

Stricken language would be deleted from and underlined language would be added to present law.

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