State of Arkansas

A Bill

91st General Assembly
Regular Session, 2017

By: Representative Tucker

For An Act To Be Entitled

AN ACT CONCERNING THE NEW BUSINESS RULE AND THE
ABILITY OF A BUSINESS TO RECOVER LOST PROFITS IN
LITIGATION; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE NEW BUSINESS RULE AND THE
ABILITY OF A BUSINESS TO RECOVER LOST
PROFITS IN LITIGATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings.
The General Assembly finds that:
(1) Courts in this state and others may have perceived Arkansas
as a "new business rule" state concerning the exclusion of lost profit
damages for a newly established business;
(2) Damages have been recoverable in this state if they can be
established with a reasonable degree of certainty; and
(3) The question of damages, both as to measure or amount, is a
question of fact, and thus Arkansas has not applied a rigid "new business
rule" to bar the award of future lost profits in tort or breach of contract
cases.

SECTION 2. DO NOT CODIFY. Legislative intent.
The General Assembly intends to:
(1) Annul the application of the "new business rule" on any
action for damages consisting of lost profits; and
(2) Prohibit the recognition of the "new business rule" in a court in this state.

SECTION 3. Arkansas Code Title 16, Chapter 64, is amended to add an additional section to read as follows:


(a) In a case involving a recognized tort or breach of contract, there is no absolute denial of damages for lost profits to a newly established business.

(b) A newly established business is subject to the same standard of proof for lost profits as any other business regardless of how long the newly established business has operated.

/s/Tucker

APPROVED: 04/07/2017