

118TH CONGRESS
1ST SESSION

S. _____

To require enforcement against misbranded milk alternatives.

IN THE SENATE OF THE UNITED STATES

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on _____

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 Dietary Guidelines for Americans, 2020–2025

1 (referred to in this section as the “Dietary Guide-
2 lines”) published by the Department of Agriculture
3 and the Department of Health and Human Services.
4 The Dietary Guidelines state that most Americans
5 are not meeting recommended intake for the dairy
6 food group.

7 (2) Consumption of dairy foods provides numer-
8 ous health benefits, including lowering the risk of di-
9 abetes, metabolic syndrome, cardiovascular disease,
10 and obesity.

11 (3) The Dietary Guidelines state that dairy
12 foods are sources of critical nutrients for human
13 health, including vitamin D, calcium, and potassium,
14 all of which are under consumed by people of the
15 United States. Even though average consumption
16 falls short of amounts recommended by the Food
17 Patterns of the Department of Agriculture, on aver-
18 age across the calorie levels dairy foods still con-
19 tribute about 68 percent of calcium, 76 percent of
20 vitamin D, and 31 percent of magnesium.

21 (4) Beginning at age 9 and persisting through-
22 out every subsequent life-stage, individuals in the
23 United States on average fail to meet the rec-
24 ommended amount of dairy intake for their age
25 group, according to the Dietary Guidelines. The Die-

1 tary Guidelines note the gap between recommended
2 and current intake of dairy widens throughout life
3 stages and find the age-related decreasing intake of
4 dairy for youth ages 2 through 18 to be “notable
5 and concerning”. Overall, approximately 90 percent
6 of the entire population of the United States does
7 not meet the daily dairy intake recommendation.

8 (5) The Dietary Guidelines state that the nutri-
9 ent composition of dairy foods highlights the impor-
10 tance of adequate consumption, finding this to be es-
11 pecially relevant for the intake of calcium and vita-
12 min D throughout an individual’s life. The Dietary
13 Guidelines note that calcium and vitamin D are im-
14 portant at any age, that adolescents have an in-
15 creased need for these nutrients to support accrual
16 of bone mass, and that adults should give particular
17 attention to consuming adequate amounts of foods
18 with these nutrients to promote optimal bone health
19 and prevent the onset of osteoporosis. Yet, close to
20 30 percent of men and 60 percent of women older
21 than age 19 do not consume enough calcium, and
22 more than 90 percent do not consume enough vita-
23 min D. According to the Dietary Guidelines, dietary
24 patterns that do not meet recommended consump-
25 tion amounts for food groups and subgroups which

1 include sources of calcium and vitamin D, such as
2 dairy foods, contribute to low intake of these nutri-
3 ents.

4 (6) The Dietary Guidelines state that many
5 products sold as “milks” but made from plants (e.g.,
6 almond, rice, coconut, oat, and hemp “milks”) do
7 not have an overall nutritional content similar to
8 real milk and that most have significantly less pro-
9 tein than real milk and are not always fortified with
10 calcium and vitamin D. The amount of calcium per
11 calorie is lower for most plant-based alternative milk
12 products. To obtain the amount of calcium contained
13 in one cup of nonfat fluid milk from a plant-based
14 milk alternative, the portion size and calorie intake
15 must be greater.

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

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

24 (9) 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 (10) Given the proliferation of plant-based
9 products in the marketplace that are mislabeled as
10 milk despite the standard of identity defined for this
11 substance, enforcement by the Food and Drug Ad-
12 ministration against these practices should be im-
13 proved to 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.—

21 (1) NEW GUIDANCE.—The Secretary of Health
22 and Human Services, acting through the Commis-
23 sioner of Food and Drugs, shall—

24 (A) not later than 90 days after the date
25 of enactment of this Act, issue draft guidance

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

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

6 (2) EFFECT ON CERTAIN PREVIOUS GUID-
7 ANCE.—Effective on the date of enactment of this
8 Act, any guidance issued by the Secretary of Health
9 and Human Services, acting through the Commis-
10 sioner of Food and Drugs, that is not consistent
11 with paragraph (z) of section 403 of the Federal
12 Food, Drug, and Cosmetic Act (21 U.S.C. 343), as
13 added by subsection (a), shall have no force or ef-
14 fect.

15 (c) REPORT TO CONGRESS.—Not later than 2 years
16 after the date of enactment of this Act, the Secretary of
17 Health and Human Services, acting through the Commis-
18 sioner of Food and Drugs, shall report to Congress on en-
19 forcement actions taken under paragraph (z) of section
20 403 of the Federal Food, Drug, and Cosmetic Act (21
21 U.S.C. 343), as amended by this Act, including warnings
22 issued pursuant to such paragraph and penalties assessed
23 under section 303 of such Act (21 U.S.C. 333) with re-
24 spect to such paragraph. If food that is misbranded under
25 section 403(z) is offered for sale in interstate commerce

- 1 at the time of such report, the Commissioner of Food and
- 2 Drugs shall include in such report an updated plan for
- 3 enforcement with respect to such food.