

**Assembly Joint Resolution**

**No. 16**

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**Introduced by Assembly Members Eduardo Garcia, Bloom, and  
Low  
(Coauthors: Assembly Members Atkins, Chiu, Eggman, and  
Cristina Garcia)**

May 13, 2015

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Assembly Joint Resolution No. 16—Relative to blood donations.

LEGISLATIVE COUNSEL'S DIGEST

AJR 16, as introduced, Eduardo Garcia. Blood donations.

This measure would call upon the President of the United States to encourage the Secretary of the United States Department of Health and Human Services to adopt policies to repeal the current and upcoming discriminatory donor suitability policies of the United States Food and Drug Administration (FDA) regarding blood donations by men who have had sex with another man and, instead, direct the FDA to develop science-based policies such as criteria based on risky sexual behavior in lieu of sexual orientation.

Fiscal committee: no.

- 1 WHEREAS, Since 1983, the United States Food and Drug
- 2 Administration (FDA), an agency under the United States
- 3 Department of Health and Human Services (HHS), has prohibited
- 4 the donation of blood by any man who has had sex with another
- 5 man (MSM) at any time since 1977; and
- 6 WHEREAS, In December 2014, based on recommendations
- 7 from the HHS Advisory Committee on Blood and Tissue Safety
- 8 and Availability, the FDA announced its intent to promulgate

1 regulations to allow an MSM to donate blood only if he has not  
2 been sexually active for the past 12 months. The HHS should be  
3 commended for this initial step towards equality, but a double  
4 standard still exists by treating gay and bisexual men differently  
5 from heterosexual men; and

6 WHEREAS, California law prohibits discrimination against  
7 individuals on the basis of actual or perceived sex, sexual  
8 orientation, gender identity, and gender-related appearance and  
9 behavior; and

10 WHEREAS, France, Spain, Italy, Russia, Mexico, and Portugal  
11 have adopted blood donor policies that measure risk against a set  
12 of behaviors, sexual and otherwise, rather than the sex of a person's  
13 sexual partner or partners; and

14 WHEREAS, The FDA does not allow gay and bisexual men in  
15 committed relationships to donate blood because, while one partner  
16 may be monogamous, that individual cannot guarantee that the  
17 other partner is monogamous. The FDA does not apply this same  
18 logic to heterosexual relationships, which in effect discriminates  
19 against gay and bisexual men; and

20 WHEREAS, A 12-month deferral policy for gay and bisexual  
21 men to donate blood is overly stringent given the scientific  
22 evidence, advanced testing methods, and the safety and quality  
23 control measures in place within the different FDA-qualified blood  
24 donating centers. The technology can identify within 7 to 10 days  
25 with 99.9 percent accuracy whether or not a blood sample is  
26 HIV-positive, and the chance of the blood test being inaccurate  
27 within the 10-day window is about 1 in 2,000,000; and

28 WHEREAS, The General Social Survey conducted by NORC  
29 at the University of Chicago estimates that 8.5 percent of men in  
30 the United States have had at least one male sexual partner since  
31 18 years of age, 4.1 percent of men report at least one male sex  
32 partner in the last 5 years, and 3.8 percent report a male sex partner  
33 in the last 12 months; and

34 WHEREAS, An estimated 45.4 percent of men (54 million) in  
35 the United States are eligible to donate blood, but only 8.7 percent  
36 of eligible men actually do. There are 15.7 million donations of  
37 blood per year made by 9.2 million donors, yielding approximately  
38 1.7 donations per donor; and

39 WHEREAS, The Williams Institute of the University of  
40 California at Los Angeles School of Law estimates that, based on

1 the population of eligible and likely donors among the MSM  
2 community, lifting the federal lifetime deferral policy on blood  
3 donation by an MSM would result in 4.2 million newly eligible  
4 male donors, of which 360,600 would likely donate, generating  
5 615,300 additional pints of blood. Applying national estimates to  
6 the California population, the Institute further estimates that lifting  
7 the ban on MSM blood donations would add an additional 510,000  
8 eligible men to the current blood donor pool, of which 43,917  
9 would likely donate, resulting in an additional 74,945 donated  
10 pints in California; now, therefore, be it

11 *Resolved by the Assembly and the Senate of the State of*  
12 *California, jointly*, That the California State Legislature calls upon  
13 the President of the United States to encourage the Secretary of  
14 the United States Department of Health and Human Services to  
15 adopt policies to repeal the current and upcoming discriminatory  
16 donor suitability policies of the United States Food and Drug  
17 Administration (FDA) regarding blood donations by men who  
18 have had sex with another man and, instead, direct the FDA to  
19 develop science-based policies such as criteria based on risky  
20 sexual behavior in lieu of sexual orientation; and be it further

21 *Resolved*, That the Chief Clerk of the Assembly transmit copies  
22 of this resolution to the President and Vice President of the United  
23 States, to the Secretary of the United States Department of Health  
24 and Human Services, to the Speaker of the House of  
25 Representatives, to the Majority Leader of the Senate, and to each  
26 Senator and Representative from California in the Congress of the  
27 United States.

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