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**AMENDMENT No. 2 PROPOSED TO**

**Senate Bill NO. 2011**

**By Senator(s) Michel**

1           **AMEND** by deleting Section 7 on lines 275 through 371 and  
2 inserting the following in lieu thereof and renumbering subsequent  
3 section(s) accordingly:

4           **SECTION \*.** Section 11-1-65, Mississippi Code of 1972, is  
5 amended as follows:

6           11-1-65. (1) In any action in which punitive damages are  
7 sought:

8                   (a) Punitive damages may not be awarded if the claimant  
9 does not prove by clear and convincing evidence that the defendant  
10 against whom punitive damages are sought acted with actual malice,  
11 gross negligence which evidences a willful, wanton or reckless  
12 disregard for the safety of others, or committed actual fraud.

13                   (b) In any action in which the claimant seeks an award  
14 of punitive damages, the trier of fact shall first determine  
15 whether compensatory damages are to be awarded and in what amount,  
16 before addressing any issues related to punitive damages.

17                   (c) If, but only if, an award of compensatory damages  
18 has been made against a party, the court shall promptly commence  
19 an evidentiary hearing before the same trier of fact to determine  
20 whether punitive damages may be considered.

21                   (d) The court shall determine whether the issue of  
22 punitive damages may be submitted to the trier of fact; and, if  
23 so, the trier of fact shall determine whether to award punitive

24 damages and in what amount.

25 (e) In all cases involving an award of punitive  
26 damages, the fact finder, in determining the amount of punitive  
27 damages, shall consider, to the extent relevant, the following:  
28 the defendant's financial condition and net worth; the nature and  
29 reprehensibility of the defendant's wrongdoing, for example, the  
30 impact of the defendant's conduct on the plaintiff, or the  
31 relationship of the defendant to the plaintiff; the defendant's  
32 awareness of the amount of harm being caused and the defendant's  
33 motivation in causing such harm; the duration of the defendant's  
34 misconduct and whether the defendant attempted to conceal such  
35 misconduct; and any other circumstances shown by the evidence that  
36 bear on determining a proper amount of punitive damages. The  
37 trier of fact shall be instructed that the primary purpose of  
38 punitive damages is to punish the wrongdoer and deter similar  
39 misconduct in the future by the defendant and others while the  
40 purpose of compensatory damages is to make the plaintiff whole.

41 (f) (i) Before entering judgment for an award of  
42 punitive damages the trial court shall ascertain that the award is  
43 reasonable in its amount and rationally related to the purpose to  
44 punish what occurred giving rise to the award and to deter its  
45 repetition by the defendant and others.

46 (ii) In determining whether the award is  
47 excessive, the court shall take into consideration the following  
48 factors:

49 1. Whether there is a reasonable relationship  
50 between the punitive damage award and the harm likely to result  
51 from the defendant's conduct as well as the harm that actually  
52 occurred;

53 2. The degree of reprehensibility of the  
54 defendant's conduct, the duration of that conduct, the defendant's  
55 awareness, any concealment, and the existence and frequency of  
56 similar past conduct;

57 3. The financial condition and net worth of  
58 the defendant; and

59                               4. In mitigation, the imposition of criminal  
60 sanctions on the defendant for its conduct and the existence of  
61 other civil awards against the defendant for the same conduct.

62                               (g) An award for punitive damages in civil actions is  
63 payable to the state and not to the individual plaintiff or  
64 plaintiffs who bring the suit. The damage award shall be  
65 deposited by the clerk of the court into the Mississippi Helping  
66 Outstanding Pupils Educationally (MHOPE) Scholarship Fund, a  
67 special fund hereby created in the State Treasury, which shall be  
68 expended pursuant to legislative appropriation for the purpose of  
69 funding MHOPE scholarships.

70                               (2) The seller of a product other than the manufacturer  
71 shall not be liable for punitive damages unless the seller  
72 exercised substantial control over that aspect of the design,  
73 testing, manufacture, packaging or labeling of the product that  
74 caused the harm for which recovery of damages is sought; the  
75 seller altered or modified the product, and the alteration or  
76 modification was a substantial factor in causing the harm for  
77 which recovery of damages is sought; the seller had actual  
78 knowledge of the defective condition of the product at the time he  
79 supplied same; or the seller made an express factual  
80 representation about the aspect of the product which caused the  
81 harm for which recovery of damages is sought.

82                               (3) The provisions of Section 11-1-65 shall not apply to:

83                               (a) Contracts;

84                               (b) Libel and slander; or

85                               (c) Causes of action for persons and property arising  
86 out of asbestos.

87                               **SECTION \*.** (1) There is established a study committee on  
88 creating a Mississippi Helping Outstanding Pupils Educationally  
89 (MHOPE) scholarship program to study and make recommendations to  
90 the Legislature on the establishment and implementation of a  
91 program of free college tuition in the State of Mississippi for  
92 highly achieving Mississippi students. The committee shall make a  
93 report of its findings and recommendations to the Legislature

94 before December 1, 2003.

95 (2) The committee shall examine the Helping Outstanding  
96 Pupils Educationally (HOPE) scholarship program in the State of  
97 Georgia, Louisiana and similar programs that have been implemented  
98 in other states in order to gain a full understanding of such  
99 programs. In its report to the Legislature, the committee shall  
100 develop legislation for a HOPE scholarship program in Mississippi  
101 to be funded from punitive damages awards in civil cases, as  
102 provided in Section 11-1-65(1)(g), and shall develop suggestions  
103 on the possible integration of currently existing scholarship and  
104 tuition assistance programs in Mississippi with MHOPE. The report  
105 must include a fiscal note on the projected costs of MHOPE.

106 (3) The study committee shall be composed of the following  
107 fifteen (15) members:

108 (a) The Chairmen of the House Universities and  
109 Colleges, Education and Appropriations Committees;

110 (b) Two (2) members of the House of Representatives  
111 appointed by the Speaker of the House, or their designees from the  
112 House membership;

113 (c) The Chairmen of the Senate Universities and  
114 Colleges, Education and Appropriations Committees;

115 (d) Two (2) members of the Senate appointed by the  
116 Lieutenant Governor, or their designees from the Senate  
117 membership;

118 (e) The Commissioner of Higher Education or his  
119 designee;

120 (f) The State Superintendent of Public Education or his  
121 designee;

122 (g) The President of the Board of Trustees of State  
123 Institutions of Higher Learning or his designee from the board;

124 (h) The President of State Board for Community and  
125 Junior Colleges or his designee from the board; and

126 (i) A representative of a local district of Rotary  
127 International or his designee.

128 In making their legislative appointments, the Lieutenant

129 Governor and Speaker of the House shall endeavor to achieve a  
130 diverse representation, with all geographical areas of the state  
131 being represented on the committee.

132 (4) If any chairman of a legislative committee serving on  
133 the study committee is unable to attend any meeting of the  
134 committee, the vice chairman of the respective committee may  
135 attend and vote at such meeting. Appointments shall be made  
136 within thirty (30) days after passage of this act. Within fifteen  
137 (15) days thereafter, on a day to be designated jointly by the  
138 Speaker of the House and the Lieutenant Governor, the study  
139 committee shall meet and organize by selecting from its membership  
140 a chairman and vice chairman. The vice chairman shall serve as  
141 secretary and shall be responsible for keeping all records of the  
142 study committee. A majority of the members of the study committee  
143 shall constitute a quorum. In the selection of its officers and  
144 the adoption of rules, resolutions and reports, an affirmative  
145 vote of a majority of the study committee is required. All  
146 members shall be notified in writing of all meetings, and such  
147 notices must be mailed at least five (5) days before the date on  
148 which a meeting is to be held.

149 (5) All expenses of the study committee shall be defrayed  
150 from the MHOPE scholarship fund established in Section  
151 11-1-65(1)(g), and the study committee is authorized to conduct  
152 its business when the balance in this fund is Ten Thousand Dollars  
153 (\$10,000.00) or more. Subject to the availability of MHOPE funds,  
154 for attending meetings of the study committee, members who are not  
155 legislators shall be compensated at the per diem rate authorized  
156 by Section 25-3-69, Mississippi Code of 1972, and shall be  
157 reimbursed in accordance with Section 25-3-41, Mississippi Code of  
158 1972, for mileage and actual expenses incurred in attending  
159 meetings of the committee. However, no per diem, mileage  
160 allowance or expense allowance may be paid for attending meetings  
161 of the committee while the Legislature is in session, and no per  
162 diem, mileage allowance or expense allowance may be paid without  
163 prior approval of the proper committee in the member's respective

164 house. Any member who is also a state employee shall not be  
165 eligible to receive per diem compensation. No study committee  
166 member may incur per diem, travel or other expenses unless  
167 previously authorized by vote, at a meeting of the study  
168 committee, which action must be recorded in the official minutes  
169 of the meeting. Nonlegislative members shall also be paid from  
170 MHOPE funds.

171 (6) The study committee may employ consultants or staff and  
172 may utilize clerical and legal staff employed by the Board of  
173 Trustees of State Institutions of Higher Learning, the Office of  
174 the Governor, the Legislature and any other staff assistance made  
175 available to the committee.

176 (7) Upon presentation of its report to the Legislature, the  
177 study committee shall be dissolved.

178 **FURTHER, AMEND the title to conform.**