



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4959

Introduced 1/19/2006, by Rep. Chapin Rose

SYNOPSIS AS INTRODUCED:

30 ILCS 105/5.663 new
725 ILCS 5/110-7

from Ch. 38, par. 110-7

Amends the State Finance Act and the Code of Criminal Procedure of 1963. Provides that, if the accused does not appear on the date set for a required appearance in a traffic or conservation case and the court enters an order of failure to appear and an arrest warrant for the accused, the accused shall be assessed a penalty of not less than \$100 and not more than \$200 upon his or her admission to bail, in addition to any bail that the accused is required to deposit. Provides that the penalty may not be used for the payment of court costs or fines. Provides that the court clerk shall remit the penalty to the State Treasurer for deposit into the Failure to Appear Fund, a new special fund in the State treasury and that moneys in the Fund shall be used solely to reimburse law enforcement agencies for executing arrest warrants for failure to appear and transporting arrested persons to the county jail.

LRB094 15355 RLC 50546 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The State Finance Act is amended by adding
5 Section 5.663 as follows:

6 (30 ILCS 105/5.663 new)

7 Sec. 5.663. The Failure to Appear Fund.

8 Section 10. The Code of Criminal Procedure of 1963 is
9 amended by changing Section 110-7 as follows:

10 (725 ILCS 5/110-7) (from Ch. 38, par. 110-7)

11 Sec. 110-7. Deposit of Bail Security.

12 (a) The person for whom bail has been set shall execute the
13 bail bond and deposit with the clerk of the court before which
14 the proceeding is pending a sum of money equal to 10% of the
15 bail, but in no event shall such deposit be less than \$25. The
16 clerk of the court shall provide a space on each form for a
17 person other than the accused who has provided the money for
18 the posting of bail to so indicate and a space signed by an
19 accused who has executed the bail bond indicating whether a
20 person other than the accused has provided the money for the
21 posting of bail. The form shall also include a written notice
22 to such person who has provided the defendant with the money
23 for the posting of bail indicating that the bail may be used to
24 pay costs, attorney's fees, fines, or other purposes authorized
25 by the court and if the defendant fails to comply with the
26 conditions of the bail bond, the court shall enter an order
27 declaring the bail to be forfeited. The written notice must be:
28 (1) distinguishable from the surrounding text; (2) in bold type
29 or underscored; and (3) in a type size at least 2 points larger
30 than the surrounding type. When a person for whom bail has been

1 set is charged with an offense under the Illinois Controlled
2 Substances Act or the Methamphetamine Control and Community
3 Protection Act which is a Class X felony, the court may require
4 the defendant to deposit a sum equal to 100% of the bail. Where
5 any person is charged with a forcible felony while free on bail
6 and is the subject of proceedings under Section 109-3 of this
7 Code the judge conducting the preliminary examination may also
8 conduct a hearing upon the application of the State pursuant to
9 the provisions of Section 110-6 of this Code to increase or
10 revoke the bail for that person's prior alleged offense.

11 (b) Upon depositing this sum and any bond fee authorized by
12 law, the person shall be released from custody subject to the
13 conditions of the bail bond.

14 (c) Once bail has been given and a charge is pending or is
15 thereafter filed in or transferred to a court of competent
16 jurisdiction the latter court shall continue the original bail
17 in that court subject to the provisions of Section 110-6 of
18 this Code.

19 (d) After conviction the court may order that the original
20 bail stand as bail pending appeal or deny, increase or reduce
21 bail subject to the provisions of Section 110-6.2.

22 (e) After the entry of an order by the trial court allowing
23 or denying bail pending appeal either party may apply to the
24 reviewing court having jurisdiction or to a justice thereof
25 sitting in vacation for an order increasing or decreasing the
26 amount of bail or allowing or denying bail pending appeal
27 subject to the provisions of Section 110-6.2.

28 (f) When the conditions of the bail bond have been
29 performed and the accused has been discharged from all
30 obligations in the cause the clerk of the court shall return to
31 the accused or to the defendant's designee by an assignment
32 executed at the time the bail amount is deposited, unless the
33 court orders otherwise, 90% of the sum which had been deposited
34 and shall retain as bail bond costs 10% of the amount
35 deposited. However, in no event shall the amount retained by
36 the clerk as bail bond costs be less than \$5. Bail bond

1 deposited by or on behalf of a defendant in one case may be
2 used, in the court's discretion, to satisfy financial
3 obligations of that same defendant incurred in a different case
4 due to a fine, court costs, restitution or fees of the
5 defendant's attorney of record. In counties with a population
6 of 3,000,000 or more, the court shall not order bail bond
7 deposited by or on behalf of a defendant in one case to be used
8 to satisfy financial obligations of that same defendant in a
9 different case until the bail bond is first used to satisfy
10 court costs and attorney's fees in the case in which the bail
11 bond has been deposited and any other unpaid child support
12 obligations are satisfied. In counties with a population of
13 less than 3,000,000, the court shall not order bail bond
14 deposited by or on behalf of a defendant in one case to be used
15 to satisfy financial obligations of that same defendant in a
16 different case until the bail bond is first used to satisfy
17 court costs in the case in which the bail bond has been
18 deposited.

19 At the request of the defendant the court may order such
20 90% of defendant's bail deposit, or whatever amount is
21 repayable to defendant from such deposit, to be paid to
22 defendant's attorney of record.

23 (g) If the accused does not comply with the conditions of
24 the bail bond the court having jurisdiction shall enter an
25 order declaring the bail to be forfeited. Notice of such order
26 of forfeiture shall be mailed forthwith to the accused at his
27 last known address. If the accused does not appear and
28 surrender to the court having jurisdiction within 30 days from
29 the date of the forfeiture or within such period satisfy the
30 court that appearance and surrender by the accused is
31 impossible and without his fault the court shall enter judgment
32 for the State if the charge for which the bond was given was a
33 felony or misdemeanor, or if the charge was quasi-criminal or
34 traffic, judgment for the political subdivision of the State
35 which prosecuted the case, against the accused for the amount
36 of the bail and costs of the court proceedings; however, in

1 counties with a population of less than 3,000,000, instead of
2 the court entering a judgment for the full amount of the bond
3 the court may, in its discretion, enter judgment for the cash
4 deposit on the bond, less costs, retain the deposit for further
5 disposition or, if a cash bond was posted for failure to appear
6 in a matter involving enforcement of child support or
7 maintenance, the amount of the cash deposit on the bond, less
8 outstanding costs, may be awarded to the person or entity to
9 whom the child support or maintenance is due. The deposit made
10 in accordance with paragraph (a) shall be applied to the
11 payment of costs. If judgment is entered and any amount of such
12 deposit remains after the payment of costs it shall be applied
13 to payment of the judgment and transferred to the treasury of
14 the municipal corporation wherein the bond was taken if the
15 offense was a violation of any penal ordinance of a political
16 subdivision of this State, or to the treasury of the county
17 wherein the bond was taken if the offense was a violation of
18 any penal statute of this State. The balance of the judgment
19 may be enforced and collected in the same manner as a judgment
20 entered in a civil action.

21 (h) After a judgment for a fine and court costs or either
22 is entered in the prosecution of a cause in which a deposit had
23 been made in accordance with paragraph (a) the balance of such
24 deposit, after deduction of bail bond costs, shall be applied
25 to the payment of the judgment.

26 (i) When a court appearance is required for an alleged
27 violation of a traffic or conservation offense as specified in
28 Supreme Court Rule 551 and if the accused does not appear in
29 court on the date set for appearance or any date to which the
30 case may be continued and the court enters an order of failure
31 to appear and an arrest warrant for the accused, the accused
32 upon his or her admission to bail shall be assessed by the
33 court a penalty of not less than \$100 and not more than \$200.
34 The penalty shall be in addition to any bail that the accused
35 is required to deposit for the offense for which the accused
36 has been charged and may not be used for the payment of court

1 costs or fines assessed for the offense. The clerk of the court
2 shall remit the penalty assessed under this subsection (i) to
3 the State Treasurer for deposit into the Failure to Appear
4 Fund, which is created as a special fund in the State treasury.
5 Moneys in the Fund shall be used solely to reimburse law
6 enforcement agencies for the costs of executing arrest warrants
7 for failure to appear and transporting the accused persons to
8 the county jail.

9 (Source: P.A. 93-371, eff. 1-1-04; 93-760, eff. 1-1-05; 94-556,
10 eff. 9-11-05.)