

117TH CONGRESS  
1ST SESSION

# H. R. 2828

To require enforcement against misbranded milk alternatives.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2021

Mr. WELCH (for himself, Mr. SIMPSON, Mr. KILDEE, Mr. MOOLENAAR, Ms. KUSTER, Mr. GONZALEZ of Ohio, Mr. SEAN PATRICK MALONEY of New York, Mr. NEWHOUSE, Mr. TONKO, Mr. GROTHMAN, Mr. SCHRADER, Mr. GALLAGHER, Mr. KIND, Mr. STEUBE, Ms. CRAIG, Mr. HAGEDORN, Mr. PAPPAS, Mrs. HARTZLER, Mr. DELGADO, Mr. TIFFANY, Mr. COURTNEY, Mr. KELLER, Mr. CARTWRIGHT, Mr. JOYCE of Pennsylvania, Mrs. HAYES, Mr. REED, Mr. SAN NICOLAS, Mr. FULCHER, Mr. MEUSER, Ms. STEFANIK, Mr. VALADAO, Mr. UPTON, Mr. JOHNSON of South Dakota, Mr. LONG, and Mr. BAIRD) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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 the  
7 “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 2020–2025 Dietary Guidelines for Americans  
6 (referred to in this section as the “Dietary Guide-  
7 lines”) published by the Department of Agriculture  
8 and the Department of Health and Human Services.  
9 The Dietary Guidelines state that most Americans  
10 are not meeting recommended intake for the dairy  
11 food group.

12 (2) Consumption of dairy foods provides numer-  
13 ous health benefits, including lowering the risk of di-  
14 abetes, metabolic syndrome, cardiovascular disease,  
15 and obesity.

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

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

13           (5) The Dietary Guidelines state that the nutri-  
14 ent composition of dairy foods highlights the impor-  
15 tance of adequate consumption, finding this to be es-  
16 pecially relevant for the intake of calcium and vita-  
17 min D throughout an individual’s life. The Dietary  
18 Guidelines note that calcium and vitamin D are im-  
19 portant at any age, that adolescents have an in-  
20 creased need for these nutrients to support accrual  
21 of bone mass, and that adults should give particular  
22 attention to consuming adequate amounts of foods  
23 with these nutrients to promote optimal bone health  
24 and prevent the onset of osteoporosis. Yet, close to  
25 30 percent of men and 60 percent of women older

1 than age 19 do not consume enough calcium, and  
2 more than 90 percent do not consume enough vita-  
3 min D. According to the Dietary Guidelines, dietary  
4 patterns that do not meet recommended consump-  
5 tion amounts for food groups and subgroups which  
6 include sources of calcium and vitamin D, such as  
7 dairy foods, contribute to low intake of these nutri-  
8 ents.

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

21 (7) Similarly, imitation dairy products, such as  
22 plant-based products derived from rice, nuts, soy-  
23 beans, hemp, coconut, algae, and other foods that  
24 imitate milk, yogurt, and cheese, often do not pro-

1       vide the same nutrition content as real cheese and  
2       yogurt derived from dairy cows.

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

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

14          (10) Given the proliferation of plant-based  
15      products in the marketplace that are mislabeled as  
16      milk despite the standard of identity defined for this  
17      substance, enforcement by the Food and Drug Ad-  
18      ministration against these practices should be im-  
19      proved to avoid misleading consumers.

20   **SEC. 3. PURPOSE.**

21       No food may be introduced or delivered for introduc-  
22      tion into interstate commerce using a market name for  
23      a dairy product if the food does not meet the criterion  
24      set forth for dairy products under paragraph (z)(2) of sec-

1 tion 403 of the Federal Food, Drug, and Cosmetic Act  
2 (21 U.S.C. 343) (as added by section 4(a)).

3 **SEC. 4. ENFORCEMENT OF DEFINITION.**

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

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

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

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

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

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

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

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

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