**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 5, TITLE 19 SO AS TO PROVIDE A PROCEDURE FOR THE VIDEOCONFERENCING OF CERTAIN WITNESSES DURING TRIALS, TO DELINEATE FACTORS THE COURT SHALL CONSIDER IN GRANTING OR DENYING A MOTION FOR THE VIDEOCONFERENCING OF A WITNESS’S TESTIMONY, AND TO PROVIDE THAT VIDEOCONFERENCING TECHNOLOGY USED FOR THIS PURPOSE MUST BE CONDUCTED IN ACCORDANCE WITH STANDARDS PUBLISHED BY THE SOUTH CAROLINA SUPREME COURT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 19 of the 1976 Code is amended by adding:

“Article 10

Videoconferencing of Witness Testimony

Section 19‑5‑550. (A) A party may move to videoconference the testimony of a witness during a trial if:

(1) the witness has an illness preventing him from appearing in court to testify;

(2) an expert witness is prevented from testifying because of the distance to the trial or other scheduling conflicts;

(3) a chain of evidence witness presenting evidence concerning the chain of custody of an item necessary in the trial is unable to appear in court; or

(4) a business record witness presenting evidence concerning the business record hearsay exception under Rule 803(6) of the South Carolina Rules of Evidence is unable to appear in court.

(B) The moving party seeking to present the testimony of a witness through videoconferencing pursuant to the provisions of this article must present evidence, as required by the court and consistent with the factors delineated in Section 19-5-560, to the court as well as to all other parties. The court shall make a finding on the record before the testimony is presented via videoconferencing in the trial.

Section 19-5-560. (A) In determining in a particular case whether to permit the use of videoconferencing technology and the manner of proceeding with videoconferencing, the court shall consider the following factors:

(1) the capabilities of the court’s videoconferencing equipment;

(2) whether undue prejudice may result from the use of videoconferencing the testimony of the witness;

(3) the convenience of the parties and the proposed witness and the costs associated with the appearance of the witness in person in relation to the importance of the offered testimony;

(4) whether the procedure would allow for cross‑examination with special consideration to Crawford v. Washington, 124 S.Ct. 1354, Confrontation Clause issues when the cross‑examination would involve documents or other exhibits;

(5) whether the dignity, solemnity, and decorum of the courtroom would tend to impress upon the witness the duty to testify truthfully;

(6) whether a physical liberty or other fundamental interest is at stake in the proceeding;

(7) whether the court is satisfied that it can sufficiently control the proceedings at the remote location so as to effectively extend the courtroom to the remote location;

(8) whether the use of videoconferencing technology presents the person at a remote location in a diminished or distorted sense that negatively reflects upon the person at the remote location to persons present in the courtroom;

(9) whether the use of videoconferencing technology diminishes or detracts from the dignity, solemnity, or formality of the proceeding and undermines the integrity, fairness, or effectiveness of the proceeding;

(10) whether the person appearing by videoconferencing technology presents a significant security risk to transport and be present physically in the courtroom;

(11) whether the parties or the witness have waived personal appearance or stipulated to videoconferencing the testimony of the witness;

(12) the proximity of the videoconferencing request date to the proposed appearance date; and

(13) any other factors that the court may determine to be relevant.

(B) A party who requests that a witness be allowed to testify through the use of videoconferencing technology shall:

(1) ensure that the equipment available at the remote location meets the technical and operational standards established by the South Carolina Supreme Court; and

(2) provide the court with the videoconferencing dialing information and the witness’s contact information in advance of the court date when videoconferencing technology will be used.

(C) Notwithstanding another provision of law, a motion fee may not be required for requests for testimony via videoconferencing submitted pursuant to this article.

(D) The court shall rule on any objection to the use of videoconferencing for witness testimony pursuant to the factors delineated in subsection (A).

(E) The use of videoconferencing technology for the purpose contained in this article must be conducted in accordance with standards published by the South Carolina Supreme Court. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court.

Section 19-5-570. The provisions of this article do not apply to or affect the use of closed circuit television or videotaped testimony of a child witness or child victim pursuant to the provisions of Section 19-1-180 or as otherwise provided by law.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑