HOUSE DOCKET, NO. 1643 FILED ON: 1/20/2011

HOUSE . . . . . No. 1284

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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:

An Act relative to the withholding of rent..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	☐ *[District]* ☐
Elizabeth A. Poirier	*14th Bristol*
John W. Scibak	*2nd Hampshire*
Robert M. Koczera	*11th Bristol*
Cleon H. Turner	*1st Barnstable*
Richard T. Moore	☐ *[District]* ☐
Viriato Manuel deMacedo	*1st Plymouth*
Gale D. Candaras	☐ *[District]* ☐
John H. Rogers	*12th Norfolk*
Colleen M. Garry	*36th Middlesex*
Bruce E. Tarr	☐ *[District]*

Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Linda Dorcena Forry	*12th Suffolk*
Vincent A. Pedone	*15th Worcester*

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HOUSE . . . . . No. 1284

By Mr. Brownsberger of Belmont, a petition (accompanied by bill, House, No. 1284) of William N. Brownsberger and others relative to the witholding of rent. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3623* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to the withholding of rent..

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

SECTION 1. Section 8A of chapter 239, as appearing in the 2004 Official Edition, is hereby amended by striking out the second, third and four paragraphs and inserting in place thereof the following 6 paragraphs:—

At any time when a person is entitled to serve a notice to quit upon a tenant or occupant or is otherwise entitled to commence a summary process action pursuant to this chapter, such person may demand, in the notice to quit or by later demand, that the tenant or occupant pay into court all unpaid rent or use and occupancy that is accruing or has accrued since the first day of the sixth full calendar month prior to the date of service of the notice or later demand. Such amount shall be paid within 5 business days following the date of service of the notice or later demand, whichever is later; provided, however, that in the event that the tenant's or occupant's rent is subsidized by any governmental agency or governmentally subsidized agency, the amount to be paid shall be limited to only that portion of the rent paid by the tenant or occupant. Any notice to quit or later demand submitted in accordance with this paragraph shall include a statement indicating into which court the deposit shall be made. Such court may be any court which would have jurisdiction over a summary process action against the tenant or occupant. The person making such demand shall file with such court a copy of the notice to quit or later demand, together with a statement under oath by the person who served such notice to quit or later demand indicating how such service was made. Service of such notice to quit or later demand shall be by any means permitted for service of a summary process complaint. Such court

20 shall have jurisdiction over all issues arising out of the demand for such deposit, which shall be
21 considered a separate action from any summary process action against such tenant or occupant
22 and shall be commenced by the filing of the copy of the notice to quit. The person making such
23 demand shall be the plaintiff. The tenant or occupant receiving such demand shall be the
24 defendant. Any notice to quit or later demand submitted in accordance with this paragraph shall
25 contain a statement of the agreed-upon rent rate heretofore payable, the subsidized tenant's or
26 occupant's portion of the agreed-upon rent rate, if applicable, and the amount of any and all
27 unpaid rent as defined and limited by this paragraph. Any notice to quit or later demand
28 submitted in accordance with this paragraph shall contain a statement prepared by the
29 department of housing and community development of the tenant's rights and responsibilities
30 under this section. Such statement shall be prepared by the department within six weeks after
31 passage of this act.

32 The defendant shall pay into court within 5 business days of service of the notice or later
33 demand the amounts so demanded under the previous paragraph and shall continue to pay into
34 court within 3 business days after its due date the agreed-upon rent rate or the unsubsidized
35 portion thereof that accrues during the pendency of the action demanding deposit in accordance
36 with the preceding paragraph or during the pendency of a companion summary process action;
37 provided, however, that the tenant or occupant may deduct any amounts, documented with
38 copies of receipts, that were reasonably spent by the tenant or occupant pursuant to section 127L
39 of chapter 111. Such copies of receipts shall be deposited in the same manner with the court in
40 lieu of payment. The defendant shall provide the court with the name of the plaintiff in the action
41 demanding deposit or in the companion summary process action. The defendant shall notify the
42 plaintiff in writing of the amounts so deposited and shall provide therewith copies, if any, of all
43 receipts deposited with the court according to this section.

44 If the plaintiff or the defendant believes the amounts demanded or deposited are in error
45 and not according to the requirements of the previous 2 paragraphs, either the plaintiff or the
46 defendant may request a hearing. The defendant shall request such hearing not later than the date
47 on which the demanded deposit is due in court. The plaintiff shall request such hearing within 3
48 business days after receipt of the notice from the defendant of the amount deposited. The hearing
49 shall be requested in writing to the clerk of the court and may be mailed. The hearing shall be
50 scheduled by the court for a date not later than 10 calendar days after the court's receipt of the
51 hearing request. At the hearing, the court shall consider only arguments pertaining to the agreed-
52 upon rent rate, a subsidized tenant's or occupant's portion of the agreed-upon rent rate, the
53 amounts not paid since the first day of the sixth full calendar month prior to the date of service of
54 the notice or later demand and any documented deductions pursuant to said section 127L of said
55 chapter 111, as required by the previous 2 paragraphs. After hearing arguments only relative to
56 the amounts required by the previous 2 paragraphs, the court shall determine the escrow amount
57 and order its payment or refund by the close of the next business day after the hearing. The court
58 shall order the determined amount to be paid into court or any excess previously deposited to be

59 refunded by the court not later than the close of 5 business days after the hearing. In the event
60 that a hearing on the amount demanded or deposited has been requested, the eviction trial date
61 and any companion summary process action shall be scheduled not later than the next regular
62 trial date that occurs after 5 business days following the hearing.

63 If the defendant fails to comply with any portion of this section, any claims,
64 counterclaims or defenses asserted under this section shall be dismissed and shall not be
65 considered in the hearing on the plaintiff's companion summary process action, which shall
66 commence on the original trial date or as provided in the previous paragraph. Nothing in this
67 section shall prevent the tenant or occupant from maintaining a separate action for damages
68 regarding the habitability or condition of the premises.

69 Amounts deposited with the court under this section shall be paid over by the clerk of the
70 court in accordance with a written out-of-court agreement between the plaintiff and the
71 defendant provided that their signatures are duly notarized, or if the parties cannot agree, then the
72 amounts deposited shall be paid to the plaintiff or the defendant as the court directs upon final
73 disposition of the action. Before final disposition of the action, if the court so orders, any
74 amounts so deposited shall be paid to the plaintiff to make repairs to the premises that are
75 required by law or to mitigate financial hardship to the plaintiff. If, within 1 year of the
76 commencement of an action demanding deposit in accordance with this section, no summary
77 process action is initiated against the tenant or occupant arising out of the notice to quit, or at any
78 time when the tenant fails to make ongoing monthly deposits in accordance with this section, the
79 court may, upon motion of either party, order any such deposit to be distributed in such manner
80 as it would have been distributed in a summary process action concerning rent due for such land
81 or tenements.

82 Whenever any counterclaim or claim of defense under this section is based on any
83 allegation concerning conditions affecting the premises or services or equipment provided
84 therein, the tenant or occupant shall not be entitled to assert such counterclaim or claim of
85 defense unless:

86 (1) (a) the board of health or other local enforcement agency has certified that such
87 conditions constitute a serious violation of the standards of fitness for human habitation as
88 established in the state sanitary code, the state building code or any other law, ordinance, by-law,
89 rule or regulation establishing such conditions; (b) the plaintiff received such certification prior
90 to the date that the tenant or occupant received the notice to quit or the notice terminating the
91 tenancy;

92 (2) the plaintiff does not show that such conditions were caused by the tenant or occupant
93 or any other person acting under the tenant's or occupant's control, except that the defendant
94 shall have the burden of proving that any violation appearing solely within that portion of the

95 premises under his control and not by its nature reasonably attributable to any action or failure to
96 act of the plaintiff was not so caused;

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

99 (4) the plaintiff does not show that the conditions complained of cannot be remedied
100 without the premises being vacated; provided, however, that nothing in this clause shall be
101 construed to deprive the tenant or occupant of relief under this section when the premises are
102 temporarily vacated for purposes of removing or covering paint, plaster, soil or other accessible
103 materials containing dangerous levels of lead pursuant to said chapter 111; and

104 (5) the tenant or occupant has complied with all provisions of this section regarding
105 deposit of past and accruing rent as defined herein.