

Stricken language would be deleted from and underlined language would be added to present law.
Act 1103 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/14/17 H3/16/17

A Bill

HOUSE BILL 2202

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:

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

(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