

# Union Calendar No. 191

108TH CONGRESS  
1ST SESSION

# H. R. 2134

[Report No. 108-316]

To amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. KELLER (for himself, Mr. WEXLER, Mr. BAIRD, Mr. BASS, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. GINNY BROWN-WAITE of Florida, Mr. BURTON of Indiana, Mr. CARSON of Oklahoma, Mr. CONYERS, Mr. DAVIS of Florida, Mr. DEUTSCH, Mr. ENGLISH, Mr. FEENEY, Mr. HONDA, Mr. ISSA, Mr. MCCOTTER, Mr. McDERMOTT, Mr. MEEHAN, Mr. MEEKS of New York, Mr. MICA, Mr. NADLER, Mr. PASCRELL, Mr. SCOTT of Virginia, Mr. THOMPSON of Mississippi, Mr. CHABOT, Ms. HART, Mr. GARRETT of New Jersey, Mr. OTTER, Mr. MURPHY, Mr. LAMPSON, and Mr. FOLEY) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 15, 2003

Additional sponsors: Mr. ROSS, Mr. STRICKLAND, Mr. HOYER, Ms. LOFGREN, Ms. KAPTUR, Mr. WILSON of South Carolina, and Ms. BALDWIN

OCTOBER 15, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 15, 2003]

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## A BILL

To amend title 18, United States Code, and the Federal

Rules of Criminal Procedure with respect to bail bond forfeitures.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Bail Bond Fairness Act*  
5 *of 2003”.*

6 **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) *FINDINGS.—The Congress makes the following*  
8 *findings:*

9           (1) *Historically, the sole purpose of bail in the*  
10 *United States was to ensure the defendant’s physical*  
11 *presence before a court. The bail bond would be de-*  
12 *clared forfeited only when the defendant actually*  
13 *failed to appear as ordered. Violations of other, collat-*  
14 *eral conditions of release might cause release to be re-*  
15 *voked, but would not cause the bond to be forfeited.*  
16 *This historical basis of bail bonds best served the in-*  
17 *terests of the Federal criminal justice system.*

18           (2) *Currently, however, Federal judges have*  
19 *merged the purposes of bail and other conditions of*  
20 *release. These judges now order bonds forfeited in*  
21 *cases in which the defendant actually appears as or-*  
22 *dered but he fails to comply with some collateral con-*  
23 *dition of release. The judges rely on Federal Rule of*  
24 *Criminal Procedure 46(f) as authority to do so.*

1           (3) *Federal Rule of Criminal Procedure 46(e)*  
2           *has withstood repeated court challenges. In cases such*  
3           *as United States v. Vaccaro, 51 F.3d 189 (9th Cir.*  
4           *1995), the rule has been held to authorize Federal*  
5           *courts specifically to order bonds forfeited for viola-*  
6           *tion of collateral conditions of release and not simply*  
7           *for failure to appear. Moreover, the Federal courts*  
8           *have continued to uphold and expand the rule because*  
9           *they find no evidence of congressional intent to the*  
10           *contrary, specifically finding that the provisions of*  
11           *the Bail Bond Act of 1984 were not intended to su-*  
12           *persede the rule.*

13           (4) *As a result, the underwriting of bonds for*  
14           *Federal defendants has become virtually impossible.*  
15           *Where once the bail agent was simply ensuring the*  
16           *defendant's physical presence, the bail agent now*  
17           *must guarantee the defendant's general good behavior.*  
18           *Insofar as the risk for the bail agent has greatly in-*  
19           *creased, the industry has been forced to adhere to*  
20           *strict underwriting guidelines, in most cases requir-*  
21           *ing full collateral. Consequently, the Federal criminal*  
22           *justice system has been deprived of any meaningful*  
23           *bail bond option.*

24           (b) *PURPOSES.*—*The purposes of this Act are—*

1           (1) *to restore bail bonds to their historical origin*  
2           *as a means solely to ensure the defendant’s physical*  
3           *presence before a court; and*

4           (2) *to grant judges the authority to declare bail*  
5           *bonds forfeited only where the defendant actually fails*  
6           *to appear physically before a court as ordered and*  
7           *not where the defendant violates some other collateral*  
8           *condition of release.*

9   **SEC. 3. FAIRNESS IN BAIL BOND FORFEITURE.**

10          (a)(1) *Section 3146(d) of title 18, United States Code,*  
11          *is amended by inserting at the end “The judicial officer*  
12          *may not declare forfeited a bail bond for violation of a re-*  
13          *lease condition set forth in clauses (i)–(xi), (xiii), or (xiv)*  
14          *of section 3142(c)(1)(B).”.*

15          (2) *Section 3148(a) of title 18, United States Code,*  
16          *is amended by inserting at the end “Forfeiture of a bail*  
17          *bond executed under clause (xii) of section 3142(c)(1)(B)*  
18          *is not an available sanction under this section and such*  
19          *forfeiture may be declared only pursuant to section 3146.”.*

20          (b) *Rule 46(f)(1) of the Federal Rules of Criminal Pro-*  
21          *cedure is amended by striking “a condition of the bond is*  
22          *breached” and inserting “the defendant fails to appear*  
23          *physically before the court”.*



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