

115TH CONGRESS  
1ST SESSION

# H. R. 778

To require enforcement against misbranded milk alternatives.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2017

Mr. WELCH (for himself, Mr. SIMPSON, Mr. DUFFY, Mr. COURTNEY, Mr. VALADAO, and Ms. DELBENE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To require enforcement against misbranded milk alternatives.

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 “Defending Against  
5       Imitations and Replacements of Yogurt, Milk, and Cheese  
6       To Promote Regular Intake of Dairy Everyday Act” or  
7       the “DAIRY PRIDE Act”.

8       **SEC. 2. FINDINGS.**

9       Congress finds as follows:

10           (1) Dairy products are an important part of a  
11       healthy diet for both children and adults, according

1 to the 2015–2020 Dietary Guidelines for Americans  
2 (referred to in this section as the “Dietary Guide-  
3 lines”) published by the Department of Health and  
4 Human Services and the Department of Agriculture.  
5 The Dietary Guidelines state that most Americans  
6 are not meeting recommended intake for the dairy  
7 food group. Consumption of dairy foods provides nu-  
8 merous health benefits, including lowering the risk  
9 of diabetes, metabolic syndrome, cardiovascular dis-  
10 ease, and obesity.

11 (2) The Dietary Guidelines state that dairy  
12 foods are excellent sources of critical nutrients for  
13 human health, including vitamin D, calcium, and po-  
14 tassium, all of which are under consumed by people  
15 of the United States. When consumed in the  
16 amounts recommended by the Food Patterns of the  
17 Department of Agriculture, on average across the  
18 calorie levels, dairy foods contribute about 67 per-  
19 cent of calcium, 64 percent of vitamin D, and 17  
20 percent of magnesium.

21 (3) About 30 percent of adolescent boys meet or  
22 exceed the recommended 3-cup equivalents per day,  
23 but less than 10 percent of adolescent females meet  
24 or exceed this recommendation. An age-related de-  
25 cline in dairy intake appears to begin in adolescence

1 and intakes persist at very low levels among adult  
2 females across the age distribution. Less than 5 per-  
3 cent of adult females consume the recommended 3-  
4 cup equivalents per day. Overall, more than 80 per-  
5 cent of the entire population of the United States  
6 does not meet the daily dairy intake recommenda-  
7 tion.

8 (4) The Dietary Guidelines state that vitamin  
9 D and potassium amounts vary across plant-based  
10 milk alternatives. The amount of calcium per calorie  
11 is lower for most plant-based alternative milk prod-  
12 ucts. To obtain the amount of calcium contained in  
13 one cup of non-fat fluid milk from a plant-based  
14 milk alternative, the portion size and calorie intake  
15 must be greater.

16 (5) Imitation dairy products, such as plant-  
17 based products derived from rice, nuts, soybeans,  
18 hemp, coconut, algae, and other foods that imitate  
19 milk, yogurt, and cheese, often do not provide the  
20 same nutrition content as real milk, cheese, and yo-  
21 gurt derived from dairy cows.

22 (6) Plant-based products labeled as milk are  
23 misleading to consumers.

24 (7) The Food and Drug Administration has  
25 regulations that define milk and cream as the “lac-

1 teal secretion, practically free from colostrum, ob-  
2 tained by the complete milking of one or more  
3 healthy cows” (section 131.110 of title 21, Code of  
4 Federal Regulations). This definition further applies  
5 to milk used to create other dairy products, includ-  
6 ing yogurt and cheese, as specified in sections 131  
7 and 133 of title 21, Code of Federal Regulations.

8 (8) Given the proliferation of plant-based prod-  
9 ucts in the marketplace that are mislabeled as milk  
10 despite the standard of identity defined for this sub-  
11 stance, enforcement by the Food and Drug Adminis-  
12 tration against these practices should be improved to  
13 avoid misleading consumers.

14 **SEC. 3. PURPOSE.**

15 No food may be introduced or delivered for introduc-  
16 tion into interstate commerce using a market name for  
17 a dairy product if the food does not meet the criterion  
18 set forth for dairy products under paragraph (z)(2) of sec-  
19 tion 403 of the Federal Food, Drug, and Cosmetic Act  
20 (21 U.S.C. 343) (as added by section 4(a)).

21 **SEC. 4. ENFORCEMENT OF DEFINITION.**

22 (a) IN GENERAL.—Section 403 of the Federal Food,  
23 Drug, and Cosmetic Act (21 U.S.C. 343) is amended by  
24 adding at the end the following:

1 “(z)(1) If it uses a market name for a dairy product  
2 described in subparagraph (3) and the food does not meet  
3 the criterion for being a dairy product, as described in  
4 subparagraph (2).

5 “(2) For purposes of this paragraph, a food is a dairy  
6 product only if the food is, contains as a primary ingre-  
7 dient, or is derived from, the lacteal secretion, practically  
8 free from colostrum, obtained by the complete milking of  
9 one or more hooved mammals.

10 “(3) A market name for a dairy product described  
11 in this subparagraph means the dairy product terms de-  
12 scribed in parts 131 and 133 of subchapter B of chapter  
13 I of title 21, Code of Federal Regulations, and sections  
14 135.110, 135.115, and 135.140 of title 21, Code of Fed-  
15 eral Regulations (or any successor regulations), or any  
16 other term for which the Secretary has promulgated a  
17 standard of identity with respect to a food that is formu-  
18 lated with a dairy product (as described in subparagraph  
19 (2)) as the primary ingredient.”.

20 (b) GUIDANCE.—The Secretary of Health and  
21 Human Services, acting through the Commissioner of  
22 Food and Drugs, shall—

23 (1) not later than 90 days after the date of en-  
24 actment of this Act, issue draft guidance on how en-

1        enforcement of the amendment made by subsection (a)  
2        will be carried out; and

3            (2) not later than 180 days after the date of  
4        enactment of this Act, issue final guidance on such  
5        enforcement.

6        (c) REPORT TO CONGRESS.—Not later than 2 years  
7        after the date of enactment of this Act, the Secretary of  
8        Health and Human Services, acting through the Commis-  
9        sioner of Food and Drugs, shall report to Congress on en-  
10       enforcement actions taken under paragraph (z) of section  
11       403 of the Federal Food, Drug, and Cosmetic Act (21  
12       U.S.C. 343), as amended by this Act, including warnings  
13       issued pursuant to such paragraph and penalties assessed  
14       under section 303 of such Act (21 U.S.C. 333) with re-  
15       spect to such paragraph. If food that is misbranded under  
16       section 403(z) is offered for sale in interstate commerce  
17       at the time of such report, the Commissioner of Food and  
18       Drugs shall include in such report an updated plan for  
19       enforcement with respect to such food.

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