

**Introduced by Senator De León
(Coauthor: Senator Leno)**

August 3, 2016

Senate Joint Resolution No. 26—Relative to blood donations.

LEGISLATIVE COUNSEL'S DIGEST

SJR 26, as introduced, De León. 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 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 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), had 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 2015, based on recommendations
7 from the HHS Advisory Committee on Blood and Tissue Safety
8 and Availability, the FDA promulgated revised regulations to allow
9 an MSM to donate blood only if he has not been sexually active
10 for the past 12 months. Despite these recent steps toward a policy
11 change, a double standard would still exist under the policy as it

1 is proposed to be revised because it would still treat gay and
2 bisexual men differently from heterosexual men; and

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

7 WHEREAS, Argentina, Italy, Mexico, Poland, Portugal, Russia,
8 South Africa, South Korea, and Spain have adopted blood donor
9 policies that measure risk against a set of behaviors, sexual and
10 otherwise, rather than the sex of a person's sexual partner or
11 partners; and

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

18 WHEREAS, A 12-month deferral policy for gay and bisexual
19 men to donate blood is overly stringent given the scientific
20 evidence, advanced testing methods, and the safety and quality
21 control measures in place within the different FDA-qualified blood
22 donating centers; and

23 WHEREAS, The American Public Health Association has stated
24 that no specific scientific rationale is provided to justify the
25 12-month deferral policy. The technology can identify within 7 to
26 10 days with 99.9 percent accuracy whether or not a blood sample
27 is HIV-positive, and the chance of the blood test being inaccurate
28 within the 10-day window is about 1 in 2,000,000; and

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

35 WHEREAS, An estimated 45.4 percent of men (54 million) in
36 the United States are eligible to donate blood, but only 8.7 percent
37 of eligible men actually do. There are 15.7 million donations of
38 blood per year made by 9.2 million donors, yielding approximately
39 1.7 donations per donor; and

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

13 WHEREAS, One hundred fifteen members of the Congress of
14 the United States sent a letter to the FDA Commissioner, Dr.
15 Robert M. Califf, MD, urging him to finally put an end to this
16 outdated blood donation policy and update it to reflect science,
17 not fear; now, therefore, be it

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

28 *Resolved*, That the Secretary of the Senate transmit copies of
29 this resolution to the President and Vice President of the United
30 States, to the Secretary of the United States Department of Health
31 and Human Services, to the Speaker of the House of
32 Representatives, to the Majority Leader of the Senate, and to each
33 Senator and Representative from California in the Congress of the
34 United States.

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