

**HOUSE . . . . . No. 1223**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Bradley H. Jones, Jr.**

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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 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
Paul K. Frost	7th Worcester
Susan Williams Gifford	2nd Plymouth
Bradford R. Hill	4th Essex
Richard J. Ross	9th Norfolk
Todd M. Smola	1st Hampden
Robert S. Hargraves	1st Middlesex

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

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### 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 inserting  
3 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:

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 deposited;  
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  
48 relief under section 8A of chapter 239, shall create an account payable only, except as provided  
49 below, upon the signatures of two named parties, one being the plaintiff in counterclaim, the  
50 tenant or occupant, and the other being the defendant in counterclaim, the owner, landlord or  
51 person to whom rent is customarily paid. The bank shall not require any signature or identity  
52 verification of the defendant in counterclaim in order to create the account nor until such time as  
53 a payment from the account is requested. The bank shall provide, upon demand of either of the  
54 named parties on the account or the court, a statement of the deposits to the account and the  
55 named two-party authorized payors. At the time that a payment from the account is requested,  
56 the bank shall accept a standard signature guarantee as sufficient authorization for payment by  
57 the defendant in counterclaim. If such signature guarantee is executed in the normal and

58 customary manner, the bank shall not be held liable for claims of incorrect payment. The bank  
59 shall also make payment from such account upon court order. The bank may deduct from the  
60 account all ordinary and reasonable expenses for operating the account at any time. If the  
61 account is left inactive for longer than two years, the bank shall make payment of the entire  
62 amount in the account, less ordinary and reasonable banking fees, to the defendant in  
63 counterclaim, upon receipt of a duly executed signature guarantee.