

AMENDED IN SENATE MAY 10, 2006

**Senate Joint Resolution**

**No. 25**

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**Introduced by Senator Figueroa**  
*(Coauthor: Senator Kuehl)*

March 6, 2006

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Senate Joint Resolution No. 25—Relative to international trade agreements and pharmaceutical drug programs.

LEGISLATIVE COUNSEL'S DIGEST

SJR 25, as amended, Figueroa. International trade agreements and pharmaceutical drug programs.

This measure would urge the United States Trade Representative to take specified actions regarding international trade agreements and pharmaceutical drug programs.

Fiscal committee: no.

1     WHEREAS, California and other states have taken the lead in  
2     developing innovative solutions to combating the steep rise in  
3     prescription drug costs by attempting to limit patent abuses,  
4     increasing access to affordable drugs, and implementing cost  
5     containment strategies; and

6     WHEREAS, Recent state and federal court decisions have  
7     reaffirmed the ability of states to adopt policies designed to  
8     manage prescription drug costs; and

9     WHEREAS, The language of international trade agreements  
10    into which the United States has entered, such as the  
11    Australia-United States Free Trade Agreement (AUSFTA),  
12    which includes Annex 2-C on pharmaceuticals, is ambiguous and  
13    could be interpreted by a dispute resolution panel to promote an

1 overtly liberalized market that maximizes innovation in place of  
 2 California’s interests in promoting cost containment of  
 3 prescription drugs; and

4 WHEREAS, The language of the AUSFTA uses a definition  
 5 of a “federal health care program,” that is unclear and could be  
 6 interpreted to subject the California Medi-Cal program to the  
 7 provisions of the trade agreement, thereby infringing upon  
 8 California’s authority to provide quality and affordable  
 9 prescription drugs to its residents; and

10 WHEREAS, United States Trade Representative Robert  
 11 Portman has assured states in writing that state programs are “not  
 12 covered” by recent trade agreements signed by the United States;  
 13 and

14 WHEREAS, This written assurance itself has no legal power  
 15 in the case of a complaint filed by a United States trading partner  
 16 regarding state administration of health care programs; and

17 WHEREAS, All trade agreements into which the United States  
 18 has entered include the potential for an exchange of interpretive  
 19 notes through which a party to the agreement can clarify the  
 20 scope of a measure included in a trade agreement or annex to that  
 21 agreement; and

22 WHEREAS, These interpretive notes have the force of  
 23 international law; now, therefore, be it

24 *Resolved by the Senate and the Assembly of the State of*  
 25 *California, jointly,* That the Legislature urges the United States  
 26 Trade Representative to do all of the following:

27 (a) After appropriate consultation with the states, pursue the  
 28 exchange of an interpretive note with the Government of  
 29 Australia, that clarifies that the state and local administration of  
 30 Medicaid programs—~~and~~, pharmaceutical assistance programs  
 31 under the federal Medicare Modernization Act, *and other state*  
 32 *and local health care programs receiving federal funding* are not  
 33 included in the definition of a “federal health care program”  
 34 under Annex 2-C of the Australia-United States Free Trade  
 35 Agreement.

36 (b) Discuss with the Legislature and California state health  
 37 care officials what health care programs are covered by the  
 38 Annex 2-C definition of “federal health care program” as found  
 39 in Annex 2-C of the Australia-United States Free Trade  
 40 Agreement.

1 (c) Carve out and protect state administration of health care  
2 programs, including the purchase of prescription drugs, in all  
3 current and future negotiations of trade agreements.

4 (d) Respond to states' requests for support in building local  
5 capacity to understand the implications of international trade  
6 agreements upon health care programs.

7 (e) In order to support coherent policy at all levels of  
8 government, consult with states on the implications for state laws  
9 and lawmaking authority before committing to trade provisions  
10 that directly affect their authority; and be it further

11 *Resolved*, That the Secretary of the Senate transmit copies of  
12 this resolution to the President and Vice President of the United  
13 States, to the United States Trade Representative, to the Speaker  
14 of the House of Representatives, to each Senator and  
15 Representative from California in the Congress of the United  
16 States, to the Governor, and to the Attorney General.

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