

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

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 Section 2. (a) The Legislature finds it to be an  
22 important matter of public policy that an accommodation be  
23 made for military members who are asked to testify in civil or  
24 criminal trials in this state but are unable to attend in  
25 person. The purpose of this act is to ease the burdens on  
26 military personnel and their families brought on by the duty  
27 of appearing as a witness in a trial in this state when

1 summoned. The purpose of this act is also to allow members of  
2 the armed services to assist in trials in this state as  
3 witnesses without interrupting their military service, while  
4 protecting the rights of all parties in civil or criminal  
5 litigation. The purpose of this act is also to better enable  
6 the fact-finder to obtain crucial evidence and will aid in the  
7 expeditious resolution of cases in this state by providing a  
8 procedure in which testimony of a person serving in the armed  
9 services may be taken without undue hardship.

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

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

22 §12-21-135.1.

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

25 (1) ACTIVE DUTY. Full-time duty status in the Armed  
26 Services of the United States, including members of the  
27 reserve and National Guard components on active duty orders

1 pursuant to 10 U.S.C. §§ 331, 332, 333, 12301(d), 12302,  
2 12304, and 12406.

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

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

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

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

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

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

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

26 (4) The testimony of the witness is given under oath  
27 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:

26           (1) The video conference technician.

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

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

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

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

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

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3 Senate  
  
4 Read for the first time and referred to the Senate  
5 committee on Judiciary..... 03-MAR-15  
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7 Read for the second time and placed on the calen-  
8 dar with 1 substitute and..... 18-MAR-15  
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10 Read for the third time and passed as amended .... 02-APR-15

11 Yeas 28  
12 Nays 0

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15 Patrick Harris  
16 Secretary  
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