

JAN 27 2021

A BILL FOR AN ACT

RELATING TO BURIALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there has been a
2 recent increase of interest in traditional Hawaiian practices
3 for burials amongst Native Hawaiians and non-Hawaiians. The
4 cultural significance of iwi kūpuna (ancestral bones) is deeply
5 rooted in Native Hawaiian oral traditions, language, and
6 culture. Native Hawaiian burial traditions acknowledge the
7 natural cycles of life and death and kūpuna offer spiritual
8 sustenance to present generations. Iwi are vital to the
9 perpetuation of living Native Hawaiians, as they are the lasting
10 embodiment of ancestors and a continuous genealogical link from
11 the past to present and future generations.

12 The legislature finds that a recognized traditional
13 Hawaiian practice for treatment of human remains involves
14 reducing the remains to its skeletal remains and interring the
15 iwi in a kapa or lauhala container. A traditional Hawaiian
16 burial utilizes modern technology to effect the removal of the
17 flesh and fluids from a human corpse in a manner leaving the



1 bones intact and unharmed. The traditional Hawaiian treatment
2 of human remains is safe, feasible, and cost effective using
3 modern flame crematories or other similar operations.

4 Modern treatment of corpses often involves chemicals, such
5 as embalming fluids which can be harmful to the environment when
6 buried, as the chemicals will eventually be released into the
7 soil and aquifers. Prioritizing traditional Hawaiian burial
8 techniques such as alkaline hydrolysis or water cremation is a
9 cleaner, gentler, and more environmentally friendly process than
10 modern treatment of human remains. Further, a traditional
11 Hawaiian burial is more cost effective than modern burial
12 techniques. Smaller burial plots are required and the cost of
13 caskets are avoided. Thus, the decrease in space required for a
14 burial plot will result in an increase in the carrying
15 capacities for cemeteries.

16 Currently, the department of health does not have rules or
17 policies addressing traditional Hawaiian burial practices. The
18 adoption of rules and policies to address traditional Hawaiian
19 burial practices would encourage and promote the use of those
20 practices. Section 11-22, Hawaii Administrative Rules,
21 regulates the embalming, transportation, and burial of human



1 remains, and includes requirements relating to the encasement
2 and interment of the deceased. However, these regulations do
3 not specifically address or expressly accommodate the partial
4 cremation and burial of human remains, as is consistent with
5 Hawaiian traditional practices.

6 The purpose of this Act is to allow the department of
7 health to accommodate traditional Hawaiian burial practices,
8 such as alkaline hydrolysis or water cremation to promote the
9 use of these practices.

10 SECTION 2. Section 531B-2, Hawaii Revised Statutes, is
11 amended by adding eight new definitions to be appropriately
12 inserted and to read as follows:

13 "Alkaline hydrolysis" or "hydrolysis" or "water cremation"
14 means the reduction of human remains to bone fragments and
15 essential elements in a licensed hydrolysis facility using heat,
16 pressure, water, and base chemical agents.

17 "Cremated remains", "cremains", or "ashes" means all human
18 remains recovered after the completion of the cremation, which
19 may possibly include the residue of any foreign matter,
20 including but not limited to casket material, bridgework, or
21 eyeglasses that were cremated with the human remains.



1 "Cremation" means the irreversible process of reducing
2 human remains to bone fragments (skeletal remains) through heat
3 and evaporation.

4 "Cremation equipment" means the actual equipment,
5 machinery, or retort unit specifically designed and built for
6 the purposes of cremating human remains. "Cremation equipment"
7 includes but is not limited to prebuilt and prepackaged
8 cremation units or cremation equipment that is erected on site
9 of the crematory.

10 "Hydrolysis equipment" means the equipment, machinery, or
11 unit specifically designed and built for the purposes of
12 processing human remains. "Hydrolysis equipment" includes but
13 is not limited to prebuilt and prepackaged hydrolysis units or
14 equipment that is erected on site of the facility.

15 "Hydrolysis facility" means a structure, room, or other
16 space in a building or structure containing hydrolysis
17 equipment, to be used for alkaline hydrolysis.

18 "Natural organic reduction" means the contained,
19 accelerated conversion of human remains to soil.



1 "Natural organic reduction facility" means a structure,
2 room, or other space in a building or real property where
3 natural organic reduction of a human body occurs."

4 SECTION 3. Section 327-32, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§327-32 Administration; duties of health officers.** Every
7 head officer of a hospital, nursing home, correctional facility,
8 funeral parlor, or mortuary and every county medical examiner or
9 coroner and every state or county officer, and every other
10 person who has possession, charge, or control of any unclaimed
11 dead human body that may [~~be-cremated~~] undergo cremation, water
12 cremation, alkaline hydrolysis, or natural organic reduction at
13 public expense pursuant to section 346-15 shall:

14 (1) Exercise due diligence to notify the relatives,
15 friends of the decedent, any representative of a
16 fraternal society of which the deceased was a member,
17 and any legally responsible party; and

18 (2) Submit in writing to the department of human services
19 a description of the efforts used in making the
20 determination that the dead human body is unclaimed in



1 accordance with section 346-15, if payment for
2 cremation is sought.

3 Nothing in this section shall be construed to affect the
4 requirements relating to the filing of a certificate of death
5 with the department of health pursuant to chapter 338."

6 SECTION 4. Section 327-36, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§327-36 Final disposition of anatomical gifts.** A person
9 or procurement organization that holds a dead human body as a
10 result of an anatomical gift shall, when the body is deemed of
11 no further value for purposes of transplantation, therapy,
12 research, or education, be responsible for the final disposition
13 of that dead human body and all of its parts, except those parts
14 used for transplantation. The person or procurement
15 organization shall dispose of the remains by cremation, water
16 cremation, alkaline hydrolysis, or natural organic reduction,
17 except as otherwise provided in section 327-14 or as directed in
18 a document of gift, subject to any required disposition
19 permits."

20 SECTION 5. Section 346-15, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) All unclaimed dead human bodies shall [~~be cremated.~~]
2 undergo cremation, water cremation, alkaline hydrolysis, or
3 natural organic reduction. The department may bear the cost of
4 the mortuary [~~and~~], crematory, water cremation, alkaline
5 hydrolysis, or other natural organic reduction services for
6 unclaimed dead human bodies furnished by any licensed provider
7 of mortuary or crematory services. Payments for mortuary and
8 crematory services shall be made to the extent of the cost, or
9 in the sum of \$800 in total, whichever is less, for each
10 unclaimed dead human body. Individuals who have possession,
11 charge, or control of any unclaimed dead human body to be
12 cremated at public expense shall have sixty days from the date
13 of the deceased's death to submit in writing to the department
14 its determination that the dead human body is unclaimed and its
15 application for payment for cremation. The county medical
16 examiners or coroners shall have no time limitation by which to
17 submit their written determination that the dead human body is
18 unclaimed and their application for payment for cremation."

19 SECTION 6. Section 531B-6, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "[§] 531B-6[§] Forfeiture of right to direct disposition.

2 A person entitled under law to the right of disposition shall
3 forfeit that right, and the right is passed on to the next
4 person in the order of priority as listed in section 531B-4,
5 under the following circumstances:

6 (1) The person is charged with murder or manslaughter in
7 connection with the decedent's death, and the charges
8 are known to the funeral director or manager of the
9 funeral establishment, cemetery, mortuary, [ex]
10 crematory[+], hydrolysis facility, or natural organic
11 reduction facility; provided that if the charges
12 against the person are dismissed, or if the person is
13 acquitted of the charges, the right of disposition is
14 returned to that person, unless the dismissal or
15 acquittal occurs after the final disposition has been
16 completed;

17 (2) The person does not exercise the person's right of
18 disposition within five days of notification of the
19 decedent's death or within seven days of the
20 decedent's death, whichever is earlier;



1 (3) The person and the decedent are spouses, civil union
2 partners, or reciprocal beneficiaries, and at the time
3 of the decedent's death, proceedings for annulment,
4 divorce, or separation had been initiated or a
5 declaration for termination of the reciprocal
6 beneficiary relationship had been filed; or

7 (4) The probate court pursuant to section 531B-7
8 determines that the person entitled to the right of
9 disposition and the decedent were estranged at the
10 time of death."

11 SECTION 7. Section 531B-7, Hawaii Revised Statutes, is
12 amended by amending subsections (b) and (c) to read as follows:

13 "(b) The following provisions shall apply to the court's
14 determination under this section:

15 (1) If two or more persons with the same priority class
16 hold the right of disposition and cannot agree by
17 majority vote regarding the disposition of the
18 decedent's remains, or there are any persons who claim
19 to have priority over any other person, any of these
20 persons or a funeral establishment, cemetery,
21 mortuary, ~~[or]~~ crematory, hydrolysis facility, or



1 natural organic reduction facility with custody of the
2 remains may file a petition asking the probate court
3 to make a determination in the matter; and

4 (2) In making a determination in a case where there are
5 two or more persons with the same priority class who
6 cannot agree by majority vote, the probate court may
7 consider the following:

8 (A) The reasonableness and practicality of the
9 proposed funeral arrangements and disposition;

10 (B) The degree of the personal relationship between
11 the decedent and each of the persons claiming the
12 right of disposition;

13 (C) The desires of the person or persons who are
14 ready, able, and willing to pay the cost of the
15 funeral arrangements and disposition;

16 (D) The convenience and needs of other families and
17 friends wishing to pay respects;

18 (E) The desires of the decedent; and

19 (F) The degree to which the funeral arrangements
20 would allow maximum participation by all wishing
21 to pay respect.



1 (c) In the event of a dispute regarding the right of
2 disposition, a funeral establishment, cemetery, mortuary, ~~[or]~~
3 crematory, hydrolysis facility, or natural organic reduction
4 facility shall not be liable for refusing to accept the remains,
5 to inter or otherwise dispose of the remains of the decedent, or
6 complete the arrangements for the final disposition of the
7 remains until it receives a court order or other written
8 agreement signed by the parties in the disagreement that the
9 dispute has been resolved or settled.

10 If the funeral establishment, cemetery, mortuary, ~~[or]~~
11 crematory, hydrolysis facility, or natural organic reduction
12 facility retains the remains for final disposition while the
13 parties are in disagreement, it may embalm or refrigerate and
14 shelter the body, or both, while awaiting the final decision of
15 the probate court and may add the cost of embalming or
16 refrigeration and sheltering to the cost of final disposition.

17 If a funeral establishment, cemetery, mortuary, ~~[or]~~
18 crematory, hydrolysis facility, or natural organic reduction
19 facility brings an action under this section, it may add the
20 legal fees and court costs associated with a petition under this
21 section to the cost of final disposition.



1 This section shall not be construed to require or impose a
2 duty upon a funeral establishment, cemetery, mortuary, [~~or~~]
3 crematory, hydrolysis facility, or natural organic reduction
4 facility to bring an action under this section.

5 A funeral establishment, cemetery, mortuary, [~~or~~]
6 crematory, hydrolysis facility, or natural organic reduction
7 facility and its officers, directors, managers, members,
8 partners, or employees may not be held criminally or civilly
9 liable for choosing not to bring an action under this section."

10 SECTION 8. Section 531B-8, Hawaii Revised Statutes, is
11 amended by amending subsections (b) and (c) to read as follows:

12 "(b) A funeral establishment, cemetery, mortuary, [~~or~~]
13 crematory, hydrolysis facility, or natural organic reduction
14 facility shall have the right to rely on the funeral service
15 agreement, cremation authorization form, or any other
16 authorization form, including the identification of the
17 decedent, and shall have the authority to carry out the
18 instructions of the person or persons whom the funeral
19 establishment, cemetery, mortuary, [~~or~~] crematory, hydrolysis
20 facility, or natural organic reduction facility reasonably
21 believes to hold the right of disposition.



1 (c) The funeral establishment, cemetery, mortuary, [~~or~~]
2 crematory, hydrolysis facility, or natural organic reduction
3 facility shall have no responsibility to verify the identity of
4 the decedent or contact or independently investigate the
5 existence of any person who may have a right of disposition. If
6 there is more than one person in the same priority class
7 pursuant to section 531B-4 and the funeral establishment,
8 cemetery, mortuary, [~~or~~] crematory, hydrolysis facility, or
9 natural organic reduction facility has no knowledge of any
10 objection by other members of the priority class, it may rely on
11 and act according to the instructions of the first person in the
12 priority class to make funeral and disposition arrangements;
13 provided that no other person in the priority class provides
14 written notice to the funeral establishment, cemetery, mortuary,
15 [~~or~~] crematory, hydrolysis facility, or natural organic
16 reduction facility of that person's objections."

17 SECTION 9. Section 531B-9, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) A funeral director or manager of a funeral
20 establishment, cemetery, mortuary, [~~or~~] crematory, hydrolysis
21 facility, or natural organic reduction facility shall have



1 complete authority to direct and control the final disposition
2 and disposal of a decedent's remains and to proceed under this
3 chapter to recover reasonable charges for the final disposition
4 and disposal if:

5 (1) The funeral director or manager:

6 (A) Has no knowledge that any of the persons
7 described in section 531B-4(a)(1) through
8 [f] (a)(10) [f] exist;

9 (B) Has knowledge that the person or persons who may
10 or do have the right of disposition cannot be
11 found after reasonable inquiry or reasonable
12 attempts to contact; or

13 (C) Has knowledge that the person or persons who may
14 or do have the right of disposition have lost
15 this right pursuant to section 531B-6; and

16 (2) The appropriate public authority fails to assume
17 responsibility for disposition of the remains within
18 thirty-six hours after having been given written
19 notice of the decedent's death. Written notice may be
20 given by hand delivery, certified mail, facsimile
21 transmission, or electronic mail transmission."



SECTION 10. Section 531B-11, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~531B-11[~~§~~] Immunity. No funeral establishment, cemetery, mortuary, [~~or~~] crematory, hydrolysis facility, or natural organic reduction facility or any of its officers, directors, members, partners, funeral directors, managers, or employees who reasonably rely in good faith upon the instructions of an individual claiming the right of disposition shall be subject to criminal or civil liability or administrative or disciplinary action for carrying out the disposition of the remains in accordance with the instructions."

SECTION 11. Section 841-10, Hawaii Revised Statutes, is amended to read as follows:

"§841-10 Decent burial. When any coroner or deputy coroner takes an inquest upon the dead body of a stranger or indigent person or, being called for that purpose, does not think it necessary, on view of the body, that any inquest should be taken, the coroner or deputy coroner shall cause the body to be decently buried, [~~or~~] cremated, water cremation, alkaline hydrolysis, or natural organic reduction. A burial-transit permit authorizing a burial, [~~or~~] cremation, water cremation,



1 alkaline hydrolysis, or natural organic reduction shall be
2 secured from the local agent of the department of health by the
3 person in charge of such burial or cremation."

4 SECTION 12. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 13. This Act shall take effect upon its approval.

7

INTRODUCED BY:  _____



S.B. NO. 982

Report Title:

Native Hawaiians; Traditional Hawaiian Burial Practices;
Alkaline Hydrolysis; Natural Organic Reduction

Description:

Includes the use of alkaline hydrolysis, water cremation, and natural organic reduction as methods for the disposal of human remains. Amends the procedures for the resolution of disputes regarding the right of disposition, the right to rely and act upon written instructions in a funeral service agreement or similar document, and provisions for the disposition of a decedent's remains and recovery of reasonable expenses to include hydrolysis facilities and natural organic reduction facilities.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

