

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 1863

(SENATE AUTHORS: EATON)

DATE	D-PG	OFFICIAL STATUS
02/25/2014	5839	Introduction and first reading Referred to Judiciary

1.1 A bill for an act
 1.2 relating to data practices; booking photographs; amending Minnesota Statutes
 1.3 2012, section 13.82, subdivision 26; proposing coding for new law in Minnesota
 1.4 Statutes, chapter 325E.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 13.82, subdivision 26, is amended to read:

1.7 Subd. 26. **Booking photographs.** (a) For purposes of this subdivision, "booking
 1.8 photograph" means a photograph or electronically produced image taken by law
 1.9 enforcement for identification purposes in connection with the arrest of a person.

1.10 (b) Except as otherwise provided in this subdivision, a booking photograph is public
 1.11 data. A law enforcement agency may temporarily withhold access to a booking photograph
 1.12 if the agency determines that access will adversely affect an active investigation.

1.13 (c) Notwithstanding sections 13.03 and 13.05, subdivision 12, a copy of a booking
 1.14 photograph made public under this subdivision may only be provided or made available on
 1.15 the agency's Web site to a person upon submission of the following to the law enforcement
 1.16 agency that maintains the original photograph:

1.17 (1) the legal name and address of the person making the request and, if the person is
 1.18 making the request on behalf of a business entity, the name of the business, the address
 1.19 of the business' headquarters and state of incorporation and, if applicable, the name and
 1.20 address of the business' majority shareholders or directors;

1.21 (2) a brief statement of the purpose of the request and the manner in which the
 1.22 photograph is intended to be used; and

1.23 (3) if the photograph will be published, a list of all locations and formats of
 1.24 publication, including Web site addresses if applicable.

2.1 If a person receives a copy of a booking photograph under this subdivision and later
2.2 determines that the photograph will be published in a location or format not originally
2.3 disclosed, the person must provide a supplemental disclosure to the agency containing
2.4 the detail required by clause (3) prior to the photograph's publication in the new location
2.5 or format.

2.6 (d) If a person receives or obtains a copy of a booking photograph under this
2.7 subdivision and intends to sell or transfer the photograph to another person, the new
2.8 recipient of the photograph must file a disclosure meeting the requirements of this
2.9 paragraph to the law enforcement agency that maintains the original photograph prior
2.10 to use or publication of the photograph. Prior to a private sale or transfer of a booking
2.11 photograph, the person selling or transferring the photograph must notify the recipient, in
2.12 writing, of the disclosure obligations contained in this section.

2.13 (e) A person who violates this subdivision, including but not limited to
2.14 misrepresentations or failure to disclose truthful, complete, or accurate information to
2.15 the appropriate law enforcement agency as required by this section, shall be subject to
2.16 the penalties provided in section 325E.80.

2.17 (f) This subdivision does not apply to the transfer of a booking photograph to
2.18 another federal, state, or local law enforcement agency, another government entity, or
2.19 to the judicial branch, to the extent the transfer is otherwise authorized by law, or to
2.20 the subject of the photograph or an attorney representing the subject of the photograph
2.21 in an active criminal proceeding.

2.22 **Sec. 2. [325E.80] ARREST DATA.**

2.23 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this
2.24 subdivision have the meanings given them.

2.25 (b) "Booking photograph" has the meaning given in section 13.82, subdivision
2.26 26, paragraph (a).

2.27 (c) "Person" means any natural person or any legal corporate entity.

2.28 (d) "Remove" means the removal or deletion of a photograph from a Web site or
2.29 publication.

2.30 Subd. 2. **Prohibition on payment.** No person may publish a booking photograph to
2.31 any Web site or publication if the Web site or publication requires payment of a fee or
2.32 other consideration to remove the photograph.

2.33 Subd. 3. **Removal or deletion.** (a) Any person receiving booking photographs
2.34 under section 13.82, subdivision 26, must clearly and conspicuously advertise, in an

3.1 easily identifiable spot on their Web site or publication, a method or process for removal
3.2 of photographs.

3.3 (b) After an individual has requested that a Web site or publication remove a booking
3.4 photograph under paragraph (a), the person maintaining the Web site or publication must
3.5 conduct an investigation into whether the individual pictured in the booking photograph
3.6 was convicted of a crime in connection with the arrest. Where possible, the individual
3.7 seeking removal or deletion of the booking photograph must provide the Web site or
3.8 publication with proof that there was no conviction, and:

3.9 (1) if the individual was not convicted of a crime in connection with the arrest, the
3.10 Web site or publication must delete the photograph immediately; or

3.11 (2) if the individual was convicted of the crime listed, the individual may request
3.12 that the Web site or publication alter the information posted to include no more than the
3.13 individual's first name, last initial, and crime of conviction.

3.14 (c) Under no circumstance may any person require the payment of a fee or any other
3.15 consideration to remove a booking photograph.

3.16 (d) Upon completion of the investigation, if the person finds that an individual
3.17 was not convicted of a crime, that person is prohibited from posting the same booking
3.18 photograph to any other Web site or publication it maintains.

3.19 Subd. 4. **Liability.** (a) Any person maintaining a Web site or publication that is in
3.20 violation of any provision of this section is civilly liable to the individual in the booking
3.21 photograph. That individual may recover \$500 per posted photograph.

3.22 (b) Failure to remove or delete a photograph within 30 days, or to limit the
3.23 information provided, as required under subdivision 3, entitles the individual in the
3.24 booking photograph to recover treble damages, or \$1,500 per image posted.

3.25 (c) Failure to comply with the agreement in section 13.82, subdivision 26, paragraph
3.26 (c), will result in treble damages, or \$1,500 for each violation.