KENNETH P. KERR, ED.D
Legislative District 3B
Frederick County

Health and Government Operations Committee

Subcommittees
Health Occupations and Long Term Care

Insurance and Pharmaceuticals

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Annapolis Office
The Maryland House of Delegates
6 Bladen Street, Room 209
Annapolis, Maryland 21401
410-841-3240 · 301-858-3240
800-492-7122 *Ext.* 3240
Ken.Kerr@house.state.md.us

District Office
4539 Metropolitan Court, Suite 257
Frederick, Maryland 21704
301-360-3505

March 6, 2020
HB882—Financial Institutions—Abandoned Property—Notices and Records

Chairman Davis, Vice Chairman Dumais, and members of the committee:

HB882 deals with "escheatment," a practice dating back to English Common law where if a situation arose that a person died without an heir, that person's property became the property of the crown. In modern times, escheatment is the process of returning lost or unclaimed property to the government of a State, for safekeeping until the owner(s) is identified. Geographic jurisdiction of the State is determined by the last known address of the original owner.

Each state has laws regulating escheatment, with holding periods typically from 3 to 5 years. The legal principle behind escheatment is that all property has a legally recognized owner; therefore, if the original owner cannot be found within a specified time, government is presumed the owner. Escheats are performed on a revocable basis. Thus, if property has escheated to a State but the original owner subsequently is found, escheatment should be revoked and ownership of the property should revert to that original owner (Kenton 2019).

Under Maryland Law, Title 17-301,

> "In general- Property valued at $100 or more and held by a banking or financial organization or business association is presumed abandoned if the depositor has been issued a notice by first class mail to the depositors last known address of the fact that the property will be considered abandoned and there is no response within 30 days to the notification. The holder in possession of presumed abandoned property shall send a written notice by first class mail to the apparent owner of the presumed abandoned property to the owner's last known address The property will be considered abandoned unless the owner responds within 30 days of the notification to the holder."

This issue came to my attention when Rick Rudinger, a constituent in my district, contacted me regarding this practice and how it affected him and his wife. One of his mutual funds was sold to the state of Maryland without him knowing. The financial firm said that it was sold because he had not contacted the holder or touched the mutual fund for 3 years.

Like we encourage people to do, Mr. Rudinger was saving for retirement. This account with $100,000 was part of his retirement plan. In total he has 22 additional mutual funds.

As he planned for this money to be used 20 years from now, he was content to consider it in the safe hands of the financial institution where he had placed it.My constituent did not realize that he needed to remain in contact with the holder of his mutual fund. The financial institution sent him a letter through normal first class mail.

There was a time when a letter from the bank was a rare and important communication: a monthly statement, tax filing document, or an overdraft notice.

Today, not so much. We receive weekly, even daily unsolicited correspondence from our banks for new investment opportunities, credit cards, home equity loans—essentially junk mail.

These Banks and financial institutions frequently send marketing material in envelopes identical to or quite similar to monthly statements and other correspondence. The Rudingers have signed up for electronic statements for all their accounts and were not expecting to be contacted regarding their accounts by first class mail. They apparently threw it away. It was not until he was preparing his tax return that he noticed this account was missing. He was able to recover the money, but not before paying capital gains on an account he had not intended to touch for 15 or 20 years.

The same thing almost happened to them again. They were fortunate enough to open a letter that informed them a second account about to be sold to the state in three days.

I too have had this experience with an account that was holding money in long-term savings. No deposits or withdrawals were made for three years and that account was turned over to the state. This was done even though we had other active accounts at that same bank. We use on-line banking and have no expectation of being contacted by first class mail.

I was surprised to learn that banks and financial institutions have no fiduciary responsibility to investors and account holders. (A fiduciary is a person or organization that acts on behalf of another person or persons to manage assets. Essentially, a fiduciary owes to that other entity the duties of good faith and trust. The highest legal duty of one party to another, being a fiduciary requires being bound ethically to act in the other's best interests.) It seems the bank gets the benefit of using the customer's money that is entrusted to them, but not the fiduciary responsibility to act in the customer's best interest.

We encourage people to save money then penalize them for leaving it in what they consider a safe place.

A single, letter—just like the letters they send to solicit business—sent in first class mail informing a customer an account is about to get turned over to the state is insufficient notice.

HB 882 requires that owners of accounts or property of $10,000 or more which are about to go into escheatment be notified by certified mail return receipt (at a cost of $6.10 rather than a $0.55 first class stamp). This would ensure that all attempts have been made to contact the owner before the property is sold to or turned over to the state. We request your assistance in making this happen with a favorable committee report on HB 882.

Sincerely,

Delegate Kenneth P. Kerr
District 3B – Frederick County