

AMENDED IN ASSEMBLY AUGUST 21, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**Assembly Joint Resolution**

**No. 50**

**Introduced by Assembly Member Bloom**

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(Coauthor: Senator Leno)

August 5, 2014

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

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

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

28 WHEREAS, In May 2013, the nonprofit Canadian Blood  
29 Services, which manages that nation's blood supply, announced  
30 the repeal of the policy banning men who have had sex with  
31 another man from donating blood and the replacement of that ban  
32 with a deferral policy; and

33 WHEREAS, The nations of Argentina, Australia, Brazil,  
34 Hungary, Japan, Sweden, and the United Kingdom, among others,  
35 have adopted blood donor policies providing a 12-month deferral  
36 period for men who have had sex with another man. In addition,  
37 France, Spain, Italy, Russia, and Portugal have adopted blood  
38 donor policies that measure risk against a set of behaviors, sexual  
39 and otherwise, rather than the sex of a person's sexual partner or  
40 partners; and

1 WHEREAS, The AABB, ABC, and ARC, on March 9, 2006,  
2 at the Blood Products Advisory Committee of the FDA, at a  
3 workshop titled “Behavior-Based Blood Donors Deferrals in the  
4 Era of Nucleic Acid Testing (NAT),” issued a joint statement  
5 affirming that they believe that the current lifetime deferral for  
6 men who have had sex with other men is medically and  
7 scientifically unwarranted and recommended that the deferral  
8 criteria be modified and made comparable with criteria for other  
9 groups at increased risk for sexual transmission of  
10 transfusion-transmitted infections; and

11 WHEREAS, It does not appear rational to broadly differentiate  
12 sexual transmission via responsible male-to-male sexual activity  
13 from transmission via responsible heterosexual activity on scientific  
14 grounds. To many, this differentiation is unfair, creates stigma  
15 without any justifiable public health imperative, and results in  
16 negative attitudes to blood donor eligibility criteria and blood  
17 collection facilities; and

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

22 WHEREAS, Many men who have sex with men are healthy, do  
23 not present a risk of introducing a transfusion transmissible  
24 infection such as HIV into the nation’s blood supply, and wish to  
25 be donors without compromising the safety or reliability of the  
26 supply. These men wish to join their neighbors in expression of a  
27 common altruistic form of civic engagement; and

28 WHEREAS, On July 11, 2014, a nationwide blood drive was  
29 held to bring attention to the current FDA deferral policy and help  
30 save lives; and

31 WHEREAS, Students and administrators have begun protesting  
32 the FDA policy, including one notable example from 2008 when  
33 San Jose State University president Don Kassing banned blood  
34 drives from the school’s campus, writing in a memo to the campus  
35 community that the “FDA’s lifetime blood donor deferral affecting  
36 gay men violates our nondiscrimination policy”; and

37 WHEREAS, The AABB, ABC, AMA, ARC, and the HIV  
38 Medicine Association (HIVMA) acknowledge the concern that a  
39 hasty relaxation of deferral criteria may add uncertainty to  
40 protection of the blood supply unless reliable data is available to

1 avoid that result. The blood collectors are willing to assist in  
2 collecting data regarding the actual impact of changes in the  
3 deferral, in order to allow for informed decisionmaking, and for  
4 the development of additional, appropriate interventions to  
5 ameliorate the impact; and

6 WHEREAS, Technological advances such as individual NAT,  
7 pathogen inactivation, or added means of screening hold promise  
8 to substantially reduce the risk that transfusion transmissible  
9 infections from all donors, including men who have had sex with  
10 men, could be introduced into the blood supply, and federal  
11 advisory committees have encouraged the FDA to develop these  
12 technologies further. Within seven to 10 days, it can be said with  
13 99.9% accuracy whether or not a blood sample is HIV-positive  
14 and the chance of an HIV-positive blood sample testing negative  
15 after the seven to 10-day window is about one in two million; and

16 WHEREAS, If the current men who have sex with another man  
17 ban on donation were completely lifted, the Williams Institute  
18 estimates that an additional 130,150 men would likely donate  
19 219,200 additional pints of blood each year. That analysis also  
20 suggests that lifting the ban could increase the total annual United  
21 States blood supply by 0.6% to 1.4%, which may seem modest,  
22 but would occur in an environment where blood supply shortages  
23 are common; and

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

29 WHEREAS, FDA guidelines followed by blood banks  
30 throughout the United States inadvertently create unjustified stigma  
31 directed towards gay, bisexual, transgender, and heterosexual males  
32 on the basis that they have had sex with another male since 1977;  
33 and

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

37 *Resolved by the Assembly and the Senate of the State of*  
38 *California, jointly,* That the California State Legislature calls upon  
39 the President of the United States to encourage, and the Secretary  
40 of the United States Department of Health and Human Services

1 to adopt, policies that repeal the current donor suitability policies  
2 of the FDA regarding blood donation by men who have had sex  
3 with another man and, instead, direct the FDA to develop  
4 science-based policies; and be it further

5 *Resolved*, That the Chief Clerk of the Assembly transmit copies  
6 of this resolution to the President and Vice President of the United  
7 States, to the Secretary of the United States Department of Health  
8 and Human Services, to the Speaker of the House of  
9 Representatives, to the Majority Leader of the Senate, and to each  
10 Senator and Representative from California in the Congress of the  
11 United States.

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