

By: Representative Fleming

To: Judiciary B

HOUSE BILL NO. 9

1 AN ACT TO AMEND SECTIONS 99-19-301, 99-19-305 AND 99-19-307,
2 MISSISSIPPI CODE OF 1972, TO REVISE THE APPLICATION OF THE HATE
3 CRIMES STATUTES; AND FOR RELATED PURPOSES.

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

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

7 99-19-301. The penalty for any felony or misdemeanor shall
8 be subject to enhancement as provided in Sections 99-19-301
9 through 99-19-307 if the felony or misdemeanor was committed
10 because of the actual or perceived race, color, ancestry,
11 ethnicity, religion, national origin, gender, age or sexual
12 orientation of the victim.

13 **SECTION 2.** Section 99-19-305, Mississippi Code of 1972, is
14 amended as follows:

15 99-19-305. (1) Upon conviction or adjudication of guilt of
16 a defendant where notice has been duly given that an enhanced
17 penalty will be sought as provided in Sections 99-19-301 through
18 99-19-307, the court shall conduct a separate sentencing
19 proceeding to determine the sentence. The proceeding shall be
20 conducted by the trial judge before the trial jury as soon as
21 practicable. If, through impossibility or inability, the trial
22 jury is unable to reconvene for a hearing on the issue of penalty,
23 having determined the guilt of the accused, the trial judge shall
24 summon a jury to determine whether an enhanced penalty should be
25 imposed. If trial by jury has been waived, or if the defendant
26 pleaded guilty, the sentencing proceeding shall be conducted
27 before a jury impaneled for that purpose. Provided, however, that

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

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

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

44 (b) That the defendant maliciously and with specific
45 intent committed the offense because the victim was within the
46 class delineated.

47 (3) That the victim was within the class delineated means
48 that the reason the underlying crime was committed was the
49 victim's actual or perceived race, color, religion, ethnicity,
50 ancestry, national origin, gender, age or sexual orientation.

51 **SECTION 3.** Section 99-19-307, Mississippi Code of 1972, is
52 amended as follows:

53 99-19-307. In the event it is found beyond a reasonable
54 doubt that the offense was committed by reason of the actual or
55 perceived race, color, ancestry, ethnicity, religion, national
56 origin, gender, age or sexual orientation of the victim, then the
57 penalty for the offense may be enhanced by punishment for a term
58 of imprisonment of up to twice that authorized by law for the
59 offense committed, or a fine of up to twice that authorized by law
60 for the offense committed, or both.

61 **SECTION 4.** This act shall take effect and be in force from
62 and after July 1, 2005.