

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.