

JAN 21 2022

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# A BILL FOR AN ACT

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RELATING TO HUMAN REMAINS.

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

1       SECTION 1. The legislature finds that there has been an  
2 increase of interest in traditional native Hawaiian practices  
3 for burials amongst native Hawaiians and non-native Hawaiians.  
4 The cultural significance of iwi kupuna, or ancestral bones, is  
5 deeply rooted in native Hawaiian oral traditions, language, and  
6 culture. Native Hawaiian burial traditions acknowledge the  
7 natural cycles of life and death, and kupuna offer spiritual  
8 sustenance to present generations. Traditional native Hawaiian  
9 burials include the practices for treatment of human remains,  
10 which involve reducing the remains to its skeletal components  
11 and interring the iwi in a kapa or lauhala container. The  
12 legislature finds that these traditional Hawaiian burials play a  
13 critical role in Hawaiian culture and should be encouraged to  
14 promote greater cultural preservation.

15       The legislature also finds that Hawaiian burial practices  
16 are protected by law. Yet, the absence of legislation  
17 permitting the use of technology that would enable those



1 practices in a manner consistent with contemporary health and  
2 environmental regulations has in effect prevented native  
3 Hawaiians from exercising that customary right. This  
4 legislation addresses that void, and in so doing also makes  
5 available to the wider community, the very real environmental  
6 benefits of reduced carbon emissions and significantly lower  
7 energy use from water cremation. As the planet faces an  
8 existential threat to its very existence due to the climate  
9 crisis, this legislation is particularly timely. The  
10 legislature further finds that a process called water cremation,  
11 or alkaline hydrolysis, provides a cleaner, gentler, and more  
12 eco-friendly alternative to flame cremation for the treatment of  
13 remains and will benefit both those who seek to utilize  
14 traditional Hawaiian burial techniques as well as those who want  
15 an environmentally-friendly cremation option for themselves or  
16 their loved ones. Water cremation has been used by leading  
17 institutions like the Mayo Clinic in Rochester, Minnesota, and  
18 by the University of California at Los Angeles School of  
19 Medicine for over 15 years, and has been approved for use in  
20 twenty-one states across the nation.



1           In 2018, Hawaii had more than eight thousand five hundred  
2 flame cremations releasing 4.5 million pounds of carbon dioxide  
3 into the atmosphere. Water cremation, which uses a base  
4 solution of ninety-five per cent water and five per cent  
5 potassium hydroxide and to accelerate decomposition, requires  
6 one-eighth the energy of a flame crematory and results in  
7 seventy-five per cent lower carbon emissions. Water cremation  
8 destroys pathogens, protects the operator, and returns a safe  
9 by-product to the family. No DNA is left in the water or  
10 cremated remains. No mercury amalgam is emitted into the  
11 atmosphere. There is no groundwater contamination from  
12 cemeteries and no need to extract pacemakers and implants prior  
13 to cremation. Additionally, if desired, many of the implants  
14 can be recycled.

15           The purpose of this Act is to include the use of  
16 traditional native Hawaiian burial practices including water  
17 cremation in the treatment and disposal of human remains.

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

20           "**§327-32 Administration; duties of health officers.** Every  
21 head officer of a hospital, nursing home, correctional facility,



1 funeral parlor, or mortuary and every county medical examiner or  
2 coroner and every state or county officer, and every other  
3 person who has possession, charge, or control of any unclaimed  
4 dead human body that may [~~be cremated~~] undergo cremation  
5 including alkaline hydrolysis at public expense pursuant to  
6 section 346-15 shall:

7 (1) Exercise due diligence to notify the relatives~~[7]~~ and  
8 friends of the decedent, any representative of a  
9 fraternal society of which the deceased was a member,  
10 and any legally responsible party; and

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

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

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



1       "§327-36   Final disposition of anatomical gifts.   A person  
2   or procurement organization that holds a dead human body as a  
3   result of an anatomical gift shall, when the body is deemed of  
4   no further value for purposes of transplantation, therapy,  
5   research, or education, be responsible for the final disposition  
6   of that dead human body and all of its parts, except those parts  
7   used for transplantation.   The person or procurement  
8   organization shall dispose of the remains by cremation<sup>[7]</sup> which  
9   may include alkaline hydrolysis, except as otherwise provided in  
10   section 327-14 or as directed in a document of gift, subject to  
11   any required disposition permits."

12       SECTION 4.   Section 346-15, Hawaii Revised Statutes, is  
13   amended as follows:

14       1.   By amending subsection (b) to read:

15       "(b)   All unclaimed dead human bodies shall ~~[be cremated.]~~  
16   undergo cremation, which may include alkaline hydrolysis.   The  
17   department may bear the cost of the mortuary ~~[and]~~ crematory,  
18   or alkaline hydrolysis services for unclaimed dead human bodies  
19   furnished by any licensed provider of mortuary or crematory  
20   services.   Payments for ~~[mortuary and crematory]~~ these services  
21   shall be made to the extent of the cost, or in the sum of \$800



1 in total, whichever is less, for each unclaimed dead human body.  
2 Individuals who have possession, charge, or control of any  
3 unclaimed dead human body to ~~[be-cremated]~~ undergo cremation or  
4 alkaline hydrolysis at public expense shall have sixty days from  
5 the date of the deceased's death to submit in writing to the  
6 department its determination that the dead human body is  
7 unclaimed and its application for payment for cremation[-] or  
8 alkaline hydrolysis. The county medical examiners or coroners  
9 shall have no time limitation by which to submit their written  
10 determination that the dead human body is unclaimed and their  
11 application for payment for cremation[-] or alkaline  
12 hydrolysis."

13 2. By amending subsection (e) to read:

14 "(e) For the purposes of this section, "unclaimed dead  
15 human body" means the remains of any deceased person for whom no  
16 one has assumed responsibility for disposition and no legally  
17 responsible individual has been identified. Pursuant to section  
18 327-32, the department shall review the written description of  
19 the efforts used in making the determination that a dead human  
20 body is unclaimed and approve the determination for purposes of



1 payment of the mortuary [and], crematory, or alkaline hydrolysis  
2 services, if it meets the department's requirements."

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

6 "Alkaline hydrolysis" or "water cremation" means the  
7 reduction of human remains to bone fragments and essential  
8 elements in a licensed hydrolysis facility using heat, pressure,  
9 water, and base chemical agents.

10 "Cremated remains" means all human remains recovered after  
11 the completion of the cremation, which may include the residue  
12 of any foreign matter such as casket material, bridgework, or  
13 eyeglasses that were cremated with the human remains.

14 "Cremation" means the irreversible process of reducing  
15 human remains to bone fragments or skeletal remains through heat  
16 and evaporation.

17 "Hydrolysis equipment" means the equipment, machinery, or  
18 unit specifically designed and built for the purposes of  
19 processing human remains using alkaline hydrolysis. "Hydrolysis  
20 equipment" includes prebuilt and prepackaged hydrolysis units or  
21 equipment that is erected on site of the facility and:



- (1) Operates at a temperature of 302 degrees Fahrenheit (150 degrees Celsius) to guarantee complete sterilization of the liquid and bones that can be validated using *Geobacillus stearothermophilus* spores at 10<sup>6</sup> colony forming units per milliliter;
  - (2) Operates one hundred per cent of the time in a horizontal position;
  - (3) Includes focused agitation cranial targeting to ensure breakdown of brain tissue;
  - (4) Includes a dedicated heated chemical rinse cycle to ensure that bones are white and free from contaminants that prevent proper drying, post cycle; and
  - (5) Wraps human remains only in bioplastic or natural protein-based fibers such as silk, leather or wool.
- "Hydrolysis facility" means a structure, room, or other space in a building or structure containing hydrolysis equipment, to be used for alkaline hydrolysis. Operators of hydrolysis facilities should undergo crematory or alkaline hydrolysis operator training and hold a valid license or certificate and the establishment should be licensed as a hydrolysis facility."



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

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

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

(1) The person is charged with murder or manslaughter in connection with the decedent's death, and the charges are known to the funeral director or manager of the funeral establishment, cemetery, mortuary, ~~[or]~~ crematory~~[+]~~, or hydrolysis facility; provided that if the charges against the person are dismissed, or if the person is acquitted of the charges, the right of disposition is returned to that person, unless the dismissal or acquittal occurs after the final disposition has been completed;

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



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

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

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

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

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



custody of the remains may file a petition asking the probate court to make a determination in the matter; and

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

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

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

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

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

(E) The desires of the decedent; and

(F) The degree to which the funeral arrangements would allow maximum participation by all wishing 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, or hydrolysis facility shall not be liable for  
4 refusing to accept the remains, to inter or otherwise dispose of  
5 the remains of the decedent, or complete the arrangements for  
6 the final disposition of the remains until it receives a court  
7 order or other written agreement signed by the parties in the  
8 disagreement that the dispute has been resolved or settled.

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

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



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

5        A funeral establishment, cemetery, mortuary, [ex]  
6        crematory, or hydrolysis facility and its officers, directors,  
7        managers, members, partners, or employees may not be held  
8        criminally or civilly liable for choosing not to bring an action  
9        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, [ex]  
13       crematory, or hydrolysis facility shall have the right to rely  
14       on the funeral service agreement, cremation authorization form,  
15       or any other authorization form, including the identification of  
16       the decedent, and shall have the authority to carry out the  
17       instructions of the person or persons whom the funeral  
18       establishment, cemetery, mortuary, or crematory reasonably  
19       believes to hold the right of disposition.

20       (c) The funeral establishment, cemetery, mortuary, [ex]  
21       crematory, or hydrolysis facility shall have no responsibility



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

13 SECTION 9. Section 531B-9, Hawaii Revised Statutes, is  
14 amended by amending its title and subsection (a) to read as  
15 follows:

16 "[+]§531B-9[+] Authority to direct and control  
17 disposition; recovery of reasonable expenses. (a) A funeral  
18 director or manager of a funeral establishment, cemetery,  
19 mortuary, ~~[or]~~ crematory, or hydrolysis facility shall have  
20 complete authority to direct and control the final disposition  
21 and disposal of a decedent's remains and to proceed under this



chapter to recover reasonable charges for the final disposition and disposal if:

(1) The funeral director or manager:

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

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

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

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

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



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

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

11        "**§841-10 Decent burial.** When any coroner or deputy  
12 coroner takes an inquest upon the dead body of a stranger or  
13 indigent person or, being called for that purpose, does not  
14 think it necessary, on view of the body, that any inquest should  
15 be taken, the coroner or deputy coroner shall cause the body to  
16 be decently buried or [~~eremated-~~] undergo cremation or alkaline  
17 hydrolysis. A burial-transit permit authorizing a burial [~~e~~r],  
18 cremation, or alkaline hydrolysis shall be secured from the  
19 local agent of the department of health by the person in charge  
20 of [~~such~~] the burial [~~e~~r], cremation[-], or alkaline  
21 hydrolysis."



1           SECTION 12. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 13. This Act shall take effect on July 1, 2022.

4

INTRODUCED BY: Michelle N. Sidani



# S.B. NO. 2020

**Report Title:**

Human Remains; Alkaline Hydrolysis; Water Cremation

**Description:**

Includes the use of traditional native Hawaiian burial practices in the treatment and disposal of human remains, including the use of water cremation or alkaline hydrolysis.

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