



# House of Representatives

**File No. 1011**

General Assembly

January Session, 2009

**(Reprint of File No. 738)**

Substitute House Bill No. 6339  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 28, 2009

**AN ACT CONCERNING THE FORFEITURE OF PROPERTY OBTAINED  
BY SECURITIES FRAUD.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Subsection (a) of section 53-394 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2009*):

4 (a) "Racketeering activity" means to commit, to attempt to commit,  
5 to conspire to commit, or to intentionally aid, solicit, coerce or  
6 intimidate another person to commit any crime which, at the time of its  
7 commission, was a felony chargeable by indictment or information  
8 under the following provisions of the general statutes then applicable:  
9 (1) Sections 53-278a to 53-278f, inclusive, relating to gambling activity;  
10 (2) chapter 949a, relating to extortionate credit transactions; (3) chapter  
11 952, part IV, relating to homicide; (4) chapter 952, part V, relating to  
12 assault, except assault with a motor vehicle as defined in section 53a-  
13 60d; (5) sections 53a-85 to 53a-88, inclusive, relating to prostitution; (6)  
14 chapter 952, part VII, relating to kidnapping; (7) chapter 952, part VIII,  
15 relating to burglary, arson and related offenses; (8) chapter 952, part

16 IX, relating to larceny, robbery and related offenses; (9) chapter 952,  
 17 part X, relating to forgery and related offenses; (10) chapter 952, part  
 18 XI, relating to bribery and related offenses; (11) chapter 952, part XX,  
 19 relating to obscenity and related offenses; (12) chapter 952, part XIX,  
 20 relating to coercion; (13) sections 53-202, 53-206, 53a-211 and 53a-212,  
 21 relating to weapons and firearms; (14) section 53-80a, relating to the  
 22 manufacture of bombs; (15) sections 36b-2 to [36b-33] 36b-34, inclusive,  
 23 relating to securities fraud and related offenses; (16) sections 21a-277,  
 24 21a-278 and 21a-279, relating to drugs; (17) section 22a-131a, relating to  
 25 hazardous waste; (18) chapter 952, part XXIII, relating to money  
 26 laundering; or (19) section 53a-192a, relating to trafficking in persons.

27 Sec. 2. (*Effective from passage*) The Chief State's Attorney, in  
 28 consultation with the Attorney General, the Chief Court Administrator  
 29 and the Banking Commissioner, shall study the establishment of a  
 30 fund consisting of money, and the proceeds of the sale of property,  
 31 forfeited to the state under chapter 949c of the general statutes as a  
 32 result of securities fraud and related offenses committed in violation of  
 33 sections 36b-2 to 36b-34, inclusive, of the general statutes, and the most  
 34 appropriate manner of administering such fund so as to provide  
 35 restitution to victims of such violations. Not later than March 31, 2010,  
 36 the Chief State's Attorney shall report his findings and  
 37 recommendations to the joint standing committee of the General  
 38 Assembly on judiciary in accordance with the provisions of section 11-  
 39 4a of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	53-394(a)
Sec. 2	<i>from passage</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Judicial Dpt (Probation); Correction, Dept.	GF - Cost	Potential	Potential
Criminal Justice, Div.	GF - Revenue Gain	Potential Significant	Potential Significant

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill expands the state’s Corrupt Organizations and Racketeering Act (CORA) to include: fraud and related offenses; and the failure to comply with federal Currency and Foreign Transactions Reporting Act in accordance with CGS 36b-34.

The CORA provides for the imposition of stiffer criminal penalties, including lengthier prison/probation sentences and criminal fines of up to \$25,000, and the forfeiture (through a civil cause of action brought by the Division of Criminal Justice) to the state of money or property obtained pursuant to such violations.

To the extent that offenders are subject to incarceration or probation supervision in the community as a result of the bill, a potential cost to criminal justice agencies exists. (Approximately 14 convictions are made each year under the existing CORA statutes. The magnitude of the potential increase under the bill is uncertain.) On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The bill's expansion of CORA to include additional crimes could increase the value of money or property forfeited to the state and thereby yields a potential revenue gain to the state.

The bill's provision requiring various state agencies to study and report to the General Assembly not later than March 31, 2010, on the establishment of a fund consisting of money or proceeds of the sale of property obtained pursuant to CORA has no fiscal impact.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6339 (as amended by House "A")\******AN ACT CONCERNING THE FORFEITURE OF PROPERTY  
OBTAINED BY SECURITIES FRAUD.*****SUMMARY:**

This bill extends the definition of racketeering activity under the Corrupt Organizations and Racketeering Activity Act (CORA) to include violations of the federal Currency and Foreign Transactions Reporting Act by broker-dealers and specifies that CORA applies to securities fraud and related offenses under the Uniform Securities Act. CORA provides for criminal penalties and property forfeiture (see BACKGROUND).

The bill requires the chief state's attorney, in consultation with the attorney general, chief court administrator, and banking commissioner, to study the (1) establishment of a fund to hold money and proceeds of property forfeited under CORA for securities fraud and related offenses and (2) most appropriate way to administer the fund to provide restitution to victims. The chief state's attorney must report findings and recommendations to the Judiciary Committee by March 31, 2010.

\*House Amendment "A" replaces the original bill which established forfeiture procedures for money and property illegally obtained by (1) someone in connection with the offer, sale, or purchase of securities or (2) investment advisors and people who solicit business on their behalf.

EFFECTIVE DATE: October 1, 2009, except the provision on the study, which is effective upon passage.

**BACKGROUND****CORA**

CORA punishes racketeering activity. It subjects violators to (1) one to 20 years in prison, a fine of up to \$25,000, or both; (2) forfeiture of property acquired, maintained, or used in violation of CORA including profits, appreciated value, and sale proceeds; and (3) forfeiture of any interest, claim against property, or contractual right affording a source of influence over any enterprise the violator established, operated, controlled, conducted, or participated in.

On conviction, the court or jury determines whether property is subject to forfeiture. After hearing evidence, the court can authorize the chief state's attorney to seize property in the name of the state. If property the defendant owned before judgment of forfeiture was transferred to prevent forfeiture, the court can set aside the transfer. The court can make appropriate orders to protect the rights of innocent parties.

The court can order property to be converted to cash. The court can provide for the rights of an innocent party, government, or business that is superior to the state if they are known to the court or prosecutors. The court can order property to be given to a state agency that can use it, order it sold or transferred to an innocent party, or order equitable relief.

The court can appoint a receiver to facilitate property disposition and act as a fiduciary of the state. The receiver must post a bond as ordered by the court, comply with court orders, file a final report on disposition of the property, and deposit net proceeds with the court. The court compensates the receiver from the proceeds.

Money forfeited to the state or the proceeds of forfeited property is deposited in the General Fund.

The chief state's attorney can compromise, remit, or mitigate a claim or potential claim.

At any time in a CORA prosecution when there is probable cause to believe a defendant has property that is subject to forfeiture, the court can (1) prohibit a defendant from transferring, depleting, or diminishing the property; (2) appoint a receiver for the property; or (3) permit the defendant to transfer the property on posting security. The court can also issue orders to protect innocent parties.

The state can file a CORA lien notice with town clerks and other officials of this or other states and the law specifies procedures regarding these liens (CGS § 53-393 et seq.).

### ***Federal Currency and Foreign Transactions Reporting Act***

This federal law requires financial institutions to keep records of cash purchases of negotiable instruments; file reports of cash transactions exceeding \$10,000; and report suspicious activity that might be money laundering, tax evasion, or other criminal activities (31 USC 5311 et seq.).

### ***Related Bill***

sSB 6671, File 781, establishes forfeiture procedures for (1) property used or intended to be used to commit or facilitate commission of various exploitation crimes, primarily involving children; (2) money used or intended for use in violation of the crimes; (3) direct and indirect crime proceeds; and (4) property derived from the proceeds.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (03/31/2009)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 51 Nay 0 (05/04/2009)

Banks Committee

Joint Favorable

Yea 15 Nay 0 (05/13/2009)