

**SENATE . . . . . No. 778**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***William N. Brownsberger, (BY REQUEST)***

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*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 adoption of the accompanying bill:

**An Act requiring mandatory rent escrow.**

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PETITION OF:

NAME:

*G. Emil Ward, Esq.*

DISTRICT/ADDRESS:

*21 Oak Square Avenue Brighton, MA 02135*

**SENATE . . . . . No. 778**

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By Mr. Brownsberger (by request), a petition (accompanied by bill, Senate, No. 778) of G. Emil Ward, Esq. for legislation to require mandatory rent escrow. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act requiring mandatory 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 Notwithstanding any law or special law to the contrary, Ch. 239, the

2 General Laws, Section 8A shall be amended as follows:

3 At Paragraph 4, the following text shall be deleted in its

4 entirety:

5 “The court after hearing the case may require the tenant or occupant claiming under this

6 section to pay to the clerk of the court the fair value of the use and occupation of the

7 premises less the amount awarded the tenant or occupant for any claim under this section,

8 or to make a deposit with the clerk of such amount or such installments thereof from time

9 to time as the court may direct, for the occupation of the premises. In determining said

10 fair value, the court shall consider any evidence relative to the effect of any conditions

11 claimed upon the use and occupation of residential premises. Such funds may be  
12 expended for the repair of the premises by such persons as the court after a hearing may  
13 direct, including if appropriate a receiver appointed as provided in section one hundred  
14 and twenty-seven H of chapter one hundred and eleven. When all of the conditions found  
15 by the court have been corrected, the court shall direct that the balance of funds, if any,  
16 remaining with the clerk be paid to the landlord. Any tenant or occupant intending to  
17 invoke the provisions of this section may, after commencement of an action under this  
18 chapter by the landlord, voluntarily deposit with the clerk any amount for rent or for use  
19 and occupation which may be in dispute, and such payments shall be held by the clerk  
20 subject to the provisions of this paragraph.”

21 At paragraph 4 the below text shall be inserted where the above text was  
22 deleted:

23 “The court after hearing on motion of a request for rent escrow shall require the tenant or  
24 occupant claiming under this section to pay to the clerk of the court all rent withheld or  
25 accrued to date and as yet unpaid to the plaintiff on the date of filing any defense or  
26 counterclaim and all rent accruing thereafter until the matter has been settled or judgment  
27 is entered by the court for occupation of the premises. Upon motion of either party or

28 upon the court's own motion such escrowed funds shall be expended for the repair of the  
29 premises, if the tenant or occupant claims the premises are in violation of the standard of  
30 fitness for human habitation established under the state sanitary code, the state building  
31 code, or any other ordinance, by-law, rule, or regulation establishing such standards and  
32 that such conditions may endanger or materially impair the health, safety or well-being of  
33 a person occupying the premises, said repairs shall be made by such persons including  
34 the  
35 landlord, lessor or plaintiff, as the court after hearing on motion may direct, including if  
36 appropriate a receiver appointed as provided in section one hundred and twenty-seven H  
37 of chapter one hundred and eleven. When all of the conditions found by the court to have  
38 been in violation of the standards of fitness as described above have been corrected, the  
39 court shall direct that the balance of funds in escrow, if any, remaining with the clerk be  
40 paid to the landlord."

41 At paragraph 4, the following text shall be deleted:

42 "Any tenant or occupant intending to invoke the provisions of this section may, after  
43 commencement of an action under this chapter by the landlord, voluntarily deposit with  
44 the clerk any amount for rent or for use and occupancy which may be in dispute, and such  
45 payments shall be held by the clerk subject to the provisions of this paragraph.

46 At paragraph 4 immediately after the words: "... if any, remaining with the  
47 clerk to be paid to the landlord."

48 The following text shall be inserted:

49 "If the tenant or occupant fails to pay the required escrow amount into court within 7  
50 business days of the court's order to pay into escrow, the court shall strike any jury claim,  
51 if any, or shall deny any request for continuance by the tenant and shall set the matter  
52 down for a speedy trial with 7 business days' notice to the parties. Any monies expended  
53 by the tenant or occupant pursuant to the repair and deduct statute, section one hundred  
54 and twenty-seven L of chapter one hundred and eleven shall be deemed a payment under  
55 this section, as will be any payment made into escrow be deemed payment of rent and  
56 may be used in the tenant or occupant's defense under this section. Any tenant or  
57 occupant who asserts a defense or counterclaims under paragraph 2 of this section shall  
58 give notice to the owner, his agents, servants, or employees, or the person to whom the  
59 tenant or occupant ordinarily pays rent of said conditions. In opposition to the tenant or  
60 occupant raising a counterclaim or defense, plaintiff may raise the defendant's failure to  
61 provide reasonable access in mitigation of damages claimed against said plaintiff and in  
62 support of plaintiff's action for possession. If the court finds that the tenant's or

63           occupant's claims or defenses asserted under this section are without merit and not raised  
64           in good faith, the court shall award reasonable attorney's fees to the landlord or lessor  
65           seeking possession hereunder."