

HOUSE No. 02124

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:
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>George Ross</i>	<i>2nd Bristol</i>
<i>Donald Wong</i>	<i>9th Essex</i>
<i>Kevin Kuros</i>	<i>8th Worcester</i>
<i>Sheila Harrington</i>	<i>1st Middlesex</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>
<i>Elizabeth Poirier</i>	<i>14th Bristol</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>

HOUSE No. 02124

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2124) of Frost and others relative to the withholding of rents and the establishment of rent escrow accounts by tenants for code violations by landlords Joint Committee on Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1223 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2008 Official
2 Edition, is hereby amended by striking out the second, third and fourth paragraphs and inserting
3 in place thereof the following: -

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

7 (1) (a) the board of health or other local enforcement agency has inspected and certified that the
8 condition of the premises constitutes a violation of the standards of fitness for human habitation

9 as established in the state sanitary code, the state building code, or any other law, ordinance, by-
10 law, rule or regulation establishing such standards, and that the health, safety or well-being of the
11 persons occupying the premises is endangered or materially impaired as a result of such
12 conditions,

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

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

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

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

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

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

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

47 Section 32B. Any bank or federally chartered bank, upon request of a person claiming relief
48 under section 8A of chapter 239, shall create an account payable only, except as provided below,
49 upon the signatures of two named parties, one being the plaintiff in counterclaim, the tenant or
50 occupant, and the other being the defendant in counterclaim, the owner, landlord or person to
51 whom rent is customarily paid. The bank shall not require any signature or identity verification
52 of the defendant in counterclaim in order to create the account nor until such time as a payment

53 from the account is requested. The bank shall provide, upon demand of either of the named
54 parties on the account or the court, a statement of the deposits to the account and the named two-
55 party authorized payors. At the time that a payment from the account is requested, the bank shall
56 accept a standard signature guarantee as sufficient authorization for payment by the defendant in
57 counterclaim. If such signature guarantee is executed in the normal and customary manner, the
58 bank shall not be held liable for claims of incorrect payment. The bank shall also make payment
59 from such account upon court order. The bank may deduct from the account all ordinary and
60 reasonable expenses for operating the account at any time. If the account is left inactive for
61 longer than two years, the bank shall make payment of the entire amount in the account, less
62 ordinary and reasonable banking fees, to the defendant in counterclaim, upon receipt of a duly
63 executed signature guarantee.