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Senate Bills 258 and 259 (as introduced 3-18-21)
Sponsor: Senator Curtis VanderWall (S.B. 258)
Senator Sylvia Santana (S.B. 259)
Committee: Local Government

Date Completed: 4-29-21

CONTENT

Senate Bill 258 would amend Public Act 247 of 1963, which defines the term "newspaper" as used in State statutes regarding the publication of notices, to do the following:

- **Modify the definition of "newspaper".**
- **Require a person that operated a newspaper in which a notice was published to provide access to the notice on the newspaper's website at no additional cost, and require the website to satisfy certain requirements.**
- **Require a person that operated a newspaper in which a notice was published to place the notice on a website that was established and maintained by a State association of newspapers, and require the website to comply with certain requirements.**
- **Specify that a publication that met the definition of "newspaper" but was controlled by the person on whose behalf the notice was published or by an officer, employee, agent, or affiliate of the person would not be qualified to serve as a newspaper for publication of the notice.**

Senate Bill 259 would amend the Revised Judicature Act to redefine "newspaper", with respect to the publication of a notice, as that term would be defined in Senate Bill 258, with the required area being the county in which the court was located, unless a different required area was designated.

The bills are tie-barred. Senate Bill 259 also would repeal Section 1950 of the Revised Judicature Act. (That section defines "newspaper" for the purposes of Chapter 19 (Commencement of Action and Service of Process) of the Act.)

Senate Bill 258 is discussed in greater detail below.

Definition of "Newspaper"

Under Public Act 247 of 1963, a "newspaper" as used in any State statute, except the Revised Judicature Act in relation to a publication of a notice of any kind, must be construed to refer only to a newspaper published in English for the dissemination of local or transmitted news and intelligence of a general character, or legal news, which meets the following:

- It has a bona fide list of paying subscribers or be published at not less than weekly intervals in the same community without interruption for at least two years.

- It has been published and of general circulation at not less than weekly intervals without interruption for at least one year in the county, township, city, village, or district where the notice is required to be published; a newspaper does not lose eligibility for interruption of continuous publication because of acts of God, labor disputes, or because of military service of the publisher for a period of no more than two years, provided certain criteria are met.
- It averages at least 25% news and editorial content per issue, annually.

Under the bill, as used in any statute of the State in relation to the publication of a notice of any kind, unless the statute expressly provided otherwise, "newspaper" would mean a print publication published in the English language for the dissemination of local news of a general character or for the dissemination of legal news to which all of the following apply:

- There is a bona fide list of paying subscribers to the publication or the publication has been published at not less than weekly intervals in the same community without interruption for at least two years.
- The publication has been published and of general circulation at not less than weekly intervals without interruption for at least one year in the required area.
- The publication annually averages at least 25% news and editorial content per issue.

"Notice" would include an order, ordinance, advertisement, report, and any other statement or information required by statute to be published. "Required area" would mean the county, township, city, village, district, or other geographic territory where the statute requires notices to be published or the newspaper to be published, circulated, or printed. "News and editorial content" would mean any content other than paid advertising.

Currently, if no newspaper qualifies in the county where a court is situated, "newspaper" includes a newspaper in an adjoining county, which by the Act is qualified to publish notice of actions commenced therein. Under the bill, if there were no publication that met the proposed definition of "newspaper" in the required area, the term would mean a publication in an adjoining county, township, city, village, district, or other geographic territory, as applicable that met the proposed definition.

Notice Publication Requirements

The bill would require a person that operated a newspaper in which a notice was published to do all of the following, at no additional cost beyond what the person charged for the print publication.

The person would have to provide access to the notice on the website of the newspaper. The website would have to satisfy all of the following requirements:

- The website homepage would have to have a link that took a viewer to an area of the website where notices were available for viewing; this area of the website could not be placed behind a pay wall, and the public would have to be able to read the notices at no charge.
- Notices would have to remain on the website during the full required publication period.
- Notices would have to remain searchable on the website as a permanent record of the publication.

"Website" would mean a collection of pages of the internet, usually in html format, with clickable or hypertext links to enable navigation from one page or section to another, that often uses associated graphics files to provide illustration and may contain other clickable or hypertext links.

The person would have to place the notice on a website that was established and maintained by a State association of newspapers that represented the majority of newspapers in the State as a comprehensive central repository for notices published throughout the State. The website would have to do all of the following:

- Provide for searching for a published notice by criteria contained in the notice.
- Maintain all published notices on a permanent basis.
- Provide access through standard computer browsers and mobile platforms, such as smartphones and tablets.
- Provide a method to alert the public of published notices by text message or email notification.

Other Provisions

An error or omission in the posting of a notice online as specified above would not invalidate the notice published in the print version of the newspaper.

A publication that met the proposed definition but was controlled by the person on whose behalf the notice was published or by an officer, employee, agent, or affiliate of the person would not be qualified to serve as a newspaper for publication of the notice. "Controlled" would mean that the person has one or more of the following:

- Ownership of or the power to vote, directly or indirectly, more than 50% of a class of voting securities or voting interests of the person that operates the publication.
- Power by the person's own action to elect or appoint a majority of executive officers, managers, directors, trustee, or other individuals exercising managerial authority of the person that operates the publication.
- The legal right by the person's own action to direct, restrict, regulate, govern, or administer the management or policies of the person that operates the publication.

A person that operated a newspaper that published a notice would have to maintain a permanent and complete printed copy of each published edition that contained the notice for archival and verification purposes in the required area.

MCL 691.1051 (S.B. 258)
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FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.