

House Bill 2237

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Mr. Chairman and Members of the Committee:

Expecting people to just “happen onto” a public notice on the Internet is simply unrealistic.

For example, if a hearing is scheduled about locating a proposed landfill across the street from your neighborhood, you won’t know about that hearing unless you are disciplined enough to search the Internet every day and just happen to discover: 1) that such a landfill proposal is even being planned, and 2) the time and place of the hearing so that you can go to speak out about it.

Are you going to search the Internet every day to find out what the city council and county commission are planning for your life?

Sticking a notice on a Website does not give public notice. A Website is a place you go to chat about your favorite sports team, to check stock prices, to shop on e-bay. But unless you’re on a newspaper’s Website, it’s not a place you go to be notified about something that you aren’t even expecting to be notified about.

For example, if you had no idea that the new landfill was going to be built near your home, would you have learned about it if you depended on the Internet? No. And you would have missed the public hearing where you could have voiced your objections.

You see, the Internet would require you to search for a public notice about something (like a new landfill) that you don’t even know you should be looking for. That’s not giving public notice. In fact, that’s the opposite of giving public notice. That’s making citizens do all the work, in fact it is guesswork, to see if their local government has anything planned for them.

But a public notice in the local newspaper is easily seen by the people in a community. Local newspapers present public notices to citizens amid a broad array of important information about their communities – from news reports on city council meetings to coverage of the high school football game. And despite rumors of the impending death of newspapers, they are very much alive. There is not going to be a time in the foreseeable future when there will be no newspapers. We are nearly 20 years into the Internet age, and almost every driveway in my neighborhood has a newspaper on it in the morning.

Public notices in America have been placed in newspapers for 226 years, and the reason is because local governments have a fundamental responsibility to inform citizens about certain actions that it is taking. Slapping it up on a Website does not give public notice to citizens.

But placing them in newspapers does. Ninety-two percent of Kansans read Kansas newspapers, and more than 75 percent read the public notices in their local newspaper. They're right there alongside the news and ads that they are reading anyway.

Newspaper public notices have always been considered so important that they have long been enforced by statute in every state in the union. But why would we consider something this important to be removed to a government website that almost no one will see, when cities, counties and other local governments don't do so for their own newsletters? I live in Lenexa and work in Olathe. Neither of these cities relies solely on their own websites to distribute their newsletters to citizens. What do they do, instead? They publish and distribute printed newsletters!

Fourteen years ago, the Kansas Legislature passed sweeping open government reform legislation that has given the citizens of this state unprecedented access to their government. Today's bill, however, flies directly in the face of that public-spirited legislation. The bill we are discussing today holds open government in very low regard.

But apart from its antagonism towards open government, I want to point out an enormous error in this bill as it attempts to re-write K.S.A. 64-101. This bill changes 64-101 so that it would apply only to city governments, county governments and school boards. It has carelessly chopped out all of the publishing requirements for non-government public notices – those public notices that have nothing to *do* with city governments, county governments and school boards. I'm talking about important notices for property forfeitures, estates and many others. In other words, this bill throws the baby out with the bathwater.

The existing language in K.S.A. 64-101 sets out the publication requirements for all public notices of any kind, whether they are government notices or non-government notices. These requirements mandate that the newspaper be published at least weekly, that it have paid subscribers, that it have a periodicals postal permit, and that it be at least one year old. The reason for these requirements is so that the notice appears in a legitimate newspaper and not some fly-by-night rag.

But this bill recklessly yanks out all of these requirements for non-government public notices, such as those placed by attorneys, banks, businesses and private citizens in foreclosure actions, probate cases, vehicle auctions and other proceedings. These notices are required by various other statutes to be published in legitimate newspapers, in accordance with the provisions of 64-101. If this bill were to pass, those referenced provisions would suddenly vanish. They'd be gone. Stripped out as if these other statutes didn't refer to them at all.

What would happen to these kinds of public notices? Where would they be published? Would they still have to be published? Who knows?

We would be left with massive statutory inconsistencies. Judges, lawyers, agency heads, vehicle towing companies, bank trust departments, warehouses, storage businesses and regular citizens who are trying to place their own notices, according to law, would be left scratching their heads, wondering, "I'm supposed to publish my notice in a newspaper that meets the requirements of K.S.A. 64-101, but those requirements have been removed! What am I supposed to do now? That revised statute now talks only about city governments, county governments and school boards."

Passage of this bill would therefore result in utter chaos.

- For example, K.S.A. 60-2410 states that in a private real estate foreclosure action, the notice of the sale must be placed in a newspaper "which meets the requirements of K.S.A. 64-101." But this bill completely removes those requirements from 64-101. It only talks about county governments, city governments and school boards. Therefore, K.S.A. 60-2410 would be referring to language that doesn't exist anymore. Chaos.
- K.S.A. 60-2409 states that in a sale of private personal property, notice of the sale "shall be given by publication ... in some newspaper meeting the qualifications prescribed by K.S.A. 64-101." But this bill removes those qualifications from 64-101.
- The same is true of K.S.A. 59-2209, which states that a notice of a probate hearing must be published in a newspaper "authorized by law to publish legal notices." That authority is granted by the existing requirements of K.S.A. 64-101. But this bill removes those requirements from 64-101.
- And K.S.A. 58-4003, which deals with notice to people who have loaned items to museums in the state, says: "[N]otice is deemed given if the museum publishes notice ... in a newspaper ... having the qualifications to publish legal notices pursuant to K.S.A. 64-101." But this bill removes those qualifications from 64-101.

The same is true of all of the following statutes, which rely on the newspaper requirements that this bill strips out of K.S.A. 64-101:

- K.S.A. 59-709 states that, in a petition for administration or probate of a will, notice to creditors shall be published in a newspaper "authorized to publish legal notices." That authority is granted by the requirements of K.S.A. 64-101.
- K.S.A. 60-307 states that service of process by publication in divorces, annulments, actions against foreign corporations or nonresidents, non-foreclosure real estate actions, where service of summons upon a defendant cannot be made, where a defendant has left the state with the intent to defraud creditors, or the officers of an undissolved corporation have left the state occur in a "newspaper authorized by law to publish legal notices" and

that service be proved by the publisher's sworn affidavit. That authority is granted by the provisions of K.S.A. 64-101.

- And even some *government* notices would be affected. Certain newspaper publishing requirements for water districts, irrigation districts, drainage districts, townships, and even the Kansas Corporation Commission would be referring to language in 64-101 that wouldn't exist anymore, because this bill strips it out.

And even *these* are just a *few* of the statutes that this bill would leave in limbo. There are simply too many to list, and they all depend on the specific language in K.S.A. 64-101 that this bill carelessly deletes. In fact, we found more than 400 places in the Kansas Statutes where references were made to newspaper public notice requirements.

Vital non-government public notices would have no governing publication authority if this bill were to be passed.

You see, public notices aren't required for just city governments, county governments and school boards. Do you know that the Kansas law firm that files the largest number of real estate forfeiture actions in this state insists on publishing a newspaper public notice in every single case it handles, even when it doesn't have to do so? It wants to make sure that all of the defendants and other parties, some of whom may be unknown, have been given the greatest opportunity to be notified that they might be losing their home if they don't rectify their situation.

Many other notices are also required by innumerable other statutes and agency regulations to comply with the provisions of K.S.A. 64-101. But this bill removes those provisions. It only talks about local governments. All of those statutes and regulations would therefore be referring to something that doesn't exist anymore.

And one more thing: By removing these provisions, some notices could conceivably be published in any publication that someone just decides to call a "newspaper," because this bill has removed the strict definition, that is embodied in the existing statute, of what a qualified newspaper is. For such notices as a warehouse's sale of goods and the sale of abandoned vehicles, there would be no requirement that the notice even be published in a legitimate newspaper. There would be no specific restriction against simply placing the notice in a so-called newspaper like the one here in Topeka that was dedicated to strip clubs and x-rated video stores. This bill strips out those restrictions.

In so many ways, this bill would create judicial chaos, public confusion, and a morass of inconsistent laws.