

S.B. NO. 2818

JAN 25 2012

A BILL FOR AN ACT

RELATING TO DISPOSITION OF DEAD HUMAN BODIES.

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

1 SECTION 1. The legislature finds that the roles and
2 responsibilities of state agencies and custodians of unclaimed
3 dead human bodies require clarification. Chapter 327, part II,
4 Hawaii Revised Statutes, which authorizes the department of
5 health to provide unclaimed dead human bodies to a university or
6 other institution for educational or research purposes, is in
7 direct contradiction with the Uniform Anatomical Gifts Act,
8 chapter 327, part I, Hawaii Revised Statutes.

9 The purpose of this Act is to repeal the authority of the
10 department of health to deliver or distribute an unclaimed dead
11 human body to a university, hospital, or institution for medical
12 educational and research purposes, and to clarify the
13 responsibilities of the person who has possession, charge, or
14 control of an unclaimed dead human body with respect to
15 gathering and providing information to state agencies.

16 SECTION 2. Chapter 327, Hawaii Revised Statutes, is
17 amended by amending the title of part II to read as follows:

18 "PART II. ~~[UNCLAIMED]~~ DISPOSITION OF DEAD HUMAN BODIES"

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

3 "§327-32 Administration; duties of health officers [~~, etc~~].

4 [~~(a) The department of health shall administer this part and~~
5 ~~may provide by rules and regulations, promulgated pursuant to~~
6 ~~chapter 91, for the distribution and use of unclaimed bodies as~~
7 ~~authorized in section 327-31.~~

8 ~~(b) The department upon receipt of notice of an unclaimed~~
9 ~~body shall deliver the body to a university, hospital, or~~
10 ~~institution for the purposes authorized in section 327-31.~~

11 ~~(c)]~~ Every head officer of a hospital, nursing home,
12 correctional facility, funeral parlor, or mortuary and every
13 county medical examiner or coroner and every state or county
14 officer, and every other person who has possession, charge, or
15 control of any unclaimed dead human body [~~required to be buried~~]
16 that may be cremated at public expense pursuant to section 346-
17 15 shall:

18 (1) Exercise due diligence to notify the relatives,
19 friends of the decedent [+], any representative of a
20 fraternal society of which the deceased was a member,
21 and any legally responsible party;

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1 (2) ~~[In the absence of any known relative or friend of the~~
2 ~~deceased or any representative of a fraternal society~~
3 ~~of which the deceased was a member, who desires to~~
4 ~~direct the disposition of the remains in a manner~~
5 ~~other than in this part provided, notify the~~
6 ~~department not later than immediately after the end of~~
7 ~~twenty four hours following the death, stating,~~
8 ~~whenever possible, the name, age, sex, and cause of~~
9 ~~death of the decedent.]~~ Submit in writing to the
10 department of human services a description of the
11 efforts used in making the determination that the dead
12 human body is unclaimed in accordance with section
13 346-15, if payment for cremation is sought.

14 ~~[(d) Every head officer of a hospital, nursing home, or~~
15 ~~correctional facility in which a decedent was a patient or~~
16 ~~inmate at the time of death and whose body is unclaimed and~~
17 ~~required to be buried at public expense shall transmit to the~~
18 ~~department a medical history of the decedent for the purpose of~~
19 ~~identification and permanent record, which records shall be open~~
20 ~~to inspection by any state or county public official or~~
21 ~~prosecuting attorney.]~~

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

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

6 "§327-36 Final disposition of bodies retained for medical
7 education and research purposes. A university, hospital, or
8 institution [~~which~~] that holds [~~an unclaimed~~] a dead human body
9 [~~as provided in this part~~] shall, when the body is deemed of no
10 further value for medical education and research purposes,
11 dispose of the remains by cremation except as otherwise provided
12 in section [~~327-34.~~] 327-14."

13 SECTION 5. Section 327-38, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§327-38 Prohibitions; penalty. (a) No person shall
16 give, offer, or promise any money or other things of value to
17 any other person in consideration of receiving a dead human
18 body.

19 (b) No person shall provide a dead human body to any other
20 person in consideration of any money or other things of value,
21 or any offer or promise of money or other things of value.

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1 (c) No person shall display a dead human body for
2 commercial purposes; provided that this subsection shall not
3 apply to a display of a dead human body that:

4 (1) Has been dead for more than eighty years;

5 (2) Consists solely of human teeth or hair;

6 (3) Is part of the ordinary display or viewing of the
7 deceased at a funeral establishment or part of a
8 similar funeral or memorial service;

9 (4) Is an object of religious veneration;

10 (5) Is an object of research or educational display in the
11 possession of any federal, state, or county agency,
12 any public or private institution of higher learning
13 accredited under federal or state law, or any private
14 entity in receipt of a federal, state, or county grant
15 for health-related research; or

16 (6) Is in the possession of a museum facility.

17 ~~[(d) No university, hospital, or institution shall use a~~
18 ~~body received under this part for any purpose except medical~~
19 ~~education and research.~~

20 ~~—(e)]~~ (d) Any person who violates this section shall be
21 fined not more than \$5,000 or imprisoned not more than one year,
22 or both.

1 [~~f~~] (e) As used in this section:

2 "Dead human body" means:

3 (1) An individual who has sustained either irreversible
4 cessation of circulatory and respiratory functions or
5 irreversible cessation of all functions of the entire
6 brain, including the brain stem; provided that the
7 determination of death be made in accordance with
8 accepted medical standards; and

9 (2) Includes plastinated human bodies or remains,
10 including tissue, organs, and other body parts, that
11 are preserved from decay by replacing the water and
12 fats in the human remains with a polymer.

13 "Museum facility" means a public or private nonprofit
14 institution that:

15 (1) Is accredited by the American Association of Museums
16 or is part of an accredited college or university;

17 (2) Is organized on a permanent basis for essentially
18 educational or aesthetic purposes; and

19 (3) Owns or uses tangible objects, cares for those
20 objects, and exhibits them to the general public on a
21 regular basis."

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1 SECTION 6. Section 327-31, Hawaii Revised Statutes, is
2 repealed.

3 [~~§327-31 Medical, etc., use of unclaimed bodies~~
4 ~~authorized. A university, hospital, or institution within the~~
5 ~~State authorized to teach and conduct research in medicine,~~
6 ~~anatomy, or surgery or having a medical preparatory or medical~~
7 ~~graduate course of instruction may receive from the department~~
8 ~~of health the unclaimed body of any person required to be buried~~
9 ~~or cremated at public expense and to use any such body for~~
10 ~~medical education and research purposes."]~~

11 SECTION 7. Section 327-33, Hawaii Revised Statutes, is
12 repealed.

13 [~~§327-33 Duties of university, etc., receiving bodies.~~
14 ~~Every university, hospital, or institution which receives an~~
15 ~~unclaimed body as provided in this part shall:~~

16 (1) ~~Bear all reasonable expenses incurred in the~~
17 ~~transportation and preservation of the body.~~

18 (2) ~~Keep a permanent record of every body received, giving~~
19 ~~an identification number, source, and disposition of~~
20 ~~the body and, if possible, the name, age, sex,~~
21 ~~nationality, race, and place of last residence of the~~

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1 ~~decedent, which records shall be open to inspection by~~
2 ~~the department of health.~~

3 ~~(3) Report annually, and at such other times as the~~
4 ~~department may specify, to the department concerning~~
5 ~~the receipt, preservation, retention, use, surrender,~~
6 ~~refusal, and disposition of dead bodies as provided in~~
7 ~~this part.~~

8 ~~(4) Retain every body received in a receiving vault for a~~
9 ~~period of not less than thirty days before allowing~~
10 ~~its use for medical education and research purposes.~~

11 ~~(5) Be deemed the "person in charge of the disposition of~~
12 ~~the body" as to each body received for the purposes of~~
13 ~~chapter 338, part I, and comply with the requirements~~
14 ~~pertaining to the filing of death certificates."]~~

15 SECTION 8. Section 327-34, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§327-34 Claimants; surrender. Any person may claim a~~
18 ~~body held by a university, hospital, or institution, as provided~~
19 ~~repealed. in this part, upon payment of the expenses incurred in~~
20 ~~obtaining, preparing, and handling the body. Upon receipt of~~
21 ~~such claim and payment, the university, hospital, or institution~~
22 ~~shall surrender the body to the claimant."]~~

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1 SECTION 9. Section 327-35, Hawaii Revised Statutes, is
2 repealed.

3 [~~§327-35 Refusal of university, etc. (a) A university,~~
4 ~~hospital, or institution authorized to receive unclaimed bodies~~
5 ~~as provided in this part may refuse to accept any such body for~~
6 ~~the following reasons:~~

7 ~~(1) Death occurs outside the island on which the~~
8 ~~university, hospital, or institution is located;~~

9 ~~(2) The body is autopsied or embalmed;~~

10 ~~(3) The body is not intact;~~

11 ~~(4) The university, hospital, or institution has~~
12 ~~insufficient facilities to handle, store, and use the~~
13 ~~body; or~~

14 ~~(5) Medical or health reasons endanger or threaten to~~
15 ~~endanger the public health and safety.~~

16 ~~(b) In case of such refusal, the university, hospital, or~~
17 ~~institution shall notify the appropriate public agency which~~
18 ~~shall provide for the final disposition of the body pursuant to~~
19 ~~law."]~~

20 SECTION 10. Section 327-37, Hawaii Revised Statutes, is
21 repealed.

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1 ~~["§327-37 Exceptions. No dead body shall be subject to~~
2 ~~this part if:~~

3 ~~(1) Death appears to have occurred under any of the~~
4 ~~circumstances set forth in section 841-3, in which~~
5 ~~case chapter 841 shall apply;~~

6 ~~(2) The decedent was an honorably discharged member of the~~
7 ~~United States armed forces, in which case the decedent~~
8 ~~shall be buried in accordance with law; or~~

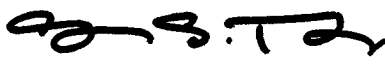
9 ~~(3) Any person claims the body for burial at the person's~~
10 ~~own expense."]~~

11 SECTION 11. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 12. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

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Report Title:

Human Bodies; Disposition of

Description:

Repeals the authority of the department of health to deliver or distribute an unclaimed dead human body to a university, hospital, or institution for medical educational and research purposes, and clarifies the responsibilities of the person who has possession, charge, or control of an unclaimed dead human body with respect to gathering and providing information to state agencies.

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

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO DISPOSITION OF DEAD HUMAN BODIES

PURPOSE: To repeal the authority of the department of health to deliver or distribute an unclaimed dead human body to a university, hospital, or institution for medical educational and research purposes, and to clarify the responsibilities of the person who has possession, charge, or control of an unclaimed dead human body with respect to gathering and providing information to state agencies.

MEANS: Repeal sections 327-31, 327-33, 327-34, 327-35, and 327-37, Hawaii Revised Statutes (HRS); amend sections 327-32, 327-36, and 327-38; and amend the title of chapter 327, part II.

JUSTIFICATION: The department of health currently plays no role in overseeing donations of unclaimed corpses for medical education and research. Part I of chapter 327, HRS, the Uniform Anatomical Gifts Act, prohibits the donation of dead human bodies or anatomical gifts without express consent. The department of health, by definition, is unable to obtain consent to donate a dead human body for medical education or research pursuant to chapter 327, part I, HRS, if the body is unclaimed. There has been some confusion about this in the past. In policy and practice educational and research institutions only receive dead human bodies that are willfully and explicitly donated in accordance with part I of chapter 327, HRS.

Further, the bill clarifies the roles and responsibilities of the person in possession of a dead human body to locate a person to claim the body. If the person in possession

uses due diligence to locate a relative, friend, member of a fraternal society of which the deceased is a member, or a legally responsible party, but is unable to find such a person to accept responsibility for final disposition of the dead human body, the person in possession shall notify the department of human services in writing of the efforts used to locate a concerned party and obtain the approval of the department of human services to declare the body unclaimed.

Finally, the bill also makes it clear that the provisions of section 327-32, HRS, shall not interfere with or contradict chapter 338, HRS, which deals with death certificates.

Impact on the public: This bill preserves the dignity of unidentified or unclaimed deceased persons in line with current standards for other types of anatomical gifts, i.e. consent from self or next of kin prior to donation for educational or research purposes. There will be no disruption to medical education and research because unclaimed dead human bodies are not used by the institutions that conduct the education or research.

Impact on the department and other agencies: This bill will clarify that the department of health is not responsible for providing unclaimed dead human bodies to institutions for educational or research purposes. The impact on the department of human services is that it will be DHS' responsibility to confirm that due diligence was made in the determination that the corpse is, in fact, unclaimed, by the person in possession of the body. This impact is anticipated to be minimal because DHS already pays for the disposition of unclaimed bodies, and because of the infrequency of unclaimed corpses eligible for publicly funded disposal, which is estimated at zero to two per year.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH907

OTHER AFFECTED
AGENCIES: Department of human services.

EFFECTIVE DATE: Upon approval.