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Testimony in Favor of "Truth in Food Labeling" Bills (AB 73 and 74)

Thank you, Chair Tauchen and committee members for taking the time to hold a hearing on this important package of bills related to "Truth in Food Labeling" today.

It's no secret that our state's farmers have experienced many challenges over the past five or six years. Too often, we've heard stories of family dairy farms going out of business because they are no longer able to sustain a profitable farming operation. This common-sense package of bills will help consumers know what's in the food they are buying and ultimately help farmers be more successful in the marketplace.

The first bill I would like to discuss is **Assembly Bill 73**, relating to the labeling of dairy products such as ice cream, yogurt, butter, and cheese. If a product is labeled as dairy, the bill requires that it actually contain dairy in the product. This important legislation will help clear up confusion among consumers, while making sure our state supports its \$46 billion dollar dairy industry. A recent study found that nearly half of consumers thought that imitation, plant-based cheese, was actually real cheese! As a dairy farmer, this was extremely concerning to learn. Not only are consumers unaware of what they are eating, but farmers are struggling to compete with fake, plant-based imitation products. This bill will help provide clarity and transparency to the marketplace.

The second bill I would like to talk about is **Assembly Bill 74**, concerning the labeling of milk products. This legislation will require that the only products which can be labeled as "milk," come from a real cow, or other hooved or camelid animal. All plant-based products will have to be labeled "drink" or "beverage." This legislation will help to ease confusion among consumers, while aiding our state's dairy farmers. North Carolina and Maryland have passed comparable legislation to protect their consumers.

Overall, both of these bills will benefit consumers and farmers immensely. The legislation is a simple and common-sense way to help support Wisconsin's dairy industry. To address interstate commerce concerns, Assembly Bills 73 and 74 also require that at least 10 other states out of a group of 15, listed in the bill, pass similar legislation by June 30, 2031, before the law becomes enforceable.

Struggling family farms in Wisconsin should not have to compete with deceptively labeled products, and consumers should know exactly what it is they are purchasing. I would like to thank co-author Senator Marklein for his leadership in getting this legislation moving forward this session. It's my hope that the members of this committee will strongly support the "Truth in Food Labeling" bill package. Thank you for taking the time to consider these bills.



HOWARD MARKLEIN

STATE SENATOR • 17th SENATE DISTRICT

March 10, 2021

Assembly Committee on Agriculture

Testimony on Assembly Bill (AB) 73, AB 74, and AB 75

Thank you committee members for hearing Assembly Bill (AB) 73, AB 74, and AB 75, which create truth in food labeling laws to support Wisconsin's agriculture economy and alleviate consumer confusion.

My Senate district is one of the most agriculture-dependent districts in Wisconsin. I consistently hear from farmers that they are growing increasingly frustrated with the number of imitation products that are on the market. Walk into most grocery stores and the "2% Milk" will be sitting right next to the "Soy Milk" and "Almond Milk". Imitation dairy products, such as imitation cheese, butter, and ice cream, are all in close proximity to each other on shelves. In restaurants, the 100% plant-based "Impossible Burger" is listed under the "Hamburger" section of the menu. This is not right.

In fact, the Wisconsin Cheesemakers, Edge Dairy Farmer Cooperative and the Dairy Farmers of Wisconsin recently conducted a study to determine whether consumers know the difference between real cheese and plant-based, imitation "cheese". They found that 48% of people surveyed thought that fake, plant-based "cheese" was actually real cheese!

In response, I have introduced these three bills to tell the truth in food labeling. I want consumers to know what they are buying and eating. I want consumers to know the differences between the real, nutritious products grown and made by our farmers versus the fake, lab-grown, plant-based products that are passing for milk, meat, cheese, ice cream and other dairy products in our state. I want consumers to fully recognize the nutritional differences between real dairy and meat versus imitation food by the same name.

AB 73, the truth in dairy product labeling bill, will ensure that if a package says "cheese" or "yogurt", the product actually has dairy in it. 90% of Wisconsin's milk goes into cheese. It is concerning that many consumers don't know the difference between which products contain milk and which do not. This confusion, oftentimes without the consumer knowing otherwise, hurts Wisconsin's dairy industry. Wisconsin would be the first state to pass a truth in labeling law for dairy products!

AB 74, the truth in milk labeling bill, will ensure that the only products that can be labeled as "milk" come from a cow or other hooved or camelid mammal, such as a goat. Plant-based products would need to be labeled as "drink" or "beverage". This bill is modeled after similar

legislation in North Carolina and Maryland, both of which have passed milk labeling laws in the last two years.

To alleviate interstate commerce concerns and align with the North Carolina and Maryland laws, the milk labeling law would only go into effect after at least 10 out of a group of 15 states pass similar legislation by June 30, 2031. AB 73, also includes the multi-state requirement for dairy product labeling, at the request of stakeholders.

AB 75, the truth in meat labeling bill, will make labeling plant-based meat alternatives and cell-cultured meat alternatives as “meat” or a similar term, such as “burger”, “sausage”, “chicken wing”, or “bacon”, illegal. This legislation would apply to packaging on products sold in stores, menus in restaurants, and promotional materials.

Similar legislation is now law in at least 11 other states including North Dakota and South Dakota and been introduced in at least a dozen other states including Iowa, Indiana, and Illinois.

I know these bills aren’t a silver-bullet that will solve the problems for our ag-economy, but they are something we can do to protect and promote real agriculture products to consumers. These bills will also put pressure on the federal government to take action on existing food labeling regulations that aren’t being enforced.

AB 73, AB 74, and AB 75 have broad support from agriculture groups across the state including the Wisconsin Farm Bureau Federation, the Dairy Business Association, the Wisconsin Cheese Makers Association, the Wisconsin Cattlemen’s Association, and the Wisconsin Pork Association. Thank you again to the committee for hearing these proposals, and your timely action on the bills.



March 10, 2021

To: Members of the Wisconsin State Assembly

Re: Opposition to AB 73, 74, 75

The Plant Based Foods Association (“PBFA”) must register our opposition to AB 73, 74, 75. As presently drafted, each bill presents a misguided attack on innovation and all food producers’ free speech rights to use words and phrases that consumers understand.

PBFA was founded in 2016 to represent a rapidly growing industry comprised of companies producing plant-based meat, egg, and dairy. The association has quickly grown to include more than 180 members, ranging from small start-up food companies to established national brands to ingredient suppliers and restaurants. Many PBFA members make and sell plant-based dairy, including plant-based milks, cheeses, yogurts, and ice cream.

AB 73, 74, 75 are unnecessary, unconstitutional, and misguided. Each bill presents an attempt to impose new restrictions on how plant-based companies communicate with their customers, infringing on their First Amendment rights to label their foods with clear, non-misleading terms.

Companies selling plant-based foods use easy-to-understand, clear, and descriptive language on their labels, including words such as “yogurt,” “milk,” and “sausage” with well-understood qualifiers. Plant-based milk and dairy use qualifiers such as “non-dairy” and “dairy-free,” while plant-based meats use language including “meatless” and “meat-free.” All segments of the plant-based market can utilize the term “plant-based” to make their labels clear to consumers.

We present the following as justification for our opposition, and ask for your opposition, to AB 73, 74, 75.

First Amendment Issues

Our members are in full compliance with current FDA requirements. Attempts to impose new restrictions such as these run afoul of First Amendment protections allowing companies to label their foods with clear, non-misleading terms. Because the First Amendment prevents the government from restricting the free flow information to consumers except in extremely narrow circumstances, laws such as proposed in AB 73, 74, 75 are unlikely to withstand constitutional scrutiny.

For example, an Ohio law that precluded use of word “butter” in labeling or advertising any product that was made in imitation of or substitute for butter, without regard to whether such use was misleading, was ruled unconstitutional. *Lever Bros. Co. v. Maurer*, 712 F. Supp. 645 (S.D.

Ohio 1989). Likewise, a Washington law prohibiting use of dairy terms in advertising margarine was deemed *per se* violative of the First Amendment.

Anderson, Clayton & Co. v. Washington State Dep't of Agric., 402 F. Supp. 1253 (W.D. Wash. 1975). In recent years, the Supreme Court has affirmed and re-affirmed that these types of restrictions are unconstitutional.

As such, each recent instance of such speech-restrictive legislation has been subject to legal challenge by a coalition of plaintiffs including some combination of PBFA, PBFA company members, the American Civil Liberties Union, the Institute for Justice, and the Good Food Institute.

Examples:

- Missouri: In 2018, Missouri enacted a law restricting the use of the word “meat,” which was subsequently challenged as unconstitutional. In the interim, the Missouri Department of Agriculture released [guidance](#) stating that it would not refer for prosecution products where labels contained qualifiers, like “plant-based” or “veggie”. And, in response to plaintiffs’ motion for preliminary injunction to stay the enforcement of the law, the State argued that the statute only prohibited use of the word “meat” on plant-based products where it lacked an appropriate qualifier. Because of the subsequently limited nature of the statute (“only prohibiting companies from misleading consumers”), the Court denied plaintiffs’ motion for preliminary injunction. The plaintiffs, however, have appealed that ruling, and the litigation continues on, creating a drain on government resources.
- Mississippi: In 2019, Mississippi enacted a law precluding plant-based food companies from use of the word “meat.” PBFA and member Upton’s Naturals with *pro bono* counsel from the Institute for Justice, a libertarian public interest law organization that seeks to protect First Amendment rights, filed a challenge to the law on the date it became effective. After several months of litigation and negotiation, the parties were able to settle the case because the State agreed to revise its proposed regulations to allow companies to use qualifiers such as “plant-based” or “vegetarian”. Again, this litigation created press for plaintiffs and negative attention for Mississippi.
- Arkansas, Oklahoma, Louisiana: In 2019 and 2020, these states each enacted various laws restricting the use of conventional terms by many alternative types of foods. In each state, a challenge was filed. In Arkansas, a federal trial court declared that the law was likely unconstitutional while granting a temporary halt in enforcement. Litigation is ongoing in Louisiana and Oklahoma. In each case, litigation is a costly, unnecessary step the risk of which may be mitigated.

To the mitigate risk of litigation, at minimum, instead of banning terms outright, AB 73, 74, 75 should be amended to allow use of qualifying terms as several states have recently done.

For example:

- In 2019, the Wyoming legislature added this language to their resulting law: “... shall clearly label plant based products as "vegetarian", "veggie", "vegan", "plant based" or other similar term indicating that the product is plant based.”
- In 2018, the Missouri Department of Agriculture released the following [guidance](#) describing how the agency will accept the labeling of plant-based meat alternatives: “Prominent statement on the front of the package, immediately before or immediately after the product name, that the product is “plant-based,” veggie,” or a comparable qualifier... ”.
- In September 2019, Mississippi Department of Agriculture enacted [regulations](#) that state in part: “...one or more of the following terms, or a comparable qualifier, is prominently displayed on the front of the package: “meat free,” “meatless,” “plant-based,” “veggie based,” “made from plants,” “vegetarian,” or “vegan.”

PBFA members want shoppers in Wisconsin and across the US to be clear about what they are buying. Our industry is fully committed to ensuring that consumers are fully informed, that is why the Plant Based Foods Association has established industry guidance for the labeling of plant-based meat alternatives. The standards allow for references to the type of animal meat (i.e. “meat,” “chicken,” “hamburger,” etc.) and the form of the product (i.e. “nuggets,” “burger,” etc.) along with a qualifier that clearly indicates that the food is plant based or vegetarian. These qualifiers include: “plant based,” “vegan,” “meatless,” “meat-free,” “vegetarian,” and “veggie”.

We believe that this approach ensures an open and competitive marketplace without the need for government intervention.

To avoid consumer confusion and to avoid unnecessary legal challenges, we urge you to oppose AB 73, 74, 75 or at minimum adopt amendments that conform with First Amendment protections.

For more information, please reach out to michael@plantbasedfoods.org.



March 11, 2021

**Assembly Committee on Agriculture
Testimony in favor of AB 73, AB 74 and AB 75 – dairy products, milk and, meat labeling**

My name is Chad Zuleger and I am the associate director of government affairs for the Dairy Business Association. Thank you, Chairman Tauchen, Ranking Member Considine and committee members, for holding this hearing. DBA supports these bills and appreciates the leadership of Rep. Tranel, Rep. Moses and Sen. Marklein in authoring this legislation. Additionally, we are grateful for everyone who signed on as co-sponsors.

DBA represents all aspects of the dairy community. Our membership includes dairy producers and processors along with a variety of aligned businesses that help to make farmers and producers successful in our state. Together, our members produce milk and other dairy products and, of course, every dairy farmer is also a beef producer. This means DBA members are keenly interested in all three of these bills.

The “Truth in Food Labeling” package is meant to promote fairness in the marketplace and ensure that customers have correct information needed to make informed buying decisions. We are not seeking to remove the offending products from the shelves. These products have a certain market share. We do, however, object to allowing them to build their market share by misusing the good name of wholesome and nutritious products that our producers have spent years promoting, while paying into the Milk Marketing Board for this promotion. In jurisdictions that have enforced sensible labeling protections, we have seen that plant-based products continue to do well. For example, in Canada, you will not have a problem finding almond beverages in your local grocery store and, they sell just fine without misappropriating the name milk.

Giving customers good information starts by accurately labeling food products. It is not too much to ask that food products meet the standards of identity reflected by the product’s name. Indeed, that seems like the very least we can do. Milk is already very clearly defined in federal law as: “the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows.” Imitation products that do not meet this definition should not be allowed to be labeled as “milk.” Yet, the federal government has refused to enforce existing law. The problem is similar for other dairy products. For example, existing federal law contains a standard of identity for cheese and it is clear that cheese should be made from milk. However, non-dairy products that label themselves cheese, mozzarella, cheddar and the like are finding their way into grocery stores.

This failure to enforce labeling requirements has gone on far too long. The dairy community has repeatedly voiced concerns, but the Food and Drug Administration has not acted. Customers agree that clarity is needed. According to a 2018 National Tracking Poll, respondents said “milk” should not be used to market non-dairy beverages by over a 2-to-1 ratio. A subsequent survey conducted by IPSOS, a global market research and consulting firm, found that 80 percent of people believe plant-based beverages should not be labeled as milk. Even a majority of those customers who buy plant-based beverages agreed. People want honest and accurate information on the food they purchase. They need it to make healthy and nutritionally sound food-purchasing decisions for their families. The IPSOS survey also found that more than one-third of customers incorrectly believed that plant-based beverages have the same or more protein than milk when milk actually contains up to eight times as much protein as imitation products.

DBA’s affiliated co-op, Edge Dairy Farmer Cooperative, partnered with the Wisconsin Cheese Makers Association and Dairy Farmers of Wisconsin to commission a survey specifically looking at plant-based foods that are meant to mimic cheese. It found that consumer confusion over what these products contain and how they compare nutritionally to real dairy is even greater than in the beverage space. Nearly one-quarter of those surveyed thought the plant-based products contained milk. About half of those shown products meant to imitate mozzarella and cheddar cheese thought the products were real cheese.

When it comes to comparing nutritional value, customers who were surveyed struggled. More than a third thought a plant-based product that imitated mozzarella slices contained protein and calcium. The product actually contains neither. Dairy foods are well-known as an important part of a healthy diet, with milk, cheese and yogurt providing nine key nutrients. The 2015-2020 Dietary Guidelines for Americans concluded that most Americans under-consume dairy and do not get enough of several nutrients, including vitamin D, calcium and potassium.

I urge your support for these bills. They will help protect our dairy and meat industries from being unfairly undermined by misleading labeling practices. They will also help Wisconsinites make informed nutritional choices at the grocery store when faced with a proliferation of imitation products that do not have the same nutrients as those items they attempt to mimic. The federal government’s failure to enforce existing standards of identity for milk and other dairy products has made it necessary for states like Wisconsin to act. Their failure to stand up for proper labeling of dairy products also raises concerns about how well they will be able to handle emerging labeling concerns about plant-based products that imitate meat as well as lab-grown cultured tissue. Hopefully, by states taking action regarding meat labeling now, we can prevent the abject failure to protect farmers, processors and customers that has already occurred in the dairy space.

We asked 450 consumers to evaluate three plant-based foods that mimic dairy cheese to understand if the packaging and descriptions are confusing...



This is what they told us:



CHEESE TYPE



Nearly 1/2 (48%) of consumers think that plant-based foods that mimic cheese are a cheddar or mozzarella cheese



BUY



About 1/4 of consumers purchase plant-based foods that mimic cheese because they believe them to be low in calories (25%) and fat (26%). In reality, plant-based foods that mimic cheese contain an equal or comparable amount of fat and calories and contain substantially more additives than dairy cheeses.



INGREDIENTS

1/4 (23%) of consumers think that plant-based foods that mimic cheese contain pasteurized milk.



CALCIUM



2 in 5 (41%) consumers think that plant-based foods that mimic cheese contain calcium even though the amount present is substantially less than dairy, or not present at all.



PROTEIN



About 1/3 (36%) of consumers think that plant-based foods that mimic cheese contain protein and about 1/5 (21%) think that it is of a higher quality than dairy even though plant-based foods that mimic cheese have little to no protein.



KEY

- plant-based food that mimics cheddar
- plant-based food that mimics mozzarella shreds
- plant-based food that mimics mozzarella slices

DATE: March 10, 2021

TO: Chairman Tauchen and
Members of the Assembly Committee on Agriculture

FROM: Debi Towns, Sr. Director of Government Relations
WI Farm Bureau Federation

RE: Support for Assembly Bills 73, 74, & 75 – Truth in labeling for Dairy Products,
Milk and Meat

Good morning and thank you for this opportunity to speak on Assembly Bills 73, 74, and 75 relating to the labeling of Dairy Products, Milk and Meat, respectively. I will talk about all three in this testimony as the Wisconsin Farm Bureau Federation is supporting all three bills and our rationale is the same for all three bills.

As food producers in an international marketplace, many of our members strive very hard to provide high-quality products which are recognized by that market. Among these products are fluid milk, dairy products originating from milk and meat.

Over decades, Wisconsin farmers have established a reputation in the marketplace, both domestically and internationally, for their products using the accepted definitions of “milk, dairy and meat”. The consumer could rely on these accepted definitions and confidently know that if they were purchasing “milk” it was produced by a mammal and that the label “dairy” meant the product originated with milk. Consumers also knew that if they purchased a product identified as “meat”, it originated from the flesh of animal. Consumers also know these terms are identified with quality & safety but most of all nutritional value.

At Farm Bureau, we are well aware that food product labeling is governed overall at the federal level by the Food & Drug Administration (FDA). The purpose for bringing these bills before the Wisconsin legislature at this time is to encourage Wisconsin to recognize the value of the marketplace trust our farmers have spent years building and join with other states whose food producers also rely on the accepted terminology in the markets as they currently discuss this same issue. We are anticipating that the FDA will need to take up this issue at some point in the future, and when that happens, we would like Wisconsin agriculture to be positioned to join with those who stand to protect the food markets we have worked so hard to establish.

Zimmerman Cheese Testimony | Paul Witke
Assembly Committee on Agriculture
March 10, 2021

Thank you, Chairman Tauchen and members for hearing my support of Assembly Bills 73 and 74, to ensure clarity in milk and dairy product labeling.

I am Paul Witke and am honored to serve as chair of the Wisconsin Cheese Makers Association's active Policy Committee.

Together with my family, I also own and operate Zimmerman Cheese in Wiota, Wisconsin.

About Zimmerman Cheese

Zimmerman Cheese, Inc. is a four generations-strong dairy processing plant, located in Wiota since 1979. Our specialties – baby swiss and muenster – are made with pride and have won many awards. We also produce brick, baby jack, farmer, monterey jack and smoked baby swiss, low sodium cheeses, asadero, and queso-quesadilla. Most of our cheese is sold under private labels.

Zimmerman Cheese proudly employs 35 people in our rural community, and supports 40 farmer patrons.

Need for Labeling Clarity

I am proud to be a Wisconsin cheesemaker, working in our state's signature field. I am certain that all of you are proud, too, to represent "America's Dairyland."

Dairy products deliver unmatched nutritional value, bite by delicious bite. Consumers know that when they pick up a bottle of milk or a block of cheese from the grocery store, that they're bringing home products that offer their families calcium, Vitamin D, potassium, and protein.

When a consumer sees the word "milk" or "cheese" on a product label, that's what they're expecting to get. We have research studies that prove this confusion exists in the marketplace, and it's time for government to intervene and offer some measure of protection.

It's most appropriate that the Food and Drug Administration enforce its existing regulations on dairy labeling, but as the agency is failing to do its job, we ask you to take action.

Wisconsin can send a strong message – that milk is milk from a mammal and that cheese is made of that milk, as has always been the case – and that we believe in healthy marketplace competition based on the merits of a product, not on misdirection.

The bills proposed by Representative Tranel and Senator Marklein will deliver that message, offering a reasonable and measured response to a pressing problem.

I encourage you to approve AB 73 and 74, so that they might be considered by the Assembly this session.

Thank you again for your openness to hearing our perspective, and for your important work.

Nasonville Dairy Testimony | Kim Heiman
Assembly Committee on Agriculture
March 10, 2021

Thank you for the opportunity to speak today in support of Assembly Bills 73 and 74, to ensure clarity in milk and dairy product labeling.

I am Kim Heiman and, together with my family, I own and operate Nasonville Dairy in Marshfield, Wisconsin.

About Our Business

Nasonville Dairy was founded in 1885, making it the oldest cheese plant in Wood County. After more than 130 years of perfecting our recipes and processes, we know the ins and outs of the cheesemaking industry — we maximize efficiency and quality for our customers.

Today, Nasonville Dairy produces more than 160,000 pounds of award-winning cheese each day, shipping Cheddar, Colby, Monterey Jack, Asiago, and Feta across the country and around the world.

Need for Labeling Clarity

I am proud to be a Wisconsin cheesemaker, and proud of the products that my colleagues and I make.

Milk and cheese are packed with protein to build muscles, calcium to keep your bones and teeth strong, and essential vitamins and minerals, especially for infants and older adults. These benefits are naturally occurring in cow's milk.

When consumers reach for milk or cheese, they're expecting not only a delicious product, but a nutritious, natural one, as well.

Unfortunately, that's what many of them think when they choose a dairy imitator called "milk" or "cheese" too.

You heard the results of WCMA's study: one-quarter of people buying a dairy imitator think that it contains real dairy milk. Of course, that's not the case. And the products are not delivering the same nutrition.

Plant-based imitators may be fortified in processing, but most cannot come close to comparing, when it comes to protein. And, plant-based imitators often add sugars, to mask off flavors.

Assembly Bill 73 & 74

I believe that the U.S. Food and Drug Administration should enforce existing labeling requirements to protect consumers from confusion in the dairy aisle.

Absent action on the federal level, states should intercede.

The bills proposed by Representative Tranel and Senator Marklein shine a light on the issue of consumer confusion and lay out a reasonable plan of action.

I encourage you to approve AB 73 and 74, so that they might be considered by the Assembly this session.

Thank you.

**Klondike Cheese Testimony | Dave Buholzer
Assembly Committee on Agriculture
Wednesday, March 10, 2021 | 10:00 a.m.**

Chairman and Members - thank you for the opportunity to speak in support of Assembly Bills 73 and 74.

My name is Dave Buholzer, and along with my brothers, I own Klondike Cheese Company in Monroe, Wisconsin. I am a Wisconsin Master Cheesemaker.

It's also my honor to serve as President of the Wisconsin Cheese Makers Association.

About Klondike Cheese Company

Klondike Cheese Company has been making award-winning dairy products in Green County since the late 1800's.

We're known for our Feta, Brick, Muenster, and Havarti, as well as our line of Greek yogurts and yogurt-based dips. You'll find our products commercially available under the Odyssey and Buholzer Brothers brands, and we also market heavily to foodservice and private label businesses.

We've grown steadily through the years, and in 2018, completed a major expansion of our plant facility, with an investment of millions of dollars into the business.

We employ approximately 250 people, and purchase milk from dozens of local farms.

All of our products contain real dairy milk, and we're proud of it.

Real Dairy vs. Plant-Based Imitators

Real, dairy cheese is not only delicious – but also an outstanding source of protein, calcium, vitamins A and B-12, zinc, phosphorus, and riboflavin.

Almond, potato and tapioca starch-based dairy imitators contain little to no protein and can only offer some of those other nutritional benefits if processors include additives.

Make no mistake – these imitators would like for you to think their products are healthier. To some extent, their tactics are working.

WCMA studied this topic, along with Edge Dairy Farmer Cooperative and Dairy Farmers of Wisconsin, and we found that a third of consumers believe plant-based dairy imitators contain protein.

We also learned that 40 percent of consumers believe plant-based products with “cheese” on the label contain calcium – even when they don’t.

Action Needed

In 2018, the U.S. Food and Drug Administration issued a release noting it “has concerns that the labeling of some plant-based products may lead consumers to believe that those products have the same key nutritional attributes as dairy products, even though these products can vary widely in their nutritional content.”

The agency also outlined how this confusion can lead to significant health consequences – contributing to under consumption of key nutrients.

But, the FDA has yet to act, to enforce existing regulations related to the standards of identity for cheese and dairy ingredients.

These proposals, coming from “America’s Dairyland,” stand to send a message to FDA and spark action on the federal level, and to protect consumers in the meantime.

Please join me in supporting truth-in-dairy labeling legislation – and in looking closely at the nutritional facts on the products you’re purchasing in the dairy aisle. Thank you.



**WISCONSIN
CHEESE MAKERS
ASSOCIATION**

EST. 1891

**Testimony on Assembly Bills 73 & 74
Assembly Committee on Agriculture
Wednesday, March 10, 2021 | 10:00 a.m.**

Good morning. I am John Umhoefer and I am executive director of the Wisconsin Cheese Makers Association.

For nearly 130 years, WCMA has served as the voice of cheese and dairy manufacturers, processors, and marketers. Today, our organization represents 110 dairy processing companies and cooperatives operating across the United States and around the world, backed by more than 575 companies that supply equipment and services to the industry.

My thanks go to Chairman Tauchen, and to the members of the committee for today hearing testimony on Assembly Bills 73 and 74 today.

We also want to thank you for hearing remarks from our president, Dave Buholzer of Klondike Cheese Company in Monroe, and for accepting written testimony from two of our members: Kim Heiman of Nasonville Dairy in Marshfield and Paul Witke of Zimmerman Cheese Company in Wiota, given the concerns of the ongoing pandemic.

These proposals, before you today, would ban the labeling of products as milk or as a dairy product or ingredient, if the food is not made from the milk of a cow, sheep, goat, or other mammals.

Words have meaning, and – in the marketplace – they carry weight with consumers. The U.S. Food and Drug Administration, or FDA, is charged with upholding honesty and fair dealing in the interest of consumers.

And the Food, Drug and Cosmetic Act that FDA enforces requires that labels on packaged food products sold nationwide not be false or misleading in any way.



WISCONSIN CHEESE MAKERS ASSOCIATION

EST. 1891

If a food fails to meet a federal standard of identity – such as those laid out for “mozzarella” or “cheddar”, according to the FDA’s own regulations, it should be prohibited from introduction into interstate commerce. But, the FDA has, thus far, failed to live up to its identity, its role.

We are grateful that Representative Tranel, Senator Marklein and so many of you who are leading the charge on protecting the true meaning of words like milk and cheddar and butter as dairy-derived foods.

WCMA members want to be clear - we do not oppose the existence or the sale of plant-based imitations, but as these bills do, we insist that these imitations not be allowed to mislead consumers through false labeling.

Make no mistake, the labels are false and they are misleading. Wisconsin Cheese Makers Association, Edge Dairy Farmer Cooperative and Dairy Farmers of Wisconsin recently partnered on a consumer research study examining this subject. National consumer research experts at Ravel surveyed 450 consumers identified as purchasers of dairy products, purchasers of plant-based foods that mimic dairy, or buyers of both.

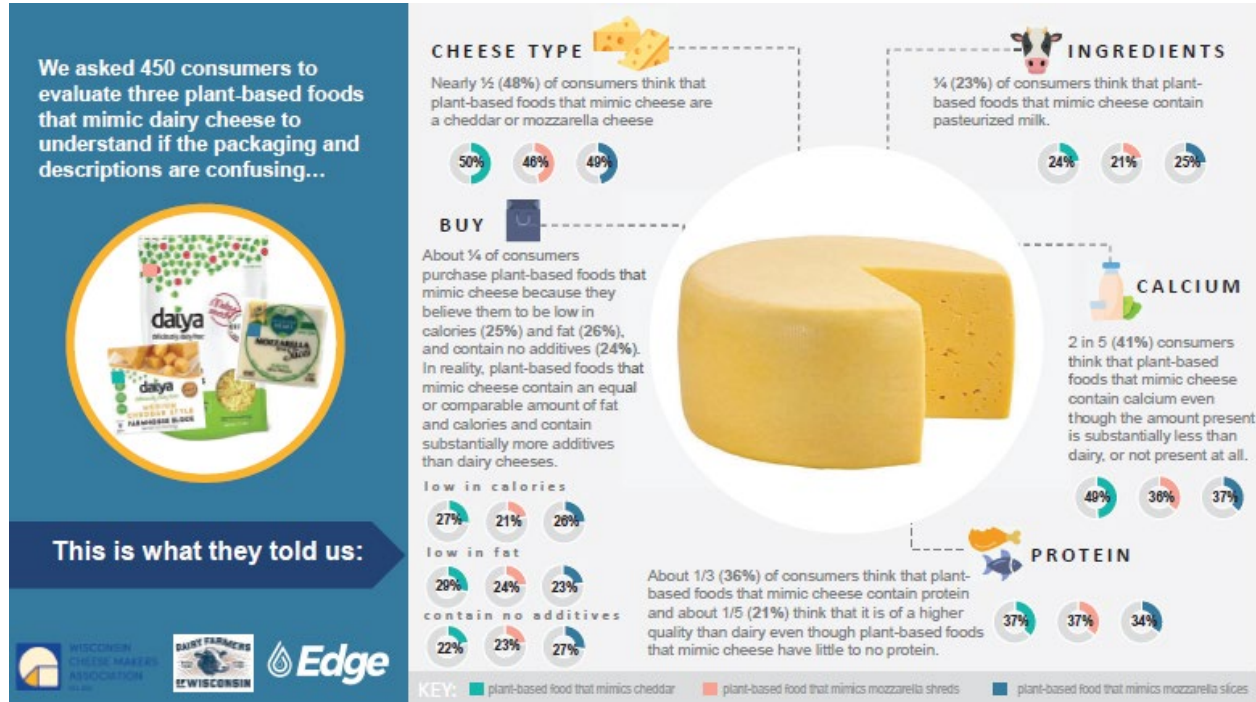
They asked these consumers about ingredients in real cheese vs. these plant-based products, about nutrients, protein content, overall nutrition, naturalness and buying habits.

What did the study find? Consumers are confused by these plant-based foods that borrow standardized words like cheddar and mozzarella, and display terms like cheese alternative. Consumers are confused about what they’re buying, about the nutrition they’re expecting and ingredients they never anticipated.



WISCONSIN CHEESE MAKERS ASSOCIATION

EST. 1891



Diving a bit deeper, Ravel reported:

- One quarter of consumers mistakenly indicated that pasteurized milk was present in plant-based foods that mimic cheese and one quarter didn't know what ingredients are in these mimics. The high prevalence of "don't know" and mistaken responses indicates that the use of traditional dairy names such as cheddar and mozzarella confuse consumers, leading to the selection of dairy ingredients in these plant-based foods.
- About one-third of consumers said they "don't know" or they think that the plant-based cheese has higher quality protein, even though the plant-based foods that mimic cheese that these consumers were shown have little to no protein content.



WISCONSIN CHEESE MAKERS ASSOCIATION

EST. 1891

- Significantly more consumers indicate that they would buy one of the plant-based foods that mimic cheese because they are low in calories, low in fat, and contain no additives. In actuality, plant-based foods that mimic cheese contain an equal or comparable amount of fat and calories to dairy cheeses and contain substantially more additives than dairy cheeses.
- About half of consumers say plant-based foods that mimic cheese are actually cheddar or mozzarella cheese. And compared to the dairy cheeses, a significantly higher percentage “don’t know” if the plant-based foods are cheddar or mozzarella cheese. Together, these answers indicate more than half of consumers surveyed mistook a plant-based food mimicking cheddar or mozzarella to be traditional cheddar or mozzarella or were unclear about applying these traditional cheese names to plant-based foods.

Wisconsin Cheese Makers Association submitted this data to FDA in 2019, imploring the agency to fulfill its statutory requirement to regulate honesty and fair dealing in foods and examine this misuse of standardized dairy names.

As yet, FDA has not acted to enforce its own regulations, and to protect consumers. And so, we ask you to take action.

The bills before you move us toward consumer clarity, and enforcement of dairy names.

They are bipartisan – approved by the Senate Committee on Agriculture and, on a unanimous voice vote, by the full Wisconsin State Assembly in the last legislative cycle.

We welcome that cooperation. We welcome clarity and enforcement. And we welcome this message of leadership from America’s Dairyland, the State of Wisconsin. Thank you.

From: info@wdpa.net
To: [Rep.Tauchen](#)
Subject: AB73 and 74
Date: Monday, March 08, 2021 10:10:44 AM

To: Rep. Gary Tauchen
From: Brad Legreid, Executive Director
Date: March 4, 2021
Re: AB73 and 74

Dear Representative Tauchen,

I have learned that the Assembly Committee on Agriculture will be holding a public hearing on AB 73 and 74 on March 10, 2021. Unfortunately, I will be out of state next week and unable to attend this hearing.

Please register in the hearing records that the Wisconsin Dairy Products Association Supports AB 73 and AB 74.

Thank you very much.

Brad

Tammy Brereton
Executive Assistant



Wisconsin Dairy Products Association
8383 Greenway Blvd. Suite 130
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E info@wdpa.net
W www.wdpa.net

From: [Scott Weathers](#)
To: [Rep. Tauchen](#)
Cc: [Arrowood, Craig](#); [Scherdell, Derrick](#)
Subject: Testimony in Opposition to AB 73, 74, and 75
Date: Thursday, March 04, 2021 1:59:57 PM

Representative Tauchen,

Please find below GFI's written testimony in opposition to AB 73, 74, and 75, which will be heard in the Assembly Agriculture Committee next Wednesday. Thank you for your time. Please let me know if there is any more information that I can provide.

Sincerely,
Scott Weathers
Senior Policy Specialist, The Good Food Institute

Good morning. I'm Scott Weathers and I represent The Good Food Institute, a nonprofit organization dedicated to using markets and innovation to promote a healthy and sustainable food system. I'm here today to respectfully oppose Assembly Bills 73, 74, and 75 and any amended versions of these bills that may appear.

These bills prohibit two kinds of product labels: those that use meat and dairy terms on plant-based products, such as almond milk and veggie burgers, and those that use meat terms on meat grown directly from animal cells, commonly called "cultivated meat."

We oppose these bills for three main reasons. In short, they're unnecessary, they're unconstitutional, and they're bad for businesses and consumers here in Wisconsin. Let me go into detail on each of those points.

First, these bills are solutions in search of a problem. Despite what some might say, consumers aren't confused by plant-based foods. According to the International Food Information Council, over 90% of consumers understand that plant-based milks don't come from cows. People buy products like almond milk and black bean burgers because they know what they are — not because they believe they're something else. It's just common sense. In fact, federal law already prohibits false and misleading food labels, and anybody who's unclear about a product can easily flip the package over and read the ingredient list. It's right there in black and white. These bills suggest that consumers aren't smart enough to know what they're buying, but science and common sense say otherwise.

Second, these bills violate the Constitution. Three states that have passed similar laws have been sued on First Amendment grounds. In 2019, a federal court issued a preliminary injunction preventing enforcement of Arkansas' label censorship law — which sought to limit usage of meat terms on plant-based food labels — because it likely violates the First Amendment. The judge wrote that the plaintiff would "likely prevail" on First Amendment grounds. Simply put, governments cannot restrict commercial speech unless the restriction directly advances a substantial government interest. Here, there's no evidence of consumer confusion, and federal law already requires that the ingredients be listed on the label. Consumer choice — not censorship — should determine winners and losers in the marketplace.

Finally, cultivated meat is indeed meat. Prohibiting the use of meat terms to describe the true nature of the product is misleading and dangerous. A consumer with a beef allergy will react the same way to eating a cultivated beef burger as if he or she ate conventional beef. From a consumer safety standpoint, not describing cultivated meat as “meat” on the label is a non-starter and would put these future consumers at significant risk. The USDA has announced that it will exercise its authority over the labels of cultivated meat. USDA will approve and inspect all cultivated meat labels before any product reaches a store shelf.

Variety is the spice of life, and I believe that there’s room on the plate for both traditional and innovative products here in Wisconsin. With no confusion around almond milk, veggie burgers, or any other plant-based food, and robust federal law on labeling, there’s no need for government restrictions that would both hurt businesses and put consumers in harm’s way. If you pass these labeling laws, which industry will be next to ask you to censor their competitors? I’m sure Barnes & Noble would like a word about “e-books.”

I urge you to vote “No” on Assembly Bills 73, 74, and 75, and any amended bills that may appear. Thank you for your consideration.

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Scott Weathers
Senior Policy Specialist
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Connect with us: [Facebook](#) • [Twitter](#)

Stay abreast of all the developments in the alternative protein landscape with GFI's State of the Industry reports and other market research in our [resource library](#).



March 8, 2021

To: Members of the Assembly Agriculture Committee

Re: Opposition to AB 73, AB 74, AB 75

The Alliance for Plant Based Inclusion (APBI) must oppose the legislation noted above. These bills as drafted would unfairly and unnecessarily restrict how the makers of plant-based foods use common and usual terms to describe their products.

APBI, a coalition of the world's largest plant-based food companies is focused on ensuring policies around plant-based foods afford consumers the greatest choice, clarity, and flexibility in the marketplace. APBI supports clear and transparent marketing and labeling for plant-based foods, including allowing the use of traditional meat, dairy and seafood terms and indicators, as long as the products are clearly labeled as plant-based, or with a similar easily understood reference.

The Alliance opposes these bills because they are solutions in search of problems and will only serve to confuse rather than inform. Our companies already clearly indicate on their labels that their alternative dairy and meat products are plant-based, vegan, vegetarian, or they utilize other equivalent terms that have been understood and commonly accepted by consumers for more than 30 years. Alliance member companies want to make it clear to shoppers what it is they are buying because their successes are built upon years of trust between their brands and consumers.

Some states have enacted legislation addressing labeling of alternative protein products. However, in nearly every case, those states made allowances for the use of qualifying terms to identify them and the legislation was passed without opposition from plant-based food manufacturers.

We believe there is room in the market for everyone and that governments should not be in the position of picking winners and losers within an industry. Alliance members feel strongly that labels using terms that consumers understand is the best way to inform them while avoiding the need for government intervention.

We must respectfully oppose AB 73, AB 74 and AB 75 as introduced.

We would be happy to discuss this, please feel free to contact Dan Colegrove at (202) 329 – 6242 or at dc@prismgroup.global.



TO: Members of the Wisconsin Assembly Committee on Agriculture
FROM: Upfield US, Inc.
DATE: March 10, 2021
RE: Assembly Bill 73, relating to labeling food as a type of dairy product or as a dairy ingredient and granting rule-making authority.

On behalf of Upfield US, Inc., we are writing to respectfully express our opposition to the legislative proposal being heard today, AB-73, that would prohibit a food for offer or sale to be labeled as a type of dairy product unless the food product is a dairy product.

Upfield strongly believes that this proposal is not in the best interests of Wisconsin consumers, who are increasingly embracing plant-based foods for health, dietary, sustainability and ethical reasons, or the retailers who serve them.

Consumers are knowledgeable about plant-based foods and benefit from truthful labeling of plant-based foods with recognizable terms that gives them information to make clear choices. We moreover believe that this proposal is inconsistent with the right provided under the First Amendment to use dairy terms on plant-based food product labels, as long it is done in a consistently non-misleading way.

Upfield is the largest producer of plant-based spreads, plant butters and, most recently, vegan cheese, in the U.S., with iconic brands that include *Country Crock*®, *I Can't Believe It's Not Butter!*®, *Imperial*®, *Brummel & Brown*® and *Violife*® 100% vegan cheese. We are committed to ensuring clear and accurate labeling of our products consistent with applicable federal and Wisconsin law.

Our comments reflect the fact that consumers today are seeking more plant-based foods. Consumers can read and understand product labels that identify the basic nature and function of foods derived from plants, and that clear labeling has promoted honesty and fair dealing in the best interests of consumers.

433 Hackensack Avenue, Suite 401
Hackensack, New Jersey 07601

Choice

Plant-based alternatives to traditional dairy-based butter and milk have long existed in the marketplace to provide consumers with products similar to traditional dairy-based products in taste, texture, and function, but without the dairy. This appeals to consumers who may struggle with allergies or other dietary restrictions, and these products often provide a different dietary profile in regard to calories and saturated fat.

Companies ranging from start-ups to larger corporations with long-standing plant-based alternatives are increasingly entering the market with various types of plant-based alternatives to traditional dairy-based butter to satisfy consumer demand. Upfield's plant-based products include our traditional vegetable oil spreads and newer plant butters that come in both stick and tub formats made with a variety of plant-based oils such as soybean oil, coconut oil, canola oil, avocado oil, olive oil, and sunflower oil.

The food industry today is evolving and continuously innovating. New production capabilities, ingredient accessibility, and food science innovation have put more new foods derived from and supporting agricultural products such as plants, nuts, fruits, seeds, and beans on store shelves and in homes as consumers expand their dietary choices and food preferences to include more plant-based options.¹ Recent surveys of plant-based food trends show increased mainstream adoption. For example, a 2017 Nielsen Homescan survey found that 39% of Americans are actively trying to eat more plant-based foods.

Clarity

Consumers can now readily choose plant butter, plant milks and vegan cheese products that do not contain any animal-derived ingredients. We believe that these products can be described in truthful and non-misleading ways including as "plant-based spread" or "plant butter" and "vegan cheese", clearly distinguishing them from the traditional dairy product.

Upfield believes that plant-based food products can lawfully be labeled with names that use clear terms such as "plant-based," "plant," "vegan" and "dairy free" to modify traditional dairy terms such as "butter", "milk" and "cheese." We believe that such

¹ A consumer survey conducted by the International Food Information Council (IFIC) showed that nearly 75% of consumers surveyed had heard of plant-based diets and nearly 50% of consumers surveyed stated they wanted to learn more about plant-based diets. IFIC, 2019 Food & Health Survey (May 2019), available at: <https://foodinsight.org/wp-content/uploads/2019/05/IFIC-Foundation-2019-Food-and-Health-Report-FINAL.pdf>.

Upfield Comments: AB-73

Page 3

modified names clearly convey the nature of the product while distinguishing it from the traditional dairy-based product, leaving no likelihood of consumer confusion.

Wisconsin itself has recognized this proposition. Wisconsin Statute Secs.100.36 and 97.01(1r) have long supported the use of the term “butter” in association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter, provided that the use of the dairy term, butter, be qualified so as to distinguish it from dairy butter.

Consumers first

Our goal at Upfield is to put products on shelves for consumers interested in a plant-based diet by helping them identify foods that are alternatives to the traditional food and making plant-based foods delicious, affordable, and recognizable.

For these reasons, Upfield respectfully opposes AB-73. We are happy to provide more detail about our position, our products, and our belief in the power of plant-based food and consumers’ ability to make clear choices based on current labeling and driven by their personal tastes, preferences, and priorities.

Sincerely,

Kyra Lindemann

Kyra Lindemann
Head, Corporate Affairs and Communications
Upfield North America