

Approved: 03/03/10  
Date

## MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:40 a.m. on February 16, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes  
Corey Carnahan, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Judy Seitz, Committee Assistant

Others attending:

See attached list.

Chairman Taddiken welcomed members of the Kansas Livestock Association (KLA) Young Stockmen's Academy.

Chairman Taddiken mentioned that the Committee had received copies of the USDA's Food and Nutrition Service determining product eligibility for purchase with Supplemental Nutrition Assistance Program (SNAP) which was discussed in the meeting on Wednesday, February 10. (Attachment 1)

The hearing on **SB 425 - Blending motor-vehicle fuel at the terminal** was continued from February 2.

Chairman Taddiken corrected a statement made regarding a lawsuit in North Carolina dealing with the selling of unblended fuel. The motion for summary judgement was dismissed and the lawsuit can proceed. Chairman Taddiken had requested an opinion from the Attorney General regarding **SB 425** and the Committee received copies of that letter. (Attachment 2)

The Chairman noted two additional letters had been received from the Kansas Soybean Association (Attachment 3) and the Association of Ethanol Processors (Attachment 4) in support of **SB 425**.

There were no other conferees to speak on **SB 425**.

Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture (KDA), Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas) and Ken Peterson, Director, Kansas Petroleum Council, responded to questions..

Chairman Taddiken closed the hearing on **SB 425**.

Jill Wolters, Office of the Revisor of Statutes, reviewed the proposed technical amendments to **SB 425** (Attachment 5).

Senator Huelskamp made a motion to adopt the proposed amendments to SB 425. The motion was seconded by Senator Francisco. The motion to adopt the amendment carried.

Senator Lee moved to remove Section 1, line 12 through line 19 from SB 425. The motion was seconded by Senator Bruce. Motion carried.

Senator Barnett made a motion to pass SB 425, as amended. Senator Ostmeyer seconded the motion, Motion carried.

Chairman Taddiken asked the members of the Kansas Livestock Association (KLA) Young Stockmen's Academy to give their name and hometown.

The meeting was adjourned at 9:30 a.m.

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: Feb 16, 2010

NAME	REPRESENTING
Kelly DeDonder	KLA
T. J. Curtis	KLA
AUNDI CURTIS	KLA
Jody WACKER	KLA
Dirck Hoagland	KLA
Jason Brown	KLA
Kory Josefiak	KLA
Glen Collinge	KLA
Trey Miser	KLA
Ryan Higbie	KLA
Scarlett Higgins	KLA
Tom BYERS	MACDELLAN
MARVIN SPEES	CAPITAL CITY OIL
Berend Koops	Hein Law Firm

## Determining Product Eligibility for Purchase with SNAP Benefits

In general, items that are not eligible for purchase with Supplemental Nutrition Assistance Program (formerly Food Stamp Program) benefits include:

- Food products that contain alcohol or tobacco
- Items that are not intended for human consumption (e.g. paper products, pet foods, etc.)
- Foods sold hot at the point-of-sale, and
- Vitamins and supplements

When considering the eligibility of vitamins and supplements, power bars, energy drinks and other branded products, the primary determinant is the type of product label chosen by the manufacturer to conform to Food and Drug Administration (FDA) guidelines:

- Items that carry a nutrition facts label are eligible foods
- Items that carry a supplement facts label are classified by the FDA as supplements, and are therefore *not* eligible.

The Food and Nutrition Service does *not* have authority to determine whether branded products have been appropriately labeled as supplements and cannot answer inquiries relative to why particular branded products carry a supplement facts label. Such questions/concerns must be directed to the product manufacturer. Product manufacturers label their products based on Food and Drug Administration (FDA) labeling guidelines and are in the best position to provide labeling rationale.

Please follow the guidance above to determine whether a specific branded product is eligible.

The FNS – SNAP posted list of determinations is now limited to generic (non-brand specific) products.

To request determinations on generic items, or brand- specific items that do not have a nutrition or supplement facts label, please submit by mail or email a complete product package or sample of the item(s) to:

Chief  
Retailer Management and Issuance Branch  
Benefit Redemption Division  
Supplemental Nutrition Assistance Program  
USDA, Food and Nutrition Service  
3101 Park Center Drive, Room 404  
Alexandria, VA 22302  
OR EMAIL TO:  
[BRDHQ-WEB@fns.usda.gov](mailto:BRDHQ-WEB@fns.usda.gov)

All requests for determinations submitted with complete product packaging will be completed within 10 business days.

Product	Eligible	Ineligible
Alcohol Category: BEER, "NON-ALCOHOLIC", BUT CONTAINING SOME ALCOHOL		X
Alcohol Category: LIQUOR FILLED CHOCOLATES		X
Alcohol Category: LOW ALCOHOL BEER		X
Alcohol Category: MIXES FOR ALCOHOLIC DRINKS (WITHOUT ALCOHOL)	X	
Alcohol Category: NEAR BEER		X
Alcohol Category: ST. REGIS CALIFORNIA BLANC DEALCOHOLIZED WINE (99.51% ALCOHOL FREE)		X
Alcohol Category: WINES (LOW ALCOHOL)		X
Alcohol Category: ALTERNATIVE VINEYARDS, NON-ALCOHOLIC BEVERAGES (0% alcohol)	X	
ALFALFA SEED	X	
Also Salt - Original, Butter, and Garlic Flavors	X	
ARTIFICIAL SWEETENER	X	
BANANA LEAVES		X
BITTERS		X
BOWS AND ARROWS	X - IN RURAL ALASKA ONLY	
BREAD, STILL WARM FROM BAKING	X	
CANNING ITEMS - JARS & LIDS		X
COD LIVER OIL		X
COOKING WINE	X	
CORN HUSKS	X	
COUGH DROPS		X
CRABS, COOKED HOT		X
DISTILLED WATER	X	
Dry Ice		X
FERTILIZER & INSECTICIDES		X
Flax Oil		X
FLAXSEED	X	
FRUIT TREES	X	
GOAT'S MILK	X	
GOURDS, USED FOR ORNAMENTAL PURPOSES		X
HONEY	X	
ICE CREAM CONE, FRESH-DIPPED, FOR ON-PREMISES CONSUMPTION (ALL FLAVORS)		X
LIVESTOCK		X

NASTURTIUM SEEDS	X	
PET FOOD		X
PREPARED SANDWICHES, COLD, FOR OFF PREMISES CONSUMPTION	X	
SALAD BAR FOODS, COLD, FOR OFF PREMISES CONSUMPTION	X	
Spiru-Tein Strawberry, Banana, Vanilla, and Cappuccino Protein Powder Shake Mixes	X	
Vegan Foods	X	
YEAST- Bakers	X	
YEAST, NUTRITIONAL TABLETS		X



FEB 12 2010

STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

February 11, 2010

The Honorable Mark W. Taddiken  
State Senator, 21<sup>st</sup> District  
State Capitol, Room 223-E  
Topeka, Kansas 66612

Dear Senator Taddiken:

Attorney General Six has asked me to respond to your letter of February 5, 2010, regarding 2010 Senate Bill 425 (SB 425) and whether the Attorney General "can successfully defend a lawsuit if SB 425 is passed."

Senate Bill 425 requires distributors, importers, and manufacturers of motor vehicle fuel/diesel fuel to offer for sale unblended fuel suitable for subsequent blending with ethanol.<sup>1</sup> The Secretary of Agriculture is responsible for enforcement through cease and desist orders and civil penalties.<sup>2</sup>

Similar legislation has spawned litigation in Tennessee,<sup>3</sup> South Carolina,<sup>4</sup> and North Carolina.<sup>5</sup> Except for South Carolina,<sup>6</sup> the lawsuits filed by the American Petroleum Institute claim that the legislation is preempted by federal law and violates the Commerce Clause. Last month, one federal district court concluded, on summary judgment, that the North Carolina law was not preempted by the Federal Renewable Fuel Program, 42 U.S.C. § 7545(o), the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 *et seq.* It also found the law did not violate the dormant Commerce Clause.<sup>7</sup> However, the litigation is ongoing in order to address the American Petroleum Institute's other preemption and Commerce Clause challenges,<sup>8</sup> and the North Carolina decision will not be binding on a court in Kansas.

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<sup>1</sup>SB 425, § 3.

<sup>2</sup>SB 425, § 4.

<sup>3</sup>*American Petroleum Institute v. Givens*, Case No. 09-CV-01195 (M.D. Tenn.) (filed December 18, 2009).

<sup>4</sup>*American Petroleum Institute v. South Carolina Dept. of Revenue*, 677 S.E.2d 16 (S.C. 2009).

<sup>5</sup>*American Petroleum Institute v. Cooper*, 2010 WL 303960 (E.D. N.C. January 26, 2010).

<sup>6</sup>The South Carolina statute was held unconstitutional for violation of the state's constitutional one-subject rule.

<sup>7</sup>Note 5.

<sup>8</sup>*American Petroleum Institute v. Cooper*, 2010 WL 303960 (E.D. N.C. January 26, 2010).

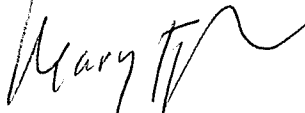
Senate Agriculture Committee  
February 16, 2010  
Attachment 2-1

Senator Mark W. Taddiken  
Page 2

Should SB 425 be enacted in its current form, it is possible that litigation similar to actions filed in Tennessee and North Carolina will be brought in Kansas.<sup>9</sup> Because of the uncertainty inherent in litigation, we cannot speculate whether the State will be successful in defending this bill.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
STEVE SIX



Mary Feighny  
Deputy Attorney General

ML:MF:jm

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<sup>9</sup>[http://www.firstenergycastfinancial.com/e\\_news.php?cont=35003](http://www.firstenergycastfinancial.com/e_news.php?cont=35003) (First Enercast Financial: Fight Brews Over Right to Blend Ethanol) ("Industry watchers say emerging battleground states include Illinois, Kansas, Mississippi, Alabama, Kentucky, Missouri, and Indiana.")



Kansas Soybean Association  
2930 SW Wanamaker Drive  
Topeka, KS 66614-4116  
Phone (785) 271-1030 or (800) 328-7390  
www.kansassoybeans.org

February 15, 2010

Dear Senator Taddiken and members of the Senate Ag Committee:

This letter is to express support from the Kansas Soybean Association (KSA) for Senate Bill 425 (SB 425). We have reviewed the testimony previously submitted to the committee and the results of the annual biodiesel usage survey that the Kansas Soybean Commission (KSC) does with our state's petroleum marketers. KSA would like to make the following observations and comments in support of SB 425.

Each year, KSC surveys petroleum marketers in Kansas on their biodiesel sales (attached). As the chart indicates, each year marketers like to sell a variety of biodiesel blends, including 2, 5, 10, 20 and 50% depending on cost, demand, and availability.

It is the intent of petroleum refiners to limit the petroleum marketer's ability to purchase unblended diesel at the rack. We feel this would restrict our Kansas marketers' ability to choose the blend rates they would be able to sell. We would like to see them continue to have the choice of marketing all the blend options they wish. SB 425 would stop the unfair practice of petroleum refiners and prevent them from restricting our Kansas petroleum marketers' flexibility in selling biodiesel blends.

As stated in the reasons above, KSA fully supports the provisions in SB 425.

Sincerely,

Kenlon Johannes  
CEO

Attachments

*Senate Agriculture Committee  
February 16, 2010  
3-1*



B-2

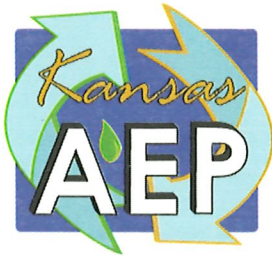
### Kansas Biodiesel Fuel Usage Survey Results

Kansas Soybean Commission, 2930 SW Wanamaker Dr. Topeka, KS 66614

785-271-1040 [www.kansassoybeans.org](http://www.kansassoybeans.org)

Blend	2004 B100 Equiv.	2005 B100 Equiv.	2006 B100 Equiv.	2007 B100 Equiv.
	July 03 - June 04	July 04 - June 05	July 05 - June 06	July 06 - June 07
B2	5,926,305	3,921,861	3,616,039	3,019,480
B5	141,248	2,109,619	3,661,836	2,097,300
B10		100,000	2,750,000	344,400
B20		18,000	24,000	215,167
B50			4,800	50,893
B100	110,005	378,524	295,900	213,164
<b>Total B100</b>	<b>236,093</b>	<b>576,042</b>	<b>830,229</b>	<b>481,339</b>
<b>Surveys</b>				
Sent out		137	175	170
Returned		55	50	26

Blend	2008 B100 Equiv.	2009 B100 Equiv.
	July 07 - June 08	July 08 - June 09
B2	2,811,730	2,313,235
B5	682,590	389,249
B10	560,925	559,601
B20	740,216	1,408,977
B50		
B100	219,556	251,818
<b>Total B100</b>	<b>514,056</b>	<b>655,300</b>
<b>Surveys</b>		
Sent out	170	170
Returned	30	31



Ethanol - *Made in Kansas*

# Association Of Ethanol Processors

**TO:** Senate Agriculture Committee Members

**FROM:** Kansas Association of Ethanol Processors

**DATE:** February 15, 2010

**RE:** Support of SB 425 – Blending Fuels

Dear Chairman Taddiken and members of the Senate Agriculture Committee. The Kansas Association of Ethanol Processors (KAEP) would like to inform the committee that at a recent board meeting, the KAEP board voted to support the passage of SB 425.

KAEP believes that SB 425 will assist the industry by ensuring a transparent process for the federal blender's tax credit (Volumetric Ethanol Excise Tax Credit – VEETC) to reach the consumer, which is the intent of the federal legislation. The VEETC has worked well but for it to continue to accomplish its' benefits including reducing fuel costs for consumers, it is necessary for the tax credit to be passed along to the retail level and this bill will greatly assist in this process.

Unblended fuel is critical to the creation of various blends of ethanol, which is the thought behind the blender pump program. Without the ability to have straight gasoline, the retailers will be unable to create various blends (i.e. E15, E20, E30 etc.) because currently the Kansas Department of Agriculture's Weight and Measure program does not endorse either the blending up from an E10 or down from an E85 blend to create some of these desirable mid-level blends. We have made some progress establishing a few blender pump stations in Kansas, but if the retailers are not able to buy straight gasoline then this would end the future of the blender pump program in Kansas. Historically, it has been the retailers that have been responsible for expanding the gasoline blends with ethanol in the market place. This group will be critical in expanding the use of ethanol in the future as higher blends of ethanol are approved by the EPA.

Thank you for your time and consideration. KAEP would urge your support of SB 425.

*Senate Agriculture Committee  
February 16, 2010  
Attachment 4*

**SENATE BILL No. 425**

By Committee on Agriculture

1-22

9 AN ACT concerning motor vehicle fuel; relating to blending of fuels.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. The legislature hereby finds and declares that the use of  
13 blended fuels reduces the dependence on imported oil and, therefore,  
14 the protection thereof is reasonable and necessary to accomplish this le-  
15 gitimate public purpose. The legislature further finds that promoting and  
16 protecting the use of blended fuels, in order to reduce the dependence  
17 on imported oil, protects a basic societal interest and that it is in the public  
18 interest not to restrict or prevent the blending of ethanol or biodiesel at  
19 the terminal by distributors or retailers.

20 Sec. 2. (a) As used in this act, except in those instances clearly indi-  
21 cating a different meaning:

22 (1) "Biodiesel fuel" means the same as defined in K.S.A. 2009 Supp.  
23 79-34,155, and amendments thereto;

24 (2) "blending stock" means any liquid compound used for blending  
25 with other liquid compounds, to produce gasoline and gasoline-oxygenate  
26 blends including, but not limited to, all grades of nonblend fuel;

27 (3) "bulk-storage plant" means a facility used for the temporary stor-  
28 age of gasoline, diesel fuel, fuel oils and similar liquid products prior to  
29 the distribution of these products to retail, commercial or consumer out-  
30 lets by wheeled tank vehicles;

31 (4) "diesel fuel" means a liquid suitable for use in a diesel-powered  
32 highway vehicle;

33 (5) "ethanol" means nominally anhydrous ethyl alcohol that is in-  
34 tended to be blended with gasoline for use as fuel in a spark-ignition  
35 internal combustion engine;

36 (6) "motor vehicle" means a motor vehicle as defined in K.S.A. 8-  
37 126, and amendments thereto, and which is required to be registered  
38 pursuant to K.S.A. 8-126 et seq., and amendments thereto;

39 (7) "preblended fuel" means a mixture composed of gasoline or diesel  
40 fuel and another liquid, other than a de minimis amount of a product  
41 such as carburetor detergent or oxidation inhibitor, that can be used as a  
42 fuel in a highway vehicle;

43 (8) "renewable identification number" is a unique number assigned

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February 16, 2010  
Attachment 5-1

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1 to each batch of renewable fuel by the renewable fuel producer or im-  
2 porter that allows the United States environmental protection agency to  
3 measure and track renewable fuel volumes starting at the point of such  
4 fuel's production;

5 (9) "secretary" means the secretary of agriculture;

6 (10) "terminal operator" means the person who by ownership or con-  
7 tractual agreement is charged with the responsibility for, or physical con-  
8 trol over, and operation of a terminal.

9 (b) As used in this act, the following words or phrases shall have the  
10 meanings provided by K.S.A. 79-3401, and amendments thereto: (1) "Dis-  
11 tributor"; (2) "importer"; (3) "manufacturer or refiner"; (4) "motor-ve-  
12 hicle fuels"; (5) "person"; (6) "retailer"; and (7) "special fuels".

13 Sec. 3. (a) Each distributor, importer or manufacturer which offers  
14 for sale in this state, at any terminal or bulk-storage plant or through  
15 delivery by motor vehicle, ~~any~~ motor-vehicle fuel, including any such fuel  
16 which has been preblended with ethanol, shall offer for sale at such ter-  
17 minal or bulk-storage plant or through delivery by motor vehicle, each  
18 grade of motor-vehicle fuel which is not preblended with ethanol and  
19 which is suitable for subsequent blending with ethanol; and

:  
(1) Any

20 ~~(b) each distributor, importer or manufacturer which offers for sale~~  
21 ~~in this state, at any terminal or bulk-storage plant or through a delivery~~  
22 ~~by motor vehicle, diesel fuel which has not been preblended to produce~~  
23 biodiesel or a biodiesel blend, shall offer for sale at such terminal or bulk-  
24 storage plant or through delivery by motor vehicle, diesel fuel that is  
25 suitable for subsequent blending with biodiesel fuel.

(2)

Reletter remaining subsections accordingly.

26 (c) Any motor-vehicle fuel which is offered for sale in this state by  
27 any manufacturer, importer or distributor, and which has not been pre-  
28 blended with ethanol, shall contain detergent additives in sufficient con-  
29 centrations such that after the addition of ethanol at the maximum volume  
30 percent permitted by state and federal law, the final product meets or  
31 exceeds the lowest additive concentrations as required by the United  
32 States environmental protection agency.

33 (d) No person or entity shall take an action that restricts or prevents  
34 a retailer or distributor from blending motor-vehicle fuel with ethanol or  
35 from qualifying for any federal or state tax credit due to such retailer or  
36 distributor blending motor-vehicle fuel with ethanol. Any provision of any  
37 contract that would make such restrictions is void. In the event a court  
38 of competent jurisdiction finds that this subsection does not apply to or  
39 improperly impairs any contractual relationship existing at the effective  
40 date of this act, this subsection shall only apply to and impact any con-  
41 tractual relationship entered into after the effective date of this act.

42 (e) Nothing in this section shall prohibit a franchisor or licensor from  
43 selecting its own customers in bona fide transactions and not in restraint

53

1 of trade, and from including in its contracts or its franchise or licensing  
2 agreements, reasonable terms which allow such franchisor or licensor to  
3 require its franchisees or licensees to maintain the quality and integrity  
4 of motor-vehicle fuels blended with ethanol or of diesel fuel which has  
5 been blended to produce biodiesel or biodiesel blend so long as such  
6 terms are consistent with the provisions of the federal petroleum mar-  
7 keting practices act, 15 U.S.C. 2801 et seq., and the Kansas petroleum  
8 education and marketing act, K.S.A. 2009 Supp. 55-1625 through 55-  
9 1635, and amendments thereto.

10 (f) All distributors, importers or manufacturers shall utilize the re-  
11 newable identification number system, as required by the Renewable  
12 Fuel Standard Program, 40 C.F.R. 80.1125. Nothing in this section shall  
13 be construed to imply a market value for the renewable identification  
14 number.

15 Sec. 4. (a) Upon complaint by any person that any distributor, im-  
16 porter or manufacturer is in noncompliance with this act, or by the sec-  
17 retary's own motion, the secretary, or the secretary's designated agent,  
18 may conduct an investigation, or cause an investigation to be conducted,  
19 to determine whether such distributor, importer or manufacturer is in  
20 compliance with this act.

21 (b) For such purpose, the secretary or the secretary's designated  
22 agents may enter any place of business of a distributor, importer, man-  
23 ufacturer or terminal operator during normal business hours, to examine  
24 and make copies of any records that may be necessary to determine com-  
25 pliance with this act. Such distributor, importer, manufacturer or terminal  
26 operator shall make available such records to the secretary or the secre-  
27 tary's designated agent. Distributors, importers, manufacturers and ter-  
28 minal operators shall retain for not less than one year records of their  
29 sales and deliveries in this state of motor-vehicle fuels and special fuels,  
30 including motor-vehicle fuels preblended with ethanol or biodiesel fuel  
31 or biodiesel blend.

32 (c) If the secretary determines that a distributor, importer, manufac-  
33 turer or terminal operator will not voluntarily assist with the secretary's  
34 investigation, as required by this section, the secretary may obtain a court  
35 order that enables the secretary or the secretary's agents to conduct an  
36 investigation free from obstruction by such distributor, importer, manu-  
37 facturer or terminal operator.

38 (d) If such investigation determines that a distributor, importer or  
39 manufacturer is in noncompliance with this act, the secretary shall issue  
40 a cease and desist order to such distributor, importer or manufacturer,  
41 which order shall assess to the distributor, importer or manufacturer the  
42 costs of the secretary's investigation pursuant to subsection (a) and impose  
43 on the distributor, importer or manufacturer a civil penalty not to exceed

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1 \$5,000 per day for each day of noncompliance with this act. Any such  
2 order shall be subject to the provisions of the Kansas administrative pro-  
3 cedure act.

4 (e) Any moneys collected by the secretary pursuant to this section  
5 shall be ~~deposited in the state treasury and credited~~ to the petroleum  
6 inspection fee fund created pursuant to K.S.A. 55-427, and amendments  
7 thereto.

8 Sec. 5. The secretary may promulgate rules and regulations as nec-  
9 essary to carry out the purposes of this act.

remitted by the secretary to the state treasurer in  
accordance with the provisions of K.S.A.  
75-4215, and amendments thereto. Upon receipt  
of each such remittance, the state treasurer shall  
deposit the entire amount in the state treasury and  
credit

10 Sec. 6. If any provision of this act or the application thereof to any  
11 person or circumstance is held invalid, such invalidity shall not affect  
12 other provisions or applications of the act which can be given effect with-  
13 out the invalid provision or application and to that end the provisions of  
14 this act are declared to be severable.

15 Sec. 7. This act shall take effect and be in force from and after its  
16 publication in the statute book.