

1 SB34
2 163945-3
3 By Senator Dial
4 RFD: Judiciary
5 First Read: 03-MAR-15
6 PFD: 02/13/2015

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8 SYNOPSIS: This bill would establish a procedure by
9 which a circuit or district court judge could
10 authorize video testimony of a witness who is
11 serving on active duty military service outside the
12 state.

13 This bill would provide requirements for the
14 video testimony to be admissible as evidence and
15 would specify that the party requesting the
16 testimony would bear the costs associated with the
17 video testimony.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To provide a procedure by which a circuit or
24 district court judge may authorize that video testimony may be
25 taken from a witness who is engaged in active duty military
26 service; to establish requirements for taking testimony; and

1 to provide that the party requesting video testimony shall
2 bear the cost.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 Section 2. The Legislature hereby finds it to be an
7 important matter of public policy that an accommodation be
8 made for military members who are asked to testify in civil or
9 criminal trials in this state but are unable to attend in
10 person. The purpose of this act is to ease the burdens on
11 military personnel and their families brought on by the dual
12 demands of military service and the performance of the civic
13 duty of appearing as a witness in a trial in this state when
14 summoned. The purpose of this act is also to allow members of
15 the armed services to assist in trials in this state as
16 witnesses without interrupting their military service, while
17 protecting the rights of all parties in civil or criminal
18 litigation. This act will better enable the fact-finder to
19 obtain crucial evidence and will aid in the expeditious
20 resolution of cases in this state by providing a procedure in
21 which testimony of a person serving in the armed services may
22 be taken without undue hardship.

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

25 § 12-21-135.1.

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

1 (1) ACTIVE DUTY. Full-time duty status in the Armed
2 Services of the United States, including members of the
3 reserve and National Guard components on active duty orders
4 pursuant to 10 U.S.C. §§ 331, 332, 333, 12301(d), 12302,
5 12304, and 12406.

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

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

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

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

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

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

1 (4) The witness is unable to attend the court
2 proceedings in person because of military duties.

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

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

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

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

15 (2) The witness is able to see and hear the
16 courtroom proceedings.

17 (3) All persons present with the witness are
18 identified on the record.

19 (e) Only the following persons may be present with
20 the witness during his or her video testimony:

21 (1) The video conference technician.

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

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

26 (f) The party seeking to introduce testimony via
27 two-way video conference shall be responsible for coordinating

1 the audiovisual feed into the courtroom and any associated
2 costs. Nothing in this section shall require any court to
3 acquire two-way video conference equipment for these purposes.
4 Any testimony given by two-way video conference under this
5 section shall be recorded in the same manner as any other
6 testimony in the proceeding. The oath may be administered to
7 the witness by two-way video conference.

8 (g) Any testimony given by two-way video conference
9 under this section must be otherwise admissible under the
10 rules of evidence in the courts of this state.

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