

116TH CONGRESS
1ST SESSION

H. R. 1769

To require enforcement against misbranded milk alternatives.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2019

Mr. WELCH (for himself, Mr. SIMPSON, Mr. GALLAGHER, Mr. GROTHMAN, Ms. STEFANIK, Mr. DUFFY, Mr. COURTNEY, Mr. THOMPSON of Pennsylvania, Mr. LARSEN of Washington, Mr. KIND, Ms. DELBENE, Mr. KILDEE, Mr. SCHRADER, Ms. KUSTER of New Hampshire, Mr. MARSHALL, Mr. REED, Mr. PETERSON, Mr. SENSENBRENNER, Mr. BRINDISI, Mr. GIBBS, Mr. JOYCE of Pennsylvania, Mr. TONKO, Mr. COLLINS of New York, Mr. CARTWRIGHT, Mr. MITCHELL, Mr. LONG, Mr. MOOLENAAR, Mr. SMUCKER, Mr. NEWHOUSE, and Mr. DELGADO) introduced the following bill; which was referred to the Committee on Energy and Commerce

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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

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

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

25 (3) About 30 percent of adolescent boys meet or
26 exceed the recommended 3-cup equivalents per day,

1 but less than 10 percent of adolescent females meet
2 or exceed this recommendation. An age-related de-
3 cline in dairy intake appears to begin in adolescence
4 and intakes persist at very low levels among adult
5 females across the age distribution. Less than 5 per-
6 cent of adult females consume the recommended 3-
7 cup equivalents per day. Overall, more than 80 per-
8 cent of the entire population of the United States
9 does not meet the daily dairy intake recommenda-
10 tion.

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

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

1 (6) Plant-based products labeled as milk are
2 misleading to consumers.

3 (7) The Food and Drug Administration has
4 regulations that define milk and cream as the “lac-
5 teal secretion, practically free from colostrum, ob-
6 tained by the complete milking of one or more
7 healthy cows” (section 131.110 of title 21, Code of
8 Federal Regulations). This definition further applies
9 to milk used to create other dairy products, includ-
10 ing yogurt and cheese, as specified in sections 131
11 and 133 of title 21, Code of Federal Regulations.

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

18 **SEC. 3. PURPOSE.**

19 No food may be introduced or delivered for introduc-
20 tion into interstate commerce using a market name for
21 a dairy product if the food does not meet the criterion
22 set forth for dairy products under paragraph (z)(2) of sec-
23 tion 403 of the Federal Food, Drug, and Cosmetic Act
24 (21 U.S.C. 343) (as added by section 4(a)).

1 **SEC. 4. ENFORCEMENT OF DEFINITION.**

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

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

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

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

24 (b) GUIDANCE.—The Secretary of Health and
25 Human Services, acting through the Commissioner of
26 Food and Drugs, shall—

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

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

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

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