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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Defending Against Imitations and Replacements of Yogurt, Milk, and Cheese To Promote Regular Intake of Dairy Everyday Act” or the “DAIRY PRIDE Act”.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Dairy products are an important part of a healthy diet for both children and adults, according to the Dietary Guidelines for Americans, 2020–2025
(referred to in this section as the “Dietary Guidelines”) published by the Department of Agriculture and the Department of Health and Human Services. The Dietary Guidelines state that most Americans are not meeting recommended intake for the dairy food group.

(2) Consumption of dairy foods provides numerous health benefits, including lowering the risk of diabetes, metabolic syndrome, cardiovascular disease, and obesity.

(3) The Dietary Guidelines state that dairy foods are sources of critical nutrients for human health, including vitamin D, calcium, and potassium, all of which are under consumed by people of the United States. Even though average consumption falls short of amounts recommended by the Food Patterns of the Department of Agriculture, on average across the calorie levels dairy foods still contribute about 68 percent of calcium, 76 percent of vitamin D, and 31 percent of magnesium.

(4) Beginning at age 9 and persisting throughout every subsequent life-stage, individuals in the United States on average fail to meet the recommended amount of dairy intake for their age group, according to the Dietary Guidelines. The Die-
tary Guidelines note the gap between recommended and current intake of dairy widens throughout life stages and find the age-related decreasing intake of dairy for youth ages 2 through 18 to be “notable and concerning”. Overall, approximately 90 percent of the entire population of the United States does not meet the daily dairy intake recommendation.

(5) The Dietary Guidelines state that the nutrient composition of dairy foods highlights the importance of adequate consumption, finding this to be especially relevant for the intake of calcium and vitamin D throughout an individual’s life. The Dietary Guidelines note that calcium and vitamin D are important at any age, that adolescents have an increased need for these nutrients to support accrual of bone mass, and that adults should give particular attention to consuming adequate amounts of foods with these nutrients to promote optimal bone health and prevent the onset of osteoporosis. Yet, close to 30 percent of men and 60 percent of women older than age 19 do not consume enough calcium, and more than 90 percent do not consume enough vitamin D. According to the Dietary Guidelines, dietary patterns that do not meet recommended consumption amounts for food groups and subgroups which
include sources of calcium and vitamin D, such as dairy foods, contribute to low intake of these nutrients.

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

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

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

(9) The Food and Drug Administration has regulations that define milk and cream as the “lact-
teal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows” (section 131.110 of title 21, Code of Federal Regulations). This definition further applies to milk used to create other dairy products, including yogurt and cheese, as specified in sections 131 and 133 of title 21, Code of Federal Regulations.

(10) Given the proliferation of plant-based products in the marketplace that are mislabeled as milk despite the standard of identity defined for this substance, enforcement by the Food and Drug Administration against these practices should be improved to avoid misleading consumers.

SEC. 3. PURPOSE.

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

SEC. 4. ENFORCEMENT OF DEFINITION.

(a) In General.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:
“(z)(1) If it uses a market name for a dairy product described in subparagraph (3) and the food does not meet the criterion for being a dairy product, as described in subparagraph (2).

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

“(3) A market name for a dairy product described in this subparagraph means the dairy product terms described in parts 131 and 133 of subchapter B of chapter I of title 21, Code of Federal Regulations, and sections 135.110, 135.115, and 135.140 of title 21, Code of Federal Regulations (or any successor regulations), or any other term for which the Secretary has promulgated a standard of identity with respect to a food that is formulated with a dairy product (as described in subparagraph (2)) as the primary ingredient.”.

(b) GUIDANCE.—

(1) NEW GUIDANCE.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall—

(A) not later than 90 days after the date of enactment of this Act, issue draft guidance
on how enforcement of the amendment made by
subsection (a) will be carried out; and

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

(2) Effect on certain previous guidance.—Effective on the date of enactment of this
Act, any guidance issued by the Secretary of Health
and Human Services, acting through the Commiss-
ioner of Food and Drugs, that is not consistent
with paragraph (z) of section 403 of the Federal
Food, Drug, and Cosmetic Act (21 U.S.C. 343), as
added by subsection (a), shall have no force or ef-
fect.

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