By: Miles H.B. No. 267

## A BILL TO BE ENTITLED

1 AN ACT

2 relating to the joint or separate prosecution of a capital felony

- 3 charged against two or more defendants.
- 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- 5 SECTION 1. Article 36.09, Code of Criminal Procedure, is
- 6 amended to read as follows:
- 7 Art. 36.09. SEVERANCE ON SEPARATE INDICTMENTS. (a) Two or
- 8 more defendants who are jointly or separately indicted or
- 9 complained against for the same offense or any offense growing out
- 10 of the same transaction may be, in the discretion of the court,
- 11 tried jointly or separately as to one or more defendants; provided
- 12 that in any event either defendant may testify for the other or on
- 13 behalf of the state; and provided further, that in cases in which,
- 14 upon timely motion to sever, and evidence introduced thereon, it is
- 15 made known to the court that there is a previous admissible
- 16 conviction against one defendant or that a joint trial would be
- 17 prejudicial to any defendant, the court shall order a severance as
- 18 to the defendant whose joint trial would prejudice the other
- 19 defendant or defendants.
- 20 (b) Notwithstanding Subsection (a), the court may not join
- 21 two or more defendants in the same criminal trial if any defendant
- 22 to be tried is indicted or complained against for a capital felony
- 23 for which the state seeks the death penalty, and the court shall
- 24 order a severance as to any two or more defendants who are jointly

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- 1 indicted or complained against for a capital felony if the state
- 2 seeks the death penalty for any one of those defendants.
- 3 SECTION 2. The change in law made by this Act applies only
- 4 to a trial commenced in a criminal case on or after the effective
- 5 date of this Act. A trial commenced before the effective date of
- 6 this Act is governed by the law in effect when the trial commenced,
- 7 and the former law is continued in effect for that purpose.
- 8 SECTION 3. This Act takes effect September 1, 2015.