

JAN 21 2022

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

13 The legislature further finds that traditional Native
14 Hawaiian burials include the practices for treatment of human
15 remains, which involve reducing the remains to its skeletal
16 components and interring the iwi in a kapa or lauhala container.
17 A traditional Native Hawaiian burial utilizes modern technology



1 to effect the removal of the flesh and fluids from a human
2 corpse in a manner leaving the bones intact and unharmed. The
3 traditional Native Hawaiian treatment of human remains is safe,
4 feasible, and cost effective using modern flame crematories or
5 other similar operations.

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

18 Currently, the department of health does not have rules or
19 policies addressing traditional Native Hawaiian burial
20 practices. The adoption of rules and policies to address
21 traditional Native Hawaiian burial practices would encourage and



1 promote the use of those practices. The Hawaii Administrative
2 Rules regulate the embalming, transportation, and burial of
3 human remains, and include requirements relating to the
4 encasement and interment of the deceased. However, these rules
5 do not specifically address or expressly accommodate the partial
6 cremation and burial of human remains, as is consistent with
7 Native Hawaiian traditional practices.

8 The purpose of this Act is to:

- 9 (1) Include the use of traditional Native Hawaiian burial
10 practices in the treatment and disposal of human
11 remains, including the use of alkaline hydrolysis; and
12 (2) Require the department of health to adopt rules to
13 implement this Act.

14 SECTION 2. Section 327-32, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§327-32 Administration; duties of health officers. Every
17 head officer of a hospital, nursing home, correctional facility,
18 funeral parlor, or mortuary and every county medical examiner or
19 coroner and every state or county officer, and every other
20 person who has possession, charge, or control of any unclaimed
21 dead human body that may ~~[be cremated]~~ undergo cremation or



1 alkaline hydrolysis at public expense pursuant to section 346-15
2 shall:

3 (1) Exercise due diligence to notify the relatives^[7] and
4 friends of the decedent, any representative of a
5 fraternal society of which the deceased was a member,
6 and any legally responsible party; and

7 (2) Submit in writing to the department of human services
8 a description of the efforts used in making the
9 determination that the dead human body is unclaimed in
10 accordance with section 346-15, if payment for
11 cremation is sought.

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

15 SECTION 3. Section 327-36, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§327-36 Final disposition of anatomical gifts.** A person
18 or procurement organization that holds a dead human body as a
19 result of an anatomical gift shall, when the body is deemed of
20 no further value for purposes of transplantation, therapy,
21 research, or education, be responsible for the final disposition



1 of that dead human body and all of its parts, except those parts
2 used for transplantation. The person or procurement
3 organization shall dispose of the remains by cremation~~[r]~~ or
4 alkaline hydrolysis, except as otherwise provided in section
5 327-14 or as directed in a document of gift, subject to any
6 required disposition permits."

7 SECTION 4. Section 346-15, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) All unclaimed dead human bodies shall ~~[be cremated]~~
10 undergo cremation or alkaline hydrolysis. The department may
11 bear the cost of the mortuary ~~[and]~~, crematory, or alkaline
12 hydrolysis services for unclaimed dead human bodies furnished by
13 any licensed provider of mortuary or crematory services.

14 Payments for ~~[mortuary and crematory]~~ these services shall be
15 made to the extent of the cost, or in the sum of \$800 in total,
16 whichever is less, for each unclaimed dead human body.

17 Individuals who have possession, charge, or control of any
18 unclaimed dead human body to ~~[be cremated]~~ undergo cremation or
19 alkaline hydrolysis at public expense shall have sixty days from
20 the date of the deceased's death to submit in writing to the
21 department its determination that the dead human body is



1 unclaimed and its application for payment for cremation[~~-~~] or
2 alkaline hydrolysis. The county medical examiners or coroners
3 shall have no time limitation by which to submit their written
4 determination that the dead human body is unclaimed and their
5 application for payment for cremation[~~-~~] or alkaline
6 hydrolysis."

7 SECTION 5. Section 531B-2, Hawaii Revised Statutes, is
8 amended by adding five new definitions to be appropriately
9 inserted and to read as follows:

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

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

19 "Cremation" means the irreversible process of reducing
20 human remains to bone fragments (skeletal remains) through heat
21 and evaporation.



1 "Hydrolysis equipment" means the equipment, machinery, or
2 unit specifically designed and built for the purposes of
3 processing human remains using alkaline hydrolysis. "Hydrolysis
4 equipment" includes but is not limited to prebuilt and
5 prepackaged hydrolysis units or equipment that is erected on
6 site of the facility.

7 "Hydrolysis facility" means a structure, room, or other
8 space in a building or structure containing hydrolysis
9 equipment, to be used for alkaline hydrolysis."

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

12 "~~{}~~§531B-6~~{}~~ Forfeiture of right to direct disposition.
13 A person entitled under law to the right of disposition shall
14 forfeit that right, and the right is passed on to the next
15 person in the order of priority as listed in section 531B-4,
16 under the following circumstances:

- 17 (1) The person is charged with murder or manslaughter in
18 connection with the decedent's death, and the charges
19 are known to the funeral director or manager of the
20 funeral establishment, cemetery, mortuary, ~~{or}~~
21 crematory~~{,}~~, or hydrolysis facility; provided that if



1 the charges against the person are dismissed, or if
2 the person is acquitted of the charges, the right of
3 disposition is returned to that person, unless the
4 dismissal or acquittal occurs after the final
5 disposition has been completed;

6 (2) The person does not exercise the person's right of
7 disposition within five days of notification of the
8 decedent's death or within seven days of the
9 decedent's death, whichever is earlier;

10 (3) The person and the decedent are spouses, civil union
11 partners, or reciprocal beneficiaries, and at the time
12 of the decedent's death, proceedings for annulment,
13 divorce, or separation had been initiated or a
14 declaration for termination of the reciprocal
15 beneficiary relationship had been filed; or

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

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



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

3 (1) If two or more persons with the same priority class
4 hold the right of disposition and cannot agree by
5 majority vote regarding the disposition of the
6 decedent's remains, or there are any persons who claim
7 to have priority over any other person, any of these
8 persons or a funeral establishment, cemetery,
9 mortuary, ~~[or]~~ crematory, or hydrolysis facility with
10 custody of the remains may file a petition asking the
11 probate court to make a determination in the matter;
12 and

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

17 (A) The reasonableness and practicality of the
18 proposed funeral arrangements and disposition;

19 (B) The degree of the personal relationship between
20 the decedent and each of the persons claiming the
21 right of disposition;



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

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

6 (E) The desires of the decedent; and

7 (F) The degree to which the funeral arrangements
8 would allow maximum participation by all wishing
9 to pay respect.

10 (c) In the event of a dispute regarding the right of
11 disposition, a funeral establishment, cemetery, mortuary, ~~[or]~~
12 crematory, or hydrolysis facility shall not be liable for
13 refusing to accept the remains, to inter or otherwise dispose of
14 the remains of the decedent, or complete the arrangements for
15 the final disposition of the remains until it receives a court
16 order or other written agreement signed by the parties in the
17 disagreement that the dispute has been resolved or settled.

18 If the funeral establishment, cemetery, mortuary, ~~[or]~~
19 crematory, or hydrolysis facility retains the remains for final
20 disposition while the parties are in disagreement, it may embalm
21 or refrigerate and shelter the body, or both, while awaiting the



1 final decision of the probate court and may add the cost of
2 embalming or refrigeration and sheltering to the cost of final
3 disposition.

4 If a funeral establishment, cemetery, mortuary, ~~[or]~~
5 crematory, or hydrolysis facility brings an action under this
6 section, it may add the legal fees and court costs associated
7 with a petition under this section to the cost of final
8 disposition.

9 This section shall not be construed to require or impose a
10 duty upon a funeral establishment, cemetery, mortuary, ~~[or]~~
11 crematory, or hydrolysis facility to bring an action under this
12 section.

13 A funeral establishment, cemetery, mortuary, ~~[or]~~
14 crematory, or hydrolysis facility and its officers, directors,
15 managers, members, partners, or employees may not be held
16 criminally or civilly liable for choosing not to bring an action
17 under this section."

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

20 "(b) A funeral establishment, cemetery, mortuary, ~~[or]~~
21 crematory, or hydrolysis facility shall have the right to rely



1 on the funeral service agreement, cremation authorization form,
2 or any other authorization form, including the identification of
3 the decedent, and shall have the authority to carry out the
4 instructions of the person or persons whom the funeral
5 establishment, cemetery, mortuary, ~~[or]~~ crematory, or hydrolysis
6 facility reasonably believes to hold the right of disposition.

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



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

3 "(a) A funeral director or manager of a funeral
4 establishment, cemetery, mortuary, ~~[or]~~ crematory, or hydrolysis
5 facility shall have complete authority to direct and control the
6 final disposition and disposal of a decedent's remains and to
7 proceed under this chapter to recover reasonable charges for the
8 final disposition and disposal if:

9 (1) The funeral director or manager:

10 (A) Has no knowledge that any of the persons
11 described in section 531B-4(a)(1) through
12 ~~[(a)(10)]~~ exist;

13 (B) Has knowledge that the person or persons who may
14 or do have the right of disposition cannot be
15 found after reasonable inquiry or reasonable
16 attempts to contact; or

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

20 (2) The appropriate public authority fails to assume
21 responsibility for disposition of the remains within



1 thirty-six hours after having been given written
2 notice of the decedent's death. Written notice may be
3 given by hand delivery, certified mail, facsimile
4 transmission, or electronic mail transmission."

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

7 "~~{~~§531B-11~~}~~ Immunity. No funeral establishment,
8 cemetery, mortuary, ~~[ex]~~ crematory, or hydrolysis facility or
9 any of its officers, directors, members, partners, funeral
10 directors, managers, or employees who reasonably rely in good
11 faith upon the instructions of an individual claiming the right
12 of disposition shall be subject to criminal or civil liability
13 or administrative or disciplinary action for carrying out the
14 disposition of the remains in accordance with the instructions."

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

17 "§841-10 Decent burial. When any coroner or deputy
18 coroner takes an inquest upon the dead body of a stranger or
19 indigent person or, being called for that purpose, does not
20 think it necessary, on view of the body, that any inquest should
21 be taken, the coroner or deputy coroner shall cause the body to



1 be decently buried or [~~cremated.~~] undergo cremation or alkaline
2 hydrolysis. A burial-transit permit authorizing a burial [~~or~~],
3 cremation, or alkaline hydrolysis shall be secured from the
4 local agent of the department of health by the person in charge
5 of [~~such~~] the burial [~~or~~], cremation [~~or~~], or alkaline
6 hydrolysis."

7 SECTION 12. The department of health shall adopt rules
8 pursuant to chapter 91, Hawaii Revised Statutes, to implement
9 this Act.

10 SECTION 13. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun before its effective date.

13 SECTION 14. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 15. This Act shall take effect upon its approval.

16

INTRODUCED BY: _____



S.B. NO. 2593

Report Title:

Human Remains; Alkaline Hydrolysis; Department of Health

Description:

Includes the use of traditional Native Hawaiian burial practices in the treatment and disposal of human remains, including the use of alkaline hydrolysis. Requires the Department of Health to adopt rules.

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