

1 HB450
2 166467-1
3 By Representatives Drake, Carns and Hill (J)
4 RFD: Judiciary
5 First Read: 09-APR-15

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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 authorize a circuit or
14 district judge to allow video testimony to be taken
15 from representatives of the Alabama Department of
16 Forensic Sciences upon motion of either party.

17 This bill would provide requirements for the
18 video testimony to be admissible as evidence and
19 would specify that the party requesting the
20 testimony would bear the costs associated with the
21 video testimony.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

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

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

13 § 12-21-135.1.

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

16 (1) ACTIVE DUTY. Full-time duty status in the Armed
17 Services of the United States, including members of the
18 reserve and National Guard components on active duty orders
19 pursuant to 10 U.S.C. §§ 331, 332, 333, 12301(d), 12302,
20 12304, and 12406.

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

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

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

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

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

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

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

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

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

25 (d) Upon motion by either party, and upon consent by
26 both parties, a circuit or district court judge may permit a
27 forensic scientist to testify in any civil or criminal case by

1 a two-way video conference presented in open court if the
2 testimony of the witness is given under oath and subject to
3 cross-examination.

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

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

9 (2) The witness is able to see and hear the
10 courtroom proceedings.

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

14 (4) All persons present with the witness are
15 identified on the record.

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

18 (1) The video conference technician.

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

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

23 (g) The party seeking to introduce testimony via
24 two-way video conference shall be responsible for coordinating
25 the audiovisual feed into the courtroom and any associated
26 costs. Nothing in this section shall require any court to
27 acquire two-way video conference equipment for these purposes.

1 Any testimony given by two-way video conference under this
2 section shall be recorded in the same manner as any other
3 testimony in the proceeding. The oath may be administered to
4 the witness by two-way video conference.

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

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