

Act 84 of the Third Special Session of 1989.

Act 84

HB1057

By: Representatives Hutchinson, Fuller, Newman, Glover,
Forgey, and Arrington

For An Act To Be Entitled
"AN ACT TO AMEND THE UNIFORM CONTROLLED SUBSTANCES ACT TO
PROVIDE FOR ENHANCED CRIMINAL PENALTIES FOR PRINCIPALS
ENGAGING IN A CONTINUING CRIMINAL ENTERPRISE; AND FOR
OTHER PURPOSES."

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

SECTION 1. Subchapter 4 of Chapter 64 of Title 5 of the Arkansas Code is hereby amended by adding a new section at the end thereof to read as follows:

"5-64-411. (a) A person commits the offense of engaging in a continuing criminal enterprise if he:

(1) violates any provision of subchapters 1 through 6 of this chapter which is a felony, except Arkansas Code 5-64-401(c); and

(2) the violation is a part of a continuing series of two (2) or more felony offenses of subchapters 1 through 6 of this chapter, except Arkansas Code 5-64-401(c):

(A) which are undertaken by that person in concert with five (5) or more other persons with respect to whom that person occupies a position of organizer, a supervisory position, or any other position of management; and

(B) from which that person obtained substantial income or resources.

(b) A person who engages in a continuing criminal enterprise is guilty of a felony, and upon conviction shall be sentenced to a term of imprisonment up to twice the term otherwise authorized for the underlying offense referenced in A.C.A. 5-64-411(a)(1) and shall be fined an amount up to twice that authorized for the underlying offense referenced in A.C.A. 5-64-411(a)(1). For all purposes other than disposition, engaging in a continuous criminal enterprise is a Class Y felony.

(c) A person who violates A.C.A. 5-64-411(a), after a previous conviction under that subsection has become final, is guilty of a felony and shall be punished by a term of imprisonment not exceeding three (3) times that authorized for the underlying offense referenced in A.C.A. 5-64-411(a)(1), and a fine not exceeding three (3) times the amount authorized for the underlying offense referenced in A.C.A. 5-64-411(a)(1). For all purposes other than disposition, engaging in a continuous criminal enterprise is a Class Y felony.

(d) Upon conviction the prosecuting attorney may institute a civil action against any person who violates this section to obtain a judgment against all persons who violate this section, jointly and severally, for damages in an amount equal to three (3) times the proceeds acquired by all persons involved in the enterprise or by reason of conduct in furtherance of the enterprise, together with costs incurred for resources and personnel used in the investigation and prosecution of both criminal and civil proceedings. The standard of proof in actions brought under this section is a preponderance of the evidence. The procedures in the asset forfeiture law, Arkansas Code 5-64-505, shall apply. Defendants in civil actions brought under this subsection shall be entitled to trial by jury.

(e) Notwithstanding any other provision to the contrary, offenders found guilty of a violation of this Act shall not have their sentence suspended, or be placed on probation, or have imposition of sentence suspended, or have the

execution of the sentence or have the sentence deferred. The individual shall not be eligible for the First Offender Act, the Youthful Offender Act, or the Alternative Service Act."

SECTION 2. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: November 17, 1989
