1 State of Arkansas

2 91st General Assembly

3 Regular Session, 2017

As Engrossed: H3/14/17

A Bill

HOUSE BILL 2202

4

5 By: Representative Tucker

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For An Act To Be Entitled

8 AN ACT CONCERNING THE NEW BUSINESS RULE AND THE

9 ABILITY OF A BUSINESS TO RECOVER LOST PROFITS IN

10 LITIGATION; AND FOR OTHER PURPOSES.

11

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Subtitle

14 CONCERNING THE NEW BUSINESS RULE AND THE

15 ABILITY OF A BUSINESS TO RECOVER LOST

16 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   *In a case involving a recognized tort or breach of contract, there is*

8   *no absolute denial of damages for lost profits to a newly established*

9   *business.*

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11   */s/Tucker*

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