

## Senate Joint Resolution No. 26

### RESOLUTION CHAPTER 189

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

[Filed with Secretary of State September 9, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

SJR 26, 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.

WHEREAS, Since 1983, the United States Food and Drug Administration (FDA), an agency under the United States Department of Health and Human Services (HHS), had prohibited the donation of blood by any man who has had sex with another man (MSM) at any time since 1977; and

WHEREAS, In December 2015, based on recommendations from the HHS Advisory Committee on Blood and Tissue Safety and Availability, the FDA promulgated revised regulations to allow an MSM to donate blood only if he has not been sexually active for the past 12 months. Despite these recent steps toward a policy change, a double standard still exists under the policy as revised because it still treats gay and bisexual men differently from heterosexual men; and

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

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

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

WHEREAS, The FDA is in the process of again reevaluating and considering updating its blood donor deferral policies as new scientific information becomes available, including the feasibility of moving from

the existing time-based deferrals related to risk behaviors to alternate deferral options, such as the use of individual risk assessments; and

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

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

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

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

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

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

*Resolved by the Senate and the Assembly of the State of California, jointly,* That the California State Legislature calls 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; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the United States Department of Health and Human Services, to the Speaker of the House of Representatives, to the Majority Leader of

the Senate, and to each Senator and Representative from California in the Congress of the United States.

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