely within that portion of the premises under
23 his control and not by its nature reasonably attributable to any action or failure to act of the
24 landlord was not so caused;

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26 (3) the premises are not situated in a hotel or motel, or in a lodging house or rooming house
27 wherein the occupant has maintained such occupancy for less than three consecutive months;

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29 (4) the landlord fails to show that the conditions complained of cannot be remedied without
30 the premises being vacated, provided however that nothing in this clause shall be construed to
31 deprive the tenant or occupant of relief under this section when the premises are temporarily
32 vacated for purposes of removal or covering of paint, plaster, soil or other accessible materials
33 containing dangerous levels of lead pursuant to chapter 111; and

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35 (5) the tenant or occupant proves that all rent withheld has been deposited at or before the
36 time at which it first became due and payable to the landlord (a) into an account maintained by
37 the clerk of the court, at the court's discretion, (b) into an escrow account controlled by an
38 attorney, or (c) into an escrow account under the provisions of section 32B of chapter 167D
39 payable on the signatures of both the tenant or occupant and the owner, landlord or person to
40 whom rent is customarily paid; provided, however, that bona fide documented out-of-pocket
41 expenses properly incurred pursuant to section 127L of chapter 111, shall not be required to be
42 deposited; and further provided that, in the case of a tenant receiving rental assistance from a
43 governmental entity where the rental assistance is being withheld because the landlord has
44 failed to repair serious code violations not caused by the tenant, the tenant shall be required to
45 deposit only the tenant's unassisted portion of the rent due. Any amounts so deposited shall be
46 paid over as ordered by the court after hearing the case or as the parties may mutually agree. If
47 the landlord is required by law to make repairs to the premises or is suffering severe financial
48 hardship, any amounts so deposited and otherwise payable to the landlord shall be used for
49 such purposes if the court so orders.

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51 SECTION 2. Chapter 167D of the General Laws, as so appearing, is hereby amended by inserting
52 after section 32A the following new section:-

53 Section 32B. Any bank or federally chartered bank, upon request of a person claiming
54 relief under section 8A of chapter 239, shall create an account payable only, except as provided
55 below, upon the signatures of two named parties, one being the plaintiff in counterclaim, the
56 tenant or occupant, and the other being the defendant in counterclaim, the owner, landlord or
57 person to whom rent is customarily paid. The bank shall not require any signature or identity
58 verification of the defendant in counterclaim in order to create the account nor until such time
59 as a payment from the account is requested. The bank shall provide, upon demand of either of
60 the named parties on the account or the court, a statement of the deposits to the account and
61 the named two-party authorized payors. At the time that a payment from the account is
62 requested, the bank shall accept a standard signature guarantee as sufficient authorization for
63 payment by the defendant in counterclaim. If such signature guarantee is executed in the
64 normal and customary manner, the bank shall not be held liable for claims of incorrect
65 payment. The bank shall also make payment from such account upon court order. The bank
66 may deduct from the account all ordinary and reasonable expenses for operating the account at
67 any time. If the account is left inactive for longer than two years, the bank shall make payment
68 of the entire amount in the account, less ordinary and reasonable banking fees, to the
69 defendant in counterclaim, upon receipt of a duly executed signature guarantee.

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