

ONE HUNDRED SIXTH LEGISLATURE

FIRST SESSION

LEGISLATIVE RESOLUTION 13

Introduced by Murman, 38; Albrecht, 17; Blood, 3; Briese, 41; Dorn, 30;
Gragert, 40; Halloran, 33; Lowe, 37.

WHEREAS, milk is a standardized food, described in 21 C.F.R. part 131.110(a) as the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows; and

WHEREAS, further standards of identity have long been promulgated for cultured milk, yogurt, butter, ice cream, cheese, and cheese-related products under the Federal Food, Drug, and Cosmetic Act and regulations of the federal Food and Drug Administration that require milk or cream as an essential and characteristic element of the product; and

WHEREAS, there has been an emergence and expansion of plant-based products labeled with names that include the names of dairy foods such as milk, cultured milk, and cheese that are often sold in packaging mimicking that of real dairy counterparts and often sold adjacent to the dairy display in retail stores; and

WHEREAS, such milk analog products may not have the same basic nature and characterizing composition as real dairy counterparts and differ in physical properties, nutritional composition, flavor characteristics, and shelf life such that they are not suitable dairy substitutes, and, except for fortified soy beverages, do not meet the recommendation for dairy food group intake in the 2015-2020 Dietary Guidelines for Americans published by the United States Department of Agriculture and the United States Department of Health and Human Services; and

WHEREAS, consumer demand for such plant-based dairy analog products is in part derived from cultivating consumer perceptions that falsely equate such products compositionally, nutritionally, and functionally with real dairy products by utilization of the term "milk" and other standardized dairy product

terms in non-dairy product names; and

WHEREAS, such change in perception is eroding the market distinction and the unique cultural, dietary, historical, and culinary values consumers associate with high-quality dairy products supplied by America's dairy farmers; and

WHEREAS, the Food and Drug Administration has initiated a review of labeling issues associated with the use of milk and other dairy terms with standardized definitions in the names of products that are derived from non-dairy sources in Docket ID FDA-2018-N-3522-0001 and has invited comments regarding how consumers understanding, perception, purchase practices, and consumption of plant-based milk analog products is influenced by the use of milk and other standardized dairy terms when used to identify non-dairy products; and

WHEREAS, the Legislature of North Carolina during its 2018 session became the first state legislature to enact legislation through passage of SB711 which directs the North Carolina Department of Agriculture to prepare regulations and enforcement policies to address mislabeling of plant-based milk analog products as milk and to implement such regulations when at least ten other states pass similar legislation; and

WHEREAS, additional states may consider similar legislation in the absence of clear federal direction and enforcement of identity standards for milk and dairy products.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SIXTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature urges the appropriate federal agencies of the United States Government responsible for food labeling to:

a. Establish and enforce standards for nomenclature of plant-based imitation milk and dairy food products that are truthful, not misleading, and sufficient to differentiate non-dairy derived beverages and food products from milk and dairy products that conform to the standard of identity in 21 C.F.R. part 131 and 21 C.F.R. part 133;

b. Enforce product labeling and statements of product identity that exclusively reserve the use of the term "milk" and dairy product terms such as "yogurt", "butter", "ice cream", and "cheese" to products derived from real dairy origin that conform to the standards of identity in 21 C.F.R. parts 131, 133, and 135 and the Federal Food, Drug, and Cosmetic Act; and

c. Ensure certainty and consistency in regulation between traditional dairy milk and other real dairy products from plant-based beverages and other imitation dairy products to avoid market distortion.

2. That a copy of this resolution be sent to President Donald J. Trump, Commissioner of Food and Drugs of the United States Department of Health and Human Services Scott Gottlieb, M.D., United States Secretary of Agriculture George E. (Sonny) Perdue, III, and to each member of Nebraska's congressional delegation.