

By: Madden

H.B. No. 975

A BILL TO BE ENTITLED

AN ACT

relating to a deposition taken of a witness in a criminal action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Articles 39.01 and 39.02, Code of Criminal Procedure, are amended to read as follows:

Art. 39.01. IN EXAMINING TRIAL. When an examination takes place in a criminal action before a magistrate, the State or the defendant may have the deposition of any witness taken by any officer authorized by this chapter [~~or officers named in this Chapter~~]. The State or the defendant may [~~shall~~] not use the deposition for any purpose unless that party [~~he~~] first acknowledges [~~consent~~] that the entire evidence or statement of the witness may be used for or against the defendant [~~him by the State~~] on the trial of the case, subject to all legal objections. The deposition of a witness duly taken before an examining trial or a jury of inquest and reduced to writing and certified according to law where the defendant was present when that [~~such~~] testimony was taken, and had the privilege afforded of cross-examining the witness, or taken at any prior trial of the defendant for the same offense, may be used by either the State or the defendant in the trial of the [~~such~~] defendant's criminal case under the following circumstances:

When oath is made by the party using the deposition [~~same~~] that the witness resides outside the State; or that since the

1 witness's [~~his~~] testimony was taken, the witness has died, or [~~that~~
 2 ~~he~~] has removed beyond the limits of the State, or [~~that he~~] has
 3 been prevented from attending the court through the act or agency of
 4 the other party, or by the act or agency of any person whose object
 5 was to deprive the State or the defendant of the benefit of the
 6 testimony; or that by reason of age or bodily infirmity, that [~~such~~]
 7 witness cannot attend. When the testimony is sought to be used by
 8 the State, the oath may be made by any credible person. When sought
 9 to be used by the defendant, the oath must [~~shall~~] be made by the
 10 defendant [~~him~~] in person.

11 Art. 39.02. WITNESS DEPOSITIONS [~~FOR~~ ~~DEFENDANT~~].
 12 Depositions of witnesses may be taken by either the state or the
 13 defendant. When a party [~~the defendant~~] desires to take the
 14 deposition of a witness, the party [~~he~~] shall[, ~~by himself or~~
 15 ~~counsel,~~] file with the clerk of the court in which the case is
 16 pending an affidavit stating the facts necessary to constitute a
 17 good reason for taking the witness's deposition [~~same,~~] and an
 18 application to take the deposition [~~same~~]. On [~~Provided that upon~~]
 19 the filing of the affidavit and [~~such~~] application, and after
 20 notice to the opposing party [~~attorney for the state~~], the court
 21 [~~courts~~] shall hear the application and determine if good reason
 22 exists for taking the deposition. The court shall base its [~~Such~~]
 23 determination and shall grant or deny the application [~~be based~~] on
 24 the facts made known at the hearing [~~and the court, in its judgment,~~
 25 ~~shall grant or deny the application on such facts~~].

26 SECTION 2. This Act applies only to a criminal case in which
 27 the indictment or information is presented to the court on or after

1 September 1, 2005. A criminal case in which the indictment or
2 information is presented to the court before September 1, 2005, is
3 governed by the law in effect when the indictment or information is
4 presented, and the former law is continued in effect for that
5 purpose.

6 SECTION 3. This Act takes effect September 1, 2005.