
**Introduced by Senator Hernandez
(Coauthors: Senators Hall and Leno)**

August 29, 2016

Senate Joint Resolution No. 29—Relative to EpiPen.

LEGISLATIVE COUNSEL'S DIGEST

SJR 29, as introduced, Hernandez. EpiPen: pricing.

This measure would urge the United States Food and Drug Administration to reconsider its denial of approval for generic alternatives to the epinephrine auto-injector EpiPen, would urge the Congress of the United States to investigate the impact that Mylan NV's monopoly has had on price increases for EpiPen, and would urge the Congress and the President of the United States to take action to limit the unrestrained ability of drug manufacturers to increase prices based on what the market can bear.

Fiscal committee: no.

1 WHEREAS, Millions benefit from life-saving drugs and devices,
2 including Americans with allergies that can be treated by
3 epinephrine; and
4 WHEREAS, Last year, doctors wrote 3.6 million prescriptions
5 for EpiPen, which stops allergic reactions by quickly and safely
6 injecting epinephrine; and
7 WHEREAS, In 2007 Mylan NV purchased the rights to EpiPen
8 and immediately began raising its price. In 2008 and 2009, Mylan
9 raised the price by 5 percent, and at the end of 2009 it raised the
10 price by another 19 percent. From 2010 to 2013, Mylan imposed
11 a series of 10-percent price hikes. And from the fourth quarter of

1 2013 to the second quarter of 2016, Mylan raised EpiPen prices
2 15 percent every other quarter; and

3 WHEREAS, A pack of two EpiPen devices now has a list price
4 of over \$600, an increase of 548 percent since Mylan began selling
5 the drug, according to Truven Health Analytics; and

6 WHEREAS, The formula of EpiPen did not change, and it is
7 no more effective in protecting against allergic reactions in 2016
8 than it was in 2007; and

9 WHEREAS, During the same time, Mylan began an aggressive
10 marketing and lobbying effort to increase demand for EpiPen,
11 which included the passage of federal and state legislation. The
12 United States Congress passed the School Access to Emergency
13 Epinephrine Act in 2013 to provide an incentive to states to boost
14 the stockpile of epinephrine at schools. A number of states,
15 including California, passed laws requiring public schools to have
16 epinephrine. In 2010, the United States Food and Drug
17 Administration (FDA) changed its recommendations so that two
18 EpiPen devices be sold in a package instead of one and that they
19 be prescribed for at-risk patients, not just those with confirmed
20 allergies; and

21 WHEREAS, The rising cost of EpiPen has implications for
22 taxpayers. Over half of California's children are insured through
23 Medi-Cal, therefore the taxpayers are paying a large share of the
24 cost of this medication; and

25 WHEREAS, Mylan has an effective monopoly that it is using
26 to maximize profit because there is no equivalent generic
27 competitor; and

28 WHEREAS, Patients who have to pay retail prices are being
29 forced to buy EpiPen abroad, where it is cheaper, and are resorting
30 to other devices that deliver epinephrine, including do-it-yourself
31 syringes; and

32 WHEREAS, Even some ambulance providers in California have
33 stopped the use of EpiPen to treat allergic shock and instead are
34 drawing from a vial and injecting epinephrine by syringe. First
35 responders in Seattle have developed such a kit and have sold them
36 to public health agencies in five other states. There is a
37 demonstration project in New York called "Check and Inject New
38 York" that trains first responders to use syringe epinephrine kits
39 in place of EpiPen to save money; and

1 WHEREAS, After recent widespread criticism, Mylan said it
2 would expand access and increase benefits to programs that it uses
3 to help consumers pay less, but those changes do not alter the
4 prices that insurers and employers pay. Those institutions will still
5 face the brunt of the impact from the price hikes; and

6 WHEREAS, Offering co-payment assistance and free product
7 to consumers is part of the standard playbook for manufacturers
8 of expensive drugs. Efforts by drug makers to shield consumers
9 from the out-of-pocket costs associated with the rapidly increasing
10 cost of their medications ignores the fact that insurance companies
11 bear the brunt of these unreasonable price increases, which results
12 in higher premiums for all consumers; now, therefore, be it

13 *Resolved by the Senate and the Assembly of the State of*
14 *California, jointly*, That the Legislature declares unnecessary and
15 unexplained increases in pharmaceutical pricing is a harm to our
16 health care system that will no longer be tolerated because the
17 system cannot sustain it; and be it further

18 *Resolved*, That the Legislature urges the United States Food and
19 Drug Administration to reconsider its denial of approval for generic
20 alternatives to EpiPen; and be it further

21 *Resolved*, That the Legislature urges the Congress of the United
22 States to investigate the impact that Mylan’s monopoly has had
23 on the price hikes for EpiPen; and be it further

24 *Resolved*, That the Legislature urges the Congress and President
25 of the United States to take action to limit the unrestrained ability
26 of drug manufacturers to increase prices based only on what the
27 market can bear rather than on providing a fair return on
28 investment; and be it further

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

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