

1 SB34  
2 166021-4  
3 By Senator Dial  
4 RFD: Judiciary  
5 First Read: 03-MAR-15  
6 PFD: 02/13/2015

1 SB34

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4 ENROLLED, An Act,

5 To provide a procedure by which a circuit or  
6 district court judge may authorize that video testimony may be  
7 taken from a witness who is engaged in active duty military  
8 service or an employee or representative of the Alabama  
9 Department of Forensic Sciences; to establish requirements for  
10 taking testimony; and to provide that the party requesting  
11 video testimony shall bear the cost.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This act shall be known as the "Alabama  
14 Armed Services Accommodation Act."

15 Section 2. (a) The Legislature finds it to be an  
16 important matter of public policy that an accommodation be  
17 made for military members who are asked to testify in civil or  
18 criminal trials in this state but are unable to attend in  
19 person. The purpose of this act is to ease the burdens on  
20 military personnel and their families brought on by the duty  
21 of appearing as a witness in a trial in this state when  
22 summoned. The purpose of this act is also to allow members of  
23 the armed services to assist in trials in this state as  
24 witnesses without interrupting their military service, while  
25 protecting the rights of all parties in civil or criminal

1 litigation. The purpose of this act is also to better enable  
2 the fact-finder to obtain crucial evidence and will aid in the  
3 expeditious resolution of cases in this state by providing a  
4 procedure in which testimony of a person serving in the armed  
5 services may be taken without undue hardship.

6 (b) The Legislature also finds it is a matter of  
7 public policy that an accommodation be made for the employees  
8 and representatives of the Alabama Department of Forensic  
9 Sciences who are asked or required to testify in civil or  
10 criminal trials in this state. This act will allow the  
11 employees and representatives of the Alabama Department of  
12 Forensic Sciences to appear as a witness, while minimizing the  
13 amount of time required for the employees and representatives  
14 of the Alabama Department of Forensic Sciences to be out of  
15 their respective facilities.

16 Section 3. Section 12-21-135.1 is added to the Code  
17 of Alabama 1975, to read as follows:

18 §12-21-135.1.

19 (a) For purposes of this section, the following  
20 words shall have the following meanings:

21 (1) ACTIVE DUTY. Full-time duty status in the Armed  
22 Services of the United States, including members of the  
23 reserve and National Guard components on active duty orders  
24 pursuant to 10 U.S.C. §§ 331, 332, 333, 12301(d), 12302,  
25 12304, and 12406.

1           (2) ARMED SERVICES. The federal military forces of  
2 the United States including the Army, Navy, Marine Corps, Air  
3 Force, Coast Guard, a reserve component thereof, and the  
4 National Guard.

5           (3) FORENSIC SCIENTIST. Any employee or  
6 representative of the Alabama Department of Forensic Sciences.

7           (4) TWO-WAY VIDEO CONFERENCE. A conference among  
8 people in different locations by means of transmitted audio  
9 and video signals. The term includes use of all communication  
10 technologies that allow individuals in two or more locations  
11 to interact by two-way video and audio transmissions  
12 simultaneously in real time.

13           (b) Upon motion by either party, a circuit or  
14 district court judge may permit a witness to testify in any  
15 civil case by a two-way video conference presented in open  
16 court, if the moving party establishes all of the following to  
17 the satisfaction of the court:

18           (1) The witness is a member of the armed services  
19 currently on active duty status.

20           (2) The witness currently is not physically present  
21 in the State of Alabama.

22           (3) The witness's absence from the state is a direct  
23 result of official military duty.

24           (4) The testimony of the witness is given under oath  
25 and subject to cross-examination.

1           (c) Upon consent of all the parties, a circuit or  
2 district court judge may permit a witness to testify in any  
3 criminal case by a two-way video conference presented in open  
4 court if the witness meets all of the requirements provided in  
5 subsection (b) for witnesses testifying in a civil case.

6           (d) Upon motion by either party, and upon consent by  
7 both parties, a circuit or district court judge may permit a  
8 forensic scientist to testify in any civil or criminal case by  
9 a two-way video conference presented in open court if the  
10 testimony of the witness is given under oath and subject to  
11 cross-examination.

12           (e) If the trial court authorizes testimony by a  
13 two-way video conference, the testimony shall be admissible  
14 only if it meets all of the following requirements:

15           (1) The parties, the court, and the trier of fact  
16 are able to see and hear the witness.

17           (2) The witness is able to see and hear the  
18 courtroom proceedings.

19           (3) Any attorney who is representing a party in any  
20 criminal or civil proceeding, or who is representing a victim  
21 in a criminal proceeding, is able to see and hear the witness.

22           (4) All persons present with the witness are  
23 identified on the record.

24           (f) Only the following persons may be present with  
25 the witness during his or her video testimony:

1           (1) The video conference technician.

2           (2) Any attorney assigned to represent or advise the  
3 witness, if provided at the discretion of the military or  
4 otherwise obtained by the witness at no cost to the state.

5           (3) Any person the court determines may be present.

6           (g) The party seeking to introduce testimony via  
7 two-way video conference shall be responsible for coordinating  
8 the audiovisual feed into the courtroom and any associated  
9 costs. Nothing in this section shall require any court to  
10 acquire two-way video conference equipment for these purposes.  
11 Any testimony given by two-way video conference under this  
12 section shall be recorded in the same manner as any other  
13 testimony in the proceeding. The oath may be administered to  
14 the witness by two-way video conference.

15           (h) Any testimony given by two-way video conference  
16 under this section must be otherwise admissible under the  
17 rules of evidence in the courts of this state.

18           Section 4. This act shall become effective on the  
19 first day of the third month following its passage and  
20 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB34

Senate 02-APR-15

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 02-JUN-15

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By: Senator Dial