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# A BILL FOR AN ACT

RELATING TO BURIALS.

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

PART I

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

The legislature finds that traditional Hawaiian burials include the practices for treatment of human remains, which involves reducing the remains to its skeletal components and interring the iwi in a kapa or lauhala container. A traditional Hawaiian burial utilizes modern technology to effect the removal



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

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

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



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

7 The purpose of this Act is to:

8 (1) Allow the department of health to accommodate  
9 traditional Hawaiian burial practices, such as  
10 alkaline hydrolysis or water cremation to promote the  
11 use of traditional Hawaiian burial practices; and

12 (2) Prohibit the sale, transfer, conveyance, or other  
13 disposal or offer for sale of any plot, conveyance, or  
14 niche unless the property on which the plot, crypt, or  
15 niche is located allows the interment of up to ten  
16 sets of human remains that are cremated or prepared  
17 consistent with traditional Hawaiian burials.

18 PART II

19 SECTION 2. Section 531B-2, Hawaii Revised Statutes, is  
20 amended by adding nine new definitions to be appropriately  
21 inserted and to read as follows:



1       "Alkaline hydrolysis" or "hydrolysis" or "water cremation"  
2       means the reduction of human remains to bone fragments and  
3       essential elements in a licensed hydrolysis facility using heat,  
4       pressure, water, and base chemical agents.

5       "Cremated remains", "cremains", or "ashes" means all human  
6       remains recovered after the completion of the cremation, which  
7       may possibly include the residue of any foreign matter,  
8       including but not limited to casket material, bridgework, or  
9       eyeglasses that were cremated with the human remains.

10       "Cremation" means the irreversible process of reducing  
11       human remains to bone fragments (skeletal remains) through heat  
12       and evaporation.

13       "Cremation equipment" means the actual equipment,  
14       machinery, or retort unit specifically designed and built for  
15       the purposes of cremating human remains. "Cremation equipment"  
16       includes but is not limited to prebuilt and prepackaged  
17       cremation units or cremation equipment that is erected on site  
18       of the crematory.

19       "Hydrolysis equipment" means the equipment, machinery, or  
20       unit specifically designed and built for the purposes of  
21       processing human remains. "Hydrolysis equipment" includes but



1 is not limited to prebuilt and prepackaged hydrolysis units or  
2 equipment that is erected on site of the facility.

3 "Hydrolysis facility" means a structure, room, or other  
4 space in a building or structure containing hydrolysis  
5 equipment, to be used for alkaline hydrolysis.

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

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

11 "Traditional Hawaiian burial" means the use of modern  
12 technology to effect the removal of the flesh and fluids from a  
13 human corpse in a manner leaving the bones intact and unharmed.  
14 "Traditional Hawaiian burial" refers to practices that are  
15 consistent with other traditional practices such as umu (above  
16 ground ovens) and the use of caves for natural decomposition."

17 PART III

18 SECTION 3. 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, water  
5 cremation, alkaline hydrolysis, or natural organic reduction at  
6 public expense pursuant to section 346-15 shall:

- 7 (1) Exercise due diligence to notify the relatives,  
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 4. 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, water  
9 cremation, alkaline hydrolysis, or natural organic reduction,  
10 except as otherwise provided in section 327-14 or as directed in  
11 a document of gift, subject to any required disposition  
12 permits."

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

15       "(b) All unclaimed dead human bodies shall [~~be cremated.~~]  
16 undergo cremation, water cremation, alkaline hydrolysis, or  
17 natural organic reduction. The department may bear the cost of  
18 the mortuary [~~and~~], crematory, water cremation, alkaline  
19 hydrolysis, or other natural organic reduction services for  
20 unclaimed dead human bodies furnished by any licensed provider  
21 of mortuary or crematory services. Payments for mortuary and



1 crematory services shall be made to the extent of the cost, or  
2 in the sum of \$800 in total, whichever is less, for each  
3 unclaimed dead human body. Individuals who have possession,  
4 charge, or control of any unclaimed dead human body to be  
5 cremated at public expense shall have sixty days from the date  
6 of the deceased's death to submit in writing to the department  
7 its determination that the dead human body is unclaimed and its  
8 application for payment for cremation. The county medical  
9 examiners or coroners shall have no time limitation by which to  
10 submit their written determination that the dead human body is  
11 unclaimed and their application for payment for cremation."

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

14 " ~~[§531B-6]~~ **Forfeiture of right to direct disposition.**

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

19 (1) The person is charged with murder or manslaughter in  
20 connection with the decedent's death, and the charges  
21 are known to the funeral director or manager of the





1 funeral establishment, cemetery, mortuary, [œ]  
2 crematory[+], hydrolysis facility, or natural organic  
3 reduction facility; provided that if the charges  
4 against the person are dismissed, or if the person is  
5 acquitted of the charges, the right of disposition is  
6 returned to that person, unless the dismissal or  
7 acquittal occurs after the final disposition has been  
8 completed;

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

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

19 (4) The probate court pursuant to section 531B-7  
20 determines that the person entitled to the right of



1           disposition and the decedent were estranged at the  
2           time of death."

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

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

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

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



- 1 (A) The reasonableness and practicality of the  
2 proposed funeral arrangements and disposition;
- 3 (B) The degree of the personal relationship between  
4 the decedent and each of the persons claiming the  
5 right of disposition;
- 6 (C) The desires of the person or persons who are  
7 ready, able, and willing to pay the cost of the  
8 funeral arrangements and disposition;
- 9 (D) The convenience and needs of other families and  
10 friends wishing to pay respects;
- 11 (E) The desires of the decedent; and
- 12 (F) The degree to which the funeral arrangements  
13 would allow maximum participation by all wishing  
14 to pay respect.

15 (c) In the event of a dispute regarding the right of  
16 disposition, a funeral establishment, cemetery, mortuary, ~~[or]~~  
17 crematory, hydrolysis facility, or natural organic reduction  
18 facility shall not be liable for refusing to accept the remains,  
19 to inter or otherwise dispose of the remains of the decedent, or  
20 complete the arrangements for the final disposition of the  
21 remains until it receives a court order or other written



1 agreement signed by the parties in the disagreement that the  
2 dispute has been resolved or settled.

3 If the funeral establishment, cemetery, mortuary, [Ø] ~~crematory,~~  
4 hydrolysis facility, or natural organic reduction  
5 facility retains the remains for final disposition while the  
6 parties are in disagreement, it may embalm or refrigerate and  
7 shelter the body, or both, while awaiting the final decision of  
8 the probate court and may add the cost of embalming or  
9 refrigeration and sheltering to the cost of final disposition.

10 If a funeral establishment, cemetery, mortuary, [Ø] ~~crematory,~~  
11 hydrolysis facility, or natural organic reduction  
12 facility brings an action under this section, it may add the  
13 legal fees and court costs associated with a petition under this  
14 section to the cost of final disposition.

15 This section shall not be construed to require or impose a  
16 duty upon a funeral establishment, cemetery, mortuary, [Ø] ~~crematory,~~  
17 hydrolysis facility, or natural organic reduction  
18 facility to bring an action under this section.

19 A funeral establishment, cemetery, mortuary, [Ø] ~~crematory,~~  
20 hydrolysis facility, or natural organic reduction  
21 facility and its officers, directors, managers, members,



1 partners, or employees may not be held criminally or civilly  
2 liable for choosing not to bring an action under this section."

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

5 "(b) A funeral establishment, cemetery, mortuary, [~~or~~]  
6 crematory, hydrolysis facility, or natural organic reduction  
7 facility shall have the right to rely on the funeral service  
8 agreement, cremation authorization form, or any other  
9 authorization form, including the identification of the  
10 decedent, and shall have the authority to carry out the  
11 instructions of the person or persons whom the funeral  
12 establishment, cemetery, mortuary, [~~or~~] crematory, hydrolysis  
13 facility, or natural organic reduction facility reasonably  
14 believes to hold the right of disposition.

15 (c) The funeral establishment, cemetery, mortuary, [~~or~~]  
16 crematory, hydrolysis facility, or natural organic reduction  
17 facility shall have no responsibility to verify the identity of  
18 the decedent or contact or independently investigate the  
19 existence of any person who may have a right of disposition. If  
20 there is more than one person in the same priority class  
21 pursuant to section 531B-4 and the funeral establishment,



1 cemetery, mortuary, ~~[or]~~ crematory, hydrolysis facility, or  
2 natural organic reduction facility has no knowledge of any  
3 objection by other members of the priority class, it may rely on  
4 and act according to the instructions of the first person in the  
5 priority class to make funeral and disposition arrangements;  
6 provided that no other person in the priority class provides  
7 written notice to the funeral establishment, cemetery, mortuary,  
8 ~~[or]~~ crematory, hydrolysis facility, or natural organic  
9 reduction facility of that person's objections."

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

12 "(a) A funeral director or manager of a funeral  
13 establishment, cemetery, mortuary, ~~[or]~~ crematory, hydrolysis  
14 facility, or natural organic reduction facility shall have  
15 complete authority to direct and control the final disposition  
16 and disposal of a decedent's remains and to proceed under this  
17 chapter to recover reasonable charges for the final disposition  
18 and disposal if:

19 (1) The funeral director or manager:



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

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

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

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

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

19 "[†] §531B-11[†] **Immunity.** No funeral establishment,  
20 cemetery, mortuary, [œ] crematory, hydrolysis facility, or  
21 natural organic reduction facility or any of its officers,



1 directors, members, partners, funeral directors, managers, or  
2 employees who reasonably rely in good faith upon the  
3 instructions of an individual claiming the right of disposition  
4 shall be subject to criminal or civil liability or  
5 administrative or disciplinary action for carrying out the  
6 disposition of the remains in accordance with the instructions."

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

9 "§841-10 Decent burial. When any coroner or deputy  
10 coroner takes an inquest upon the dead body of a stranger or  
11 indigent person or, being called for that purpose, does not  
12 think it necessary, on view of the body, that any inquest should  
13 be taken, the coroner or deputy coroner shall cause the body to  
14 be decently buried, ~~[or]~~ cremated~~[-]~~, or cremated through means  
15 of water cremation, alkaline hydrolysis, or natural organic  
16 reduction. A burial-transit permit authorizing a burial, ~~[or]~~  
17 cremation, water cremation, alkaline hydrolysis, or natural  
18 organic reduction shall be secured from the local agent of the  
19 department of health by the person in charge of such burial or  
20 cremation."

21 PART IV





SECTION 12. Section 441-13, Hawaii Revised Statutes, is amended to read as follows:

"§441-13 Sale of plots after dedication; sale of encumbered plots prohibited unless encumbrance subordinate to dedication~~[-]~~; limitation on the number of sets of cremated human remains or burials prepared consistent with traditional Hawaiian cultural customs and practices. (a) After property is dedicated pursuant to this chapter, a cemetery authority may sell, transfer, and convey plots, crypts, or niches thereof~~[-~~ which]; provided that the plots, crypts, or niches shall be described by reference to the map or plat, or amended map or plat, filed in accordance with section 441-3 or 441-8.

(b) No plot, crypt, or niche shall be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance, or other disposition~~[-unless]~~:

(1) Unless the property on or in which the plot, crypt, or niche is included:

(A) [has] Has been dedicated pursuant to this chapter~~[-, nor shall any plot, crypt, or niche be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer,~~



1 ~~conveyance, or other disposition, unless the~~  
2 ~~property on or in which the plot, crypt, or niche~~  
3 ~~is included shall]; and~~

4 (B) Is either [be] free and clear of all encumbrances  
5 or there has been recorded the written consent of  
6 every encumbrancer thereof stating that the  
7 encumbrancer's encumbrance shall be subject and  
8 subordinate to the dedication of the property to  
9 cemetery purposes and the title of any plot,  
10 crypt, and niche owner[-]; and

11 (C) Allows the interment of up to ten sets of human  
12 remains that are cremated or prepared consistent  
13 with traditional Hawaiian burial in a single  
14 plot, crypt, or niche."

15 PART V

16 SECTION 13. This Act does not affect rights and duties  
17 that matured, penalties that were incurred, and proceedings that  
18 were begun before its effective date.

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

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



**Report Title:**

Native Hawaiians; Traditional Hawaiian Burial Practices;  
Alkaline Hydrolysis; Natural Organic Reduction Cemeteries;  
Plots; Human Remains; Limits

**Description:**

Prohibits the sale, transfer, conveyance, or other disposal or offer for sale of any plot, conveyance, or niche unless the property on which the plot, crypt, or niche is located allows the interment of up to ten sets of human remains that are cremated or prepared consistent with traditional Hawaiian burials. 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. (SD2)

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