

115TH CONGRESS
1ST SESSION

S. 130

To require enforcement against misbranded milk alternatives.

IN THE SENATE OF THE UNITED STATES

JANUARY 12, 2017

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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
12 to the 2015–2020 Dietary Guidelines for Americans

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

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

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

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

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

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

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

23 (7) The Food and Drug Administration has
 24 regulations that define milk and cream as the “lac-
 25 teal secretion, practically free from colostrum, ob-

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

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

13 **SEC. 3. PURPOSE.**

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

20 **SEC. 4. ENFORCEMENT OF DEFINITION.**

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

24 “(z)(1) If it uses a market name for a dairy product
 25 described in subparagraph (3) and the food does not meet

1 the criterion for being a dairy product, as described in
2 subparagraph (2).

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

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

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

21 (1) not later than 90 days after the date of en-
22 actment of this Act, issue draft guidance on how en-
23 forcement of the amendment made by subsection (a)
24 will be carried out; and

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

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

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