

AMENDED IN ASSEMBLY AUGUST 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**Assembly Joint Resolution**

**No. 50**

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**Introduced by Assembly Member Bloom**  
*(Coauthors: Assembly Members Ammiano, Eggman, and Ting)*  
*(Coauthor: Senator Leno)*

August 5, 2014

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Assembly Joint Resolution No. 50—Relative to blood donation.

LEGISLATIVE COUNSEL'S DIGEST

AJR 50, as amended, Bloom. Blood donation.

This measure would request that the President of the United States encourage, and that the Secretary of the United States Department of Health and Human Services adopt, policies that repeal the current donor suitability policies of the federal Food and Drug Administration regarding the donation of blood by men who have had sex with another man.

Fiscal committee: no.

1     WHEREAS, California law prohibits discrimination against  
2 individuals on the basis of actual or perceived sex, sexual  
3 orientation, gender identity, and gender-related appearance and  
4 behavior; and  
5     WHEREAS, The current federal Food and Drug Administration  
6 (FDA) donor deferral policy, first established in 1983 when the  
7 FDA had no way of testing blood or plasma for HIV, effectively  
8 prohibits blood donation by men who have had sex with another  
9 man even one time since 1977. The FDA essentially classifies all  
10 sexually active gay and bisexual men in the highest-risk blood

1 donor category, the same category as IV drug users and people  
2 who have spent more than five years since 1980 in a country that  
3 has mad cow disease. Even with a clean bill of health, a gay man  
4 is considered more of a threat to the blood supply than a straight  
5 man who was treated for chlamydia, syphilis, gonorrhea, venereal  
6 warts, and genital herpes within the past year. In 40 states, a man  
7 can even give blood immediately following a tattoo or 12 months  
8 after having sex with a prostitute; and

9 WHEREAS, The American Red Cross (ARC) has joined the  
10 American Association for Blood Banks (AABB) and America's  
11 Blood Centers (ABC) in asking for a reevaluation of current donor  
12 donation deferral policies; and

13 WHEREAS, The American Medical Association (AMA) voted  
14 on June 18, 2013, to oppose the decades long ban by the FDA  
15 finding it is discriminatory and not based on sound science, and  
16 recommends that each donor be evaluated on an individual basis  
17 and not based on their sexual orientation alone; and

18 WHEREAS, In May 2013, the nonprofit Canadian Blood  
19 Services, which manages that nation's blood supply, announced  
20 the repeal of the policy banning men who have had sex with  
21 another man from donating blood and the replacement of that ban  
22 with a deferral policy; and

23 ~~WHEREAS, In February 2010, Sweden reduced its men who~~  
24 ~~have sex with another man deferral from a permanent ban to a~~  
25 ~~12-month deferral period, joining the nations of Argentina,~~  
26 ~~Australia, Brazil, Hungary, Japan, and the United Kingdom. The~~  
27 ~~nations of Argentina, Australia, Brazil, Hungary, Japan, Sweden,~~  
28 ~~and the United Kingdom, among others, have adopted blood donor~~  
29 ~~policies providing a 12-month deferral period for men who have~~  
30 ~~had sex with another man. In addition, France, Spain, Italy, Russia,~~  
31 ~~and Portugal have adopted blood donor policies that measure risk~~  
32 ~~against a set of behaviors, sexual and otherwise, rather than the~~  
33 ~~sex of a person's sexual partner or partners; and~~

34 WHEREAS, The AABB, ABC, and ARC, on March 9, 2006,  
35 at the Blood Products Advisory Committee of the FDA, at a  
36 workshop titled "Behavior-Based Blood Donors Deferrals in the  
37 Era of Nucleic Acid Testing (NAT)," issued a joint statement  
38 affirming that they believe that the current lifetime deferral for  
39 men who have had sex with other men is medically and  
40 scientifically unwarranted and recommended that the deferral

1 criteria be modified and made comparable with criteria for other  
2 groups at increased risk for sexual transmission of  
3 transfusion-transmitted infections; and

4 WHEREAS, It does not appear rational to broadly differentiate  
5 sexual transmission via responsible male-to-male sexual activity  
6 from transmission via responsible heterosexual activity on scientific  
7 grounds. To many, this differentiation is unfair, creates stigma  
8 without any justifiable public health imperative, and results in  
9 negative attitudes to blood donor eligibility criteria and blood  
10 collection facilities; and

11 WHEREAS, Blood banks in the United States routinely operate  
12 with a short blood supply. After significant disasters or national  
13 emergencies, the AABB, ABC, and ARC have each reported  
14 regions operating with less than two days supply of blood; and

15 WHEREAS, Many men who have sex with men are healthy, do  
16 not present a risk of introducing a transfusion transmissible  
17 infection such as HIV into the nation's blood supply, and wish to  
18 be donors without compromising the safety or reliability of the  
19 supply. These men wish to join their neighbors in expression of a  
20 common altruistic form of civic engagement; and

21 WHEREAS, On July 11, 2014, a nationwide blood drive ~~will~~  
22 ~~take place~~ *was held* to bring attention to the current FDA deferral  
23 policy and help save lives; and

24 WHEREAS, Students and administrators have begun protesting  
25 the FDA policy, including one notable example from 2008 when  
26 San Jose State University president Don Kassing banned blood  
27 drives from the school's campus, writing in a memo to the campus  
28 community that the "FDA's lifetime blood donor deferral affecting  
29 gay men violates our nondiscrimination policy"; and

30 WHEREAS, The AABB, ABC, AMA, ~~HIVMA~~, and ~~ARC~~ ARC,  
31 *and the HIV Medicine Association (HIVMA)* acknowledge the  
32 concern that a hasty relaxation of deferral criteria may add  
33 uncertainty to protection of the blood supply unless reliable data  
34 is available to avoid that result. The blood collectors are willing  
35 to assist in collecting data regarding the actual impact of changes  
36 in the deferral, in order to allow for informed decisionmaking, and  
37 for the development of additional, appropriate interventions to  
38 ameliorate the impact; and

39 WHEREAS, Technological advances such as individual NAT,  
40 pathogen inactivation, or added means of screening hold promise

1 to substantially reduce the risk that transfusion transmissible  
2 infections from all donors, including men who have had sex with  
3 men, could be introduced into the blood supply, and federal  
4 advisory committees have encouraged the FDA to develop these  
5 technologies further. Within seven to 10 days, it can be said with  
6 99.9% accuracy whether or not a blood sample is HIV-positive  
7 and the chance of an HIV-positive blood sample testing negative  
8 after the seven to 10-day window is about one in two million; and

9 WHEREAS, If the current men who have sex with another man  
10 ban on donation were completely lifted, the Williams Institute  
11 estimates that an additional 130,150 men would likely donate  
12 219,200 additional pints of blood each year. That analysis also  
13 suggests that lifting the ban could increase the total annual United  
14 States blood supply by 0.6% to 1.4%, which may seem modest,  
15 but would occur in an environment where blood supply shortages  
16 are common; and

17 WHEREAS, In summary, the AABB, ABC, AMA, HIVMA,  
18 and ARC believe that the deferral period for men who have had  
19 sex with other men should be modified and that this consideration  
20 should also be extended to donors of human cells, tissues, and  
21 cellular and tissue-based products; and

22 WHEREAS, FDA guidelines followed by blood banks  
23 throughout the United States inadvertently create unjustified stigma  
24 directed towards gay, bisexual, transgender, and heterosexual males  
25 on the basis that they have had sex with another male since 1977;  
26 and

27 WHEREAS, The AABB, ABC, and ARC are required to follow  
28 the FDA guidelines, which consequently are in conflict with state  
29 nondiscrimination policies; now, therefore, be it

30 *Resolved by the Assembly and the Senate of the State of*  
31 *California, jointly,* That the California State Legislature calls upon  
32 the President of the United States to encourage, and the Secretary  
33 of the United States Department of Health and Human Services  
34 to adopt, policies that repeal the current donor suitability policies  
35 of the FDA regarding blood donation by men who have had sex  
36 with another man and, instead, direct the FDA to develop  
37 science-based policies; and be it further

38 *Resolved,* That the Chief Clerk of the Assembly transmit copies  
39 of this resolution to the President and Vice President of the United  
40 States, to the Secretary of the United States Department of Health

1 and Human Services, to the Speaker of the House of  
2 Representatives, to the Majority Leader of the Senate, and to each  
3 Senator and Representative from California in the Congress of the  
4 United States.

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