

House Bill 3273

Sponsored by Representative WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits law enforcement agency from releasing booking photo except in specified circumstances.

Requires publish-for-pay publication to remove and destroy booking photo upon request within specified time period. Prohibits publication from charging fee for removal and destruction of certain booking photos. Provides that publication is liable for fees, costs and statutory damages for failure to remove and destroy photo as required.

A BILL FOR AN ACT

1
2 Relating to booking photos.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) Notwithstanding ORS 192.345, a law enforcement agency may not release**
5 **a booking photo except as provided in subsection (2) of this section.**

6 **(2) A law enforcement agency may release a booking photo described in subsection (1)**
7 **of this section:**

8 **(a) To the person depicted in the booking photo;**

9 **(b) To another law enforcement agency, or to a law enforcement officer employed by**
10 **another law enforcement agency, for a law enforcement purpose;**

11 **(c) To the public, if the law enforcement agency determines that there is a law enforce-**
12 **ment purpose for the release, including but not limited to assistance with the apprehension**
13 **of a fugitive or a suspect in a criminal investigation, or the identification of additional**
14 **criminal activity; or**

15 **(d) Upon the conviction of the person depicted in the booking photo, if the conviction**
16 **results from the arrest during which the booking photo was obtained.**

17 **(3) As used in this section:**

18 **(a) "Booking photo" means a photograph of a person taken by a law enforcement agency**
19 **for identification purposes when the person is booked into custody.**

20 **(b) "Law enforcement agency" has the meaning given that term in ORS 181A.010.**

21 **(c) "Law enforcement officer" means an officer, deputy, member or employee of a law**
22 **enforcement agency.**

23 **SECTION 2. (1) Except as provided in subsection (2) of this section:**

24 **(a) A publish-for-pay publication shall remove and destroy a booking photo of a person**
25 **who submits a request for removal and destruction within 30 calendar days of the date of the**
26 **request.**

27 **(b) A publish-for-pay publication may not condition the removal or destruction of a**
28 **booking photo on the payment of a fee of more than \$50.**

29 **(c) If the publish-for-pay publication does not remove and destroy a booking photo as**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 required by this subsection, the publish-for-pay publication is liable for:

2 (A) All costs, including reasonable attorney fees, resulting from any legal action the
3 person brings in relation to the failure of the publish-for-pay publication to remove and de-
4 stroy the booking photo; and

5 (B) Statutory damages of \$500 per day for each day after the 30-day deadline described
6 in this subsection that the booking photo is visible or accessible in or on the publish-for-pay
7 publication.

8 (2)(a) A publish-for-pay publication shall remove and destroy a booking photo of a person
9 who submits a request for removal and destruction within seven calendar days of the date
10 of the request if:

11 (A) The booking photo relates to a criminal charge for which the person was acquitted
12 or not prosecuted, or to a criminal charge resulting a criminal conviction that has been set
13 aside, vacated or pardoned; and

14 (B) The person submits to the publish-for-pay publication documentation of a disposition
15 described in subparagraph (A) of this subsection.

16 (b) A publish-for-pay publication may not condition the removal or destruction of a
17 booking photo described in this subsection on the payment of any fee or other consideration.

18 (c) If the publish-for-pay publication that receives a request described in paragraph (a)
19 of this subsection does not remove and destroy the booking photo as required by this sub-
20 section, the publish-for-pay publication is liable for:

21 (A) All costs, including reasonable attorney fees, resulting from any legal action the
22 person brings in relation to the failure of the publish-for-pay publication to remove and de-
23 stroy the booking photo; and

24 (B) Statutory damages of \$1,000 per day for each day after the seven-day deadline de-
25 scribed in this subsection that the booking photo is visible or accessible in or on the
26 publish-for-pay publication.

27 (d) An act by a publish-for-pay publication seeking to condition removal or destruction
28 of a booking photo described in this subsection on the payment of any fee may be prosecuted
29 as theft by deception under ORS 164.085.

30 (3) As used in this section:

31 (a) "Booking photo" means a photograph of a person taken by a law enforcement agency
32 for identification purposes when the person is booked into custody.

33 (b) "Publish-for-pay publication" means a publication or website that requires the pay-
34 ment of a fee or other consideration in order to remove or delete a booking photo from the
35 publication or website.

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