

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 294

1 AN ACT TO AMEND SECTIONS 99-19-301, 99-19-305 AND 99-19-307,
2 MISSISSIPPI CODE OF 1972, TO EXPAND THE SCOPE PENALTY ENHANCEMENT
3 FOR OFFENSES COMMITTED FOR DISCRIMINATORY REASONS; TO PROVIDE A
4 CIVIL CAUSE OF ACTION FOR SUCH OFFENSES; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. Section 99-19-301, Mississippi Code of 1972, is
7 amended as follows:

8 99-19-301. The penalty for any felony or misdemeanor shall
9 be subject to enhancement as provided in Sections 99-19-301
10 through 99-19-307 if the felony or misdemeanor was committed
11 because of the actual or perceived race, color, sexual
12 orientation, ancestry, ethnicity, religion, national origin or
13 gender of the victim or because the victim has a disability as
14 defined in the Americans with Disabilities Act, 42 USC 12101
15 et seq.

16 SECTION 2. Section 99-19-305, Mississippi Code of 1972, is
17 amended as follows:

18 99-19-305. (1) Upon conviction or adjudication of guilt of
19 a defendant where notice has been duly given that an enhanced
20 penalty will be sought as provided in Sections 99-19-301 through
21 99-19-307, the court shall conduct a separate sentencing
22 proceeding to determine the sentence. The proceeding shall be
23 conducted by the trial judge before the trial jury as soon as
24 practicable. If, through impossibility or inability, the trial
25 jury is unable to reconvene for a hearing on the issue of penalty,
26 having determined the guilt of the accused, the trial judge shall
27 summon a jury to determine whether an enhanced penalty should be

28 imposed. If trial by jury has been waived, or if the defendant
29 pleaded guilty, the sentencing proceeding shall be conducted
30 before a jury impaneled for that purpose. Provided, however, that
31 if the defendant enters a plea of guilty and waives trial by jury
32 for the sentencing proceeding, the sentencing proceeding shall be
33 conducted before the trial judge sitting without a jury. In the
34 proceeding, evidence may be presented as to any matter that the
35 court deems relevant to sentence. However, this subsection shall
36 not be construed to authorize the introduction of any evidence
37 secured in violation of the Constitution of the United States or
38 of the State of Mississippi. The state and the defendant or his
39 counsel or both defendant and counsel shall be permitted to
40 present arguments for or against any sentence sought.

41 (2) In order to impose an enhanced penalty under the
42 provisions of Sections 99-19-301 through 99-19-307, the jury must
43 find beyond a reasonable doubt:

44 (a) That the defendant perceived, knew, or had
45 reasonable grounds to know or perceive that the victim was within
46 the class delineated; and

47 (b) That the defendant maliciously and with specific
48 intent committed the offense because the victim was within the
49 class delineated.

50 (3) That the victim was within the class delineated means
51 that the reason the underlying crime was committed was the
52 victim's actual or perceived race, color, sexual orientation,
53 religion, ethnicity, ancestry, national origin or gender or the
54 victim has a disability as defined by the Americans with
55 Disabilities Act, 42 USC 12101 et seq.

56 SECTION 3. Section 99-19-307, Mississippi Code of 1972, is
57 amended as follows:

58 99-19-307. In the event it is found beyond a reasonable
59 doubt that the offense was committed by reason of the actual or
60 perceived race, color, sexual orientation, ancestry, ethnicity,
61 religion, national origin or gender of the victim, or because the
62 victim has a disability as defined in the Americans with
63 Disabilities Act, 42 USC 12101 et seq., then the penalty for the
64 offense may be enhanced by punishment for a term of imprisonment

65 of up to twice that authorized by law for the offense committed,
66 or a fine of up to twice that authorized by law for the offense
67 committed, or both. In addition to such penalty enhancement, the
68 victim shall have a civil cause of action against the offender and
69 may be awarded treble damages.

70 SECTION 4. This act shall take effect and be in force from
71 and after July 1, 1999.