

ACT 294

H.B. NO. 1894

A Bill for an Act Relating to Human Remains.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there has been a recent increase of interest in traditional Native Hawaiian practices for burials amongst Native Hawaiians and non-Native Hawaiians. The cultural significance of iwi kupuna, or 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. Traditional Native Hawaiian burials include the practices for treatment of human remains, which involve reducing remains to skeletal components and interring the iwi in a kapa or lauhala container. The legislature finds that these traditional Native Hawaiian burials play a critical role in Hawaiian culture and should be encouraged to promote greater cultural preservation.

The legislature also finds that a process called water cremation, technically known as alkaline hydrolysis, provides a more eco-friendly, cleaner, and gentler alternative to flame cremation for the treatment of remains. The legislature recognizes that in 2018, the remains of over eight thousand five hundred individuals were cremated by conventional means in the State, resulting in the release of over 4,500,000 pounds of carbon dioxide into the atmosphere. Water cremation, which uses a base solution of ninety-five per cent water and five per cent potassium hydroxide to accelerate decomposition, consumes one-eighth the energy of a flame crematory and results in a seventy-five per cent reduction in carbon emissions. This alternative process also destroys pathogens, protects operators, leaves no deoxyribonucleic acid in water or cremated remains, emits no mercury amalgam into the atmosphere, does not contaminate groundwater, does not require the extraction of pacemakers and implants from the deceased (families may choose to extract those implants to recycle them), and returns a safe by-product to the families of the deceased. The alternative water cremation process benefits both practitioners of traditional Native Hawaiian burial techniques and individuals who want an environmentally-friendly cremation option for themselves or their loved ones. For more than fifteen years, leading institutions, such as the Mayo Clinic in Rochester, Minnesota, and the University of California School of Medicine, have used water cremation, and more than twenty-one states have approved the process.

Accordingly, the purpose of this Act is to accommodate the use of both traditional Native Hawaiian burial practices and environmentally-friendly burial

practices by including water cremation in the treatment and disposal of human remains.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 19 to be appropriately designated and to read as follows:

**“CHAPTER
HYDROLYSIS FACILITIES**

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Department” means the department of health.

“Hydrolysis equipment” has the same meaning as in section 531B-2.

“Hydrolysis facility” has the same meaning as in section 531B-2.

§ -2 **Hydrolysis facilities operating as mortuaries or funeral establishments; human remains.** Any commercial hydrolysis facility in the State handling human remains shall be subject to the requirements for funeral establishments and mortuaries.

§ -3 **Hydrolysis equipment.** Hydrolysis equipment used at any hydrolysis facility in the State shall:

- (1) Reach a temperature of at least three hundred degrees Fahrenheit or one hundred fifty degrees Celsius to guarantee the complete sterilization of the liquid and bones, as validated using *Geobacillus stearothermophilus* spores at one million colony forming units per milliliter;
- (2) Be in a horizontal position during operation;
- (3) Include focused agitation cranial targeting to ensure the breakdown of brain tissue;
- (4) Include a dedicated heated chemical rinse cycle to ensure that the final bones exiting from the vessel are white and free from contaminants that prevent proper drying; and
- (5) Be operated on human remains only when the remains are wrapped in bioplastic or natural protein-based fibers, including silk, leather, or wool.

§ -4 **Wastewater discharge.** Hydrolysis facilities shall pretreat the wastewater effluent prior to discharge pursuant to county, state, and federal regulations. The wastewater shall only be discharged into a municipal sewer system as approved by the counties. Discharges into privately owned wastewater systems shall not be allowed.”

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

“§327-32 Administration; duties of health officers. Every head officer of a hospital, nursing home, correctional facility, funeral parlor, or mortuary and every county medical examiner or coroner and every state or county officer, and every other person who has possession, charge, or control of any unclaimed dead human body that may ~~[be cremated]~~ undergo cremation as defined in section 531B-2 at public expense pursuant to section 346-15 shall:

- (1) Exercise due diligence to notify the relatives[,] and friends of the decedent, any representative of a fraternal society of which the deceased was a member, and any legally responsible party; and
- (2) Submit in writing to the department of human services a description of the efforts used in making the determination that the dead

human body is unclaimed in accordance with section 346-15, if payment for cremation is sought.

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

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

“§327-36 **Final disposition of anatomical gifts.** A person or procurement organization that holds a dead human body as a result of an anatomical gift shall, when the body is deemed of no further value for purposes of transplantation, therapy, research, or education, be responsible for the final disposition of that dead human body and all of its parts, except those parts used for transplantation. The person or procurement organization shall dispose of the remains by cremation[.] as defined in section 531B-2, except as otherwise provided in section 327-14 or as directed in a document of gift, subject to any required disposition permits.”

SECTION 5. Section 346-15, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) All unclaimed dead human bodies shall ~~[be cremated.]~~ undergo cremation as defined in section 531B-2. The department may bear the cost of the mortuary ~~[and]~~, crematory, or hydrolysis facility services for unclaimed dead human bodies furnished by any licensed provider of ~~[mortuary or crematory]~~ these services. Payments for ~~[mortuary and crematory]~~ these services shall be made to the extent of the cost, or in the sum of \$800 in total, whichever is less, for each unclaimed dead human body. Individuals who have possession, charge, or control of any unclaimed dead human body to ~~[be cremated]~~ undergo cremation at public expense shall have sixty days from the date of the deceased’s death to submit in writing to the department its determination that the dead human body is unclaimed and its application for payment for cremation. The county medical examiners or coroners shall have no time limitation by which to submit their written determination that the dead human body is unclaimed and their application for payment for cremation.”

2. By amending subsection (e) to read:

“(e) For the purposes of this section, “unclaimed dead human body” means the remains of any deceased person for whom no one has assumed responsibility for disposition and no legally responsible individual has been identified. Pursuant to section 327-32, the department shall review the written description of the efforts used in making the determination that a dead human body is unclaimed and approve the determination for purposes of payment of the mortuary ~~[and]~~, crematory, or hydrolysis facility services, if it meets the department’s requirements.”

SECTION 6. Section 531B-2, Hawaii Revised Statutes, is amended as follows:

1. By adding six new definitions to be appropriately inserted and to read:

““Conventional cremation” means the irreversible process of reducing human remains to bone fragments or skeletal remains through heat and evaporation.

“Cremated remains” means all human remains recovered after the completion of the cremation, which may include the residue of any foreign matter.

including casket material, bridgework, or eyeglasses that were cremated with the human remains.

“Cremation” means conventional cremation or water cremation.

“Hydrolysis equipment” means the equipment, machinery, or unit specifically designed and built for the purposes of processing human remains using water cremation. “Hydrolysis equipment” includes prebuilt and prepackaged hydrolysis units or equipment that is erected on site of a hydrolysis facility.

“Hydrolysis facility” means a structure, room, or other space in a building or structure containing hydrolysis equipment, to be used for water cremation.

“Water cremation” means alkaline hydrolysis, which is the reduction of human remains to bone fragments and essential elements using heat, pressure, water, and base chemical agents.”

2. By amending the definition of “crematory” to read:

““Crematory” means a structure containing a furnace used or intended to be used for the conventional cremation of human remains.”

SECTION 7. 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, [Ø] 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 8. 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, [Ø] 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.

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

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

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

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

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

SECTION 9. Section 531B-8, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A funeral establishment, cemetery, mortuary, [Ø] crematory, or hydrolysis facility shall have the right to rely on the funeral service agreement, cremation authorization form, or any other authorization form, including the identification of the decedent, and shall have the authority to carry out the instructions of the person or persons whom the funeral establishment, cemetery, mortuary, [Ø] crematory, or hydrolysis facility reasonably believes to hold the right of disposition.

(c) The funeral establishment, cemetery, mortuary, [Ø] crematory, or hydrolysis facility shall have no responsibility to verify the identity of the decedent or contact or independently investigate the existence of any person who may have a right of disposition. If there is more than one person in the same priority class pursuant to section 531B-4 and the funeral establishment, cemetery, mortuary, [Ø] crematory, or hydrolysis facility has no knowledge of any objection by other members of the priority class, it may rely on and act accord-

ing to the instructions of the first person in the priority class to make funeral and disposition arrangements; provided that no other person in the priority class provides written notice to the funeral establishment, cemetery, mortuary, [☒] crematory, or hydrolysis facility of that person's objections."

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

"(a) A funeral director or manager of a funeral establishment, cemetery, mortuary, [☒] crematory, or hydrolysis facility shall have complete authority to direct and control the final disposition 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 [(a)(10)] 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 11. Section 531B-10, Hawaii Revised Statutes, is amended to read as follows:

"~~[(§531B-10)]~~ **Disposition of unclaimed cremated remains.** Whenever any cremated remains have been in the lawful possession of any funeral establishment, cemetery, mortuary, [☒] crematory, or hydrolysis facility for sixty or more days, and the person entitled under law to the right of disposition fails, neglects, or refuses to take custody of the cremated remains or direct the disposition, the funeral establishment, cemetery, mortuary, [☒] crematory, or hydrolysis facility with lawful possession of the cremated remains may dispose of the remains by any manner that is not inconsistent with any law of the State."

SECTION 12. Section 531B-11, Hawaii Revised Statutes, is amended to read as follows:

"~~[(§531B-11)]~~ **Immunity.** No funeral establishment, cemetery, mortuary, [☒] crematory, or hydrolysis 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 13. 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] determine it necessary, on view of the body, that any inquest should be taken, the coroner or deputy coroner shall cause the

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body to be decently buried or ~~[cremated.]~~ undergo cremation as defined in section 531B-2. A burial-transit permit authorizing a burial or cremation shall be secured from the local agent of the department of health by the person in charge of ~~[such]~~ the burial or cremation.”

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved July 12, 2022.)