

116TH CONGRESS
1ST SESSION

S. 792

To require enforcement against misbranded milk alternatives.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2019

Ms. BALDWIN (for herself, Mr. RISCH, Mr. LEAHY, Mr. CRAPO, Ms. STABENOW, and Mr. KING) 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

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 section 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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