

1 State of Arkansas As Engrossed: H3/14/17 H3/16/17

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 2202

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5 By: Representative Tucker

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For An Act To Be Entitled

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AN ACT CONCERNING THE NEW BUSINESS RULE AND THE

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ABILITY OF A BUSINESS TO RECOVER LOST PROFITS IN

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LITIGATION; AND FOR OTHER PURPOSES.

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Subtitle

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CONCERNING THE NEW BUSINESS RULE AND THE

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ABILITY OF A BUSINESS TO RECOVER LOST

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PROFITS IN LITIGATION.

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

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21 *SECTION 1. DO NOT CODIFY. Legislative findings.*

22 *The General Assembly finds that:*

23 *(1) Courts in this state and others may have perceived Arkansas*
24 *as a "new business rule" state concerning the exclusion of lost profit*
25 *damages for a newly established business;*

26 *(2) Damages have been recoverable in this state if they can be*
27 *established with a reasonable degree of certainty; and*

28 *(3) The question of damages, both as to measure or amount, is a*
29 *question of fact, and thus Arkansas has not applied a rigid "new business*
30 *rule" to bar the award of future lost profits in tort or breach of contract*
31 *cases.*

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33 *SECTION 2. DO NOT CODIFY. Legislative intent.*

34 *The General Assembly intends to:*

35 *(1) Annul the application of the "new business rule" on any*
36 *action for damages consisting of lost profits; and*



1 (2) Prohibit the recognition of the "new business rule" in a
2 court in this state.

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

6 16-64-131. New business rule – Damages.

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

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

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14 /s/Tucker

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17 **APPROVED: 04/07/2017**
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