

ACT 250

H.B. NO. 160

A Bill for an Act Relating to Hansen’s Disease.

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

SECTION 1. The purpose of this Act is to propose changes for clarity including common parlance substitutions and additional functional clarification with respect to Hansen’s disease.

SECTION 2. Section 326-1, Hawaii Revised Statutes, is amended to read as follows:

**“§326-1 Establishment of hospitals, etc.; treatment and care of persons affected with Hansen’s disease.** The department of health, subject to the approval of the governor, shall establish hospitals, [settlements,] facilities, and places as it deems necessary for the care and treatment of persons affected with Hansen’s disease.

At every such hospital, [settlement,] facility, and place there shall be exercised every reasonable effort to effect a cure of such persons, and all such persons shall be cared for as well as circumstances will permit, and given such liberties as may be deemed compatible with public safety and in the light of advances in medical science and in accordance with accepted practices elsewhere. Every patient shall be encouraged to take complete treatment so that prompt recovery can be attained and shall be discharged as soon as possible. The treatment shall be compulsory only in those cases where, in the opinion of the department, such treatment is necessary to save life [or], prevent obvious physical suffering, or protect the health of the public, and the department may take such measures as may be necessary to enforce this section.”

SECTION 3. Section 326-3, Hawaii Revised Statutes, is amended to read as follows:

**“§326-3 Care in other hospitals, homes, etc.** Notwithstanding any of the provisions of this chapter or of any other chapter relating to this subject matter, the department of health may make arrangements for the care and treatment of any person within the jurisdiction at any hospital, nursing home, or convalescent home in the State, either public or private, and bear all expenses of the hospitalization and treatment and any other necessary expenses in the same

manner as though the person were [confined] staying at any hospital, [settlement,] facility, or place for the care and treatment of persons affected with Hansen's disease established under section 326-1. Any moneys at any time appropriated for the care of patients or maintenance of the hospital, [settlement,] facility, or place established under section 326-1 may be used by the department to pay any hospital, nursing home, or convalescent home with which the department has made such arrangements. When such arrangements have been made the other provisions of this chapter relating to the examination, care, treatment, and discharge of patients shall be applicable to the institution and patient involved in the same manner as they apply to the hospital, [settlement,] facility, or place established under section 326-1."

SECTION 4. Section 326-4, Hawaii Revised Statutes, is amended to read as follows:

**"§326-4 Officers and employees; sickness and accident; expense.** In case any officer or employee of the department of health becomes ill or is injured at the [settlement] facility at Kalaupapa and, in the opinion of the physician of the [settlement,] facility, or in [his] the<sup>1</sup> absence of the physician an authorized agent of the department of health, suitable medical, hospital, nursing, or other services or facilities are not available there, the department shall incur and pay the reasonable and necessary expenses of removing and transporting the officer or employee to and from a place within the State where suitable hospital facilities or treatment can be secured."

SECTION 5. Section 326-5, Hawaii Revised Statutes, is amended to read as follows:

**"§326-5 Appropriations, how spent.** All moneys at any time appropriated for the upkeep, support, maintenance, and conduct of any hospital, [settlement,] facility, or [receiving station] place for persons affected with Hansen's disease, shall be expended under the supervision and authority and by the order of the department of health, upon vouchers signed by the director of health."

SECTION 6. Section 326-11, Hawaii Revised Statutes, is amended to read as follows:

**"§326-11 Voluntary transfer to and from Kalaupapa.** Any person undergoing treatment and receiving care for Hansen's disease at Hale Mohalu on June 30, 1969 may be transferred to Kalaupapa [Settlement] for care and treatment if [he] the person desires. Any person who may undergo treatment and receive care for Hansen's disease at Hale Mohalu after June 30, 1969 may apply to the director of health for transfer to Kalaupapa [Settlement].

Any person undergoing treatment and receiving care for Hansen's disease at Kalaupapa [Settlement] may be transferred to Hale Mohalu for care and treatment if [he] the person desires. A person transferred may be retransferred to Kalaupapa [Settlement] if [he] the person desires."

SECTION 7. Section 326-16, Hawaii Revised Statutes, is amended to read as follows:

**"§326-16 Rehabilitation of patients on temporary release.** All patients on temporary release who can be rehabilitated shall be given the opportunity at the hospital or [settlement] facility where they are receiving medical care. Following satisfactory rehabilitation and training, every effort shall be made to assist the patients in securing gainful employment to become readjusted to a normal life in society."

SECTION 8. Section 326-21, Hawaii Revised Statutes, is amended to read as follows:

“§326-21 **Employment of patients.** The department of health, with the consent of a patient, and the patient’s attending physician, may employ that patient to perform labor or service as may be approved by the attending physician, at any hospital, [settlement,] facility, or place for the care and treatment of persons suffering from Hansen’s disease.

When there are vacancies in positions, classified under chapters 76 and 77, which are of such nature that the health of the public or of other nonpatient staff members will not be in danger by their being filled by individuals living with or associating closely with active patients, at any hospital, [settlement,] facility, or place exclusively for the care and treatment of persons suffering from Hansen’s disease, employment preference shall be given to temporary release patients and discharged patients from any such hospital, [settlement,] facility, or place; provided that the persons so hired shall be otherwise qualified under chapters 76 and 77.

Discharged patients who have been employed prior to December 30, 1960, under chapters 76 and 77 in accordance with the second paragraph of this section shall be eligible to receive the same rights and privileges as those enjoyed by temporary release patients employed under the second paragraph of this section.”

SECTION 9. Section 326-23, Hawaii Revised Statutes, is amended to read as follows:

“§326-23 **Pensions for patient employees at hospitals, etc.** All patient employees or patient laborers at every hospital, [settlement,] facility, and place maintained for the treatment and care of persons affected with Hansen’s disease shall be entitled, upon retirement after twenty years or more service with the department of health, at the hospital, [settlement,] facility, or place, to a pension, payable monthly, in an amount which shall be equal to sixty-six and two-thirds per cent of the wage or salary which the patient was receiving at the time of retirement, or to a pension, payable monthly, in an amount which shall be equal to sixty-six and two-thirds per cent of the average wage or salary which the patient employee was receiving during [his] the last twelve months of employment at the hospital, [settlement,] facility, or place, whichever is higher.

Patient employees may use service with any state department or agency not exceeding five years which has not been credited under the state retirement system in lieu of service with a hospital, [settlement,] facility, and place maintained for the treatment and care of persons affected with Hansen’s disease to satisfy the requirements of the preceding paragraph; provided that the service shall be authenticated by official records of the department where service was performed.

When work is available at Kalaupapa [Settlement] which may be fulfilled by patient residents of the [settlement] facility under section 326-21 and there are no applicants for such positions from among the eligible patients, pensioned patients who are in residence at Kalaupapa [Settlement] may be reemployed, not to exceed nineteen hours per week, without relinquishing the pension granted to them under this section. Furthermore, notwithstanding any provision of this chapter or of any other chapter relating to this subject matter, such reemployment shall not result in suspension or termination of payment of the pension granted originally or serve to increase, decrease, or alter said pension in any way.”

SECTION 10. Section 326-24, Hawaii Revised Statutes, is amended to read as follows:

**“§326-24 Rules [and regulations].** The director of health may adopt rules [and regulations] pursuant to chapter 91 [as he may consider] necessary for the conduct of all matters pertaining to Hansen’s disease, the treatment and care thereof, [the care, custody, and control of all] and other services provided to persons affected with Hansen’s disease, and the full and complete governance of the county of Kalawao, except as limited by this chapter.”

SECTION 11. Section 326-26, Hawaii Revised Statutes, is amended to read as follows:

**“§326-26 [Who] Persons allowed at [settlement.] places for Hansen’s disease patients.** No person, not having Hansen’s disease, shall be allowed to visit or remain upon any land, place, or inclosure set apart by the department of health for the [isolation and confinement] domiciles and community facilities of persons affected with Hansen’s disease, without the written permission of the director of health, or some officer authorized thereto by the department, under any circumstances whatever, and any person found upon such land, place, or inclosure without a written permission shall be fined not less than \$10 nor more than \$100 for such offense; provided that any patient resident of Kalaupapa desiring to remain at the [settlement] facility shall be permitted to do so for as long as [he] the person may choose, regardless of whether or not [he] the person has been successfully treated.”

SECTION 12. Section 326-29, Hawaii Revised Statutes, is amended to read as follows:

**“§326-29 Fishing laws exemption; Kalaupapa.** Notwithstanding any provision of law to the contrary, state laws on fishing shall not be applicable to Hansen’s disease patients of Kalaupapa [settlement], provided the patients engage in fishing along the shorelines and in waters immediately adjacent to the county of Kalawao.

No fish or other marine products obtained by patients may be sold outside of the county of Kalawao.

The department of health shall adopt rules [and regulations] pursuant to chapter 91 necessary to control all fishing and acquisition of marine products by Hansen’s disease patients.”

SECTION 13. Section 326-30, Hawaii Revised Statutes, is amended to read as follows:

**“§326-30 Making or taking of pictures without permission prohibited.** Except for professional purposes, no person[, other than members of the staff,] shall take photographs of any patient confined at any hospital, [settlement,] facility, or place for the care and treatment of persons affected with Hansen’s disease, without the written permission of the patient.”

SECTION 14. Section 326-35, Hawaii Revised Statutes, is amended to read as follows:

**“§326-35 Sheriff, appointment, removal.** There shall be no county officer in the county other than a sheriff, who shall be a patient resident of and be appointed in the county by the department of health and who shall hold office at the pleasure of the department or until [his] a successor is appointed by the department. When a qualified patient resident is not available, the department

may appoint a staff employee or other qualified person to serve as sheriff on a non-compensated basis."

SECTION 15. Section 326-36, Hawaii Revised Statutes, is amended to read as follows:

**"§326-36 Sheriff, salary.** The salary of the sheriff who is a patient resident shall be fixed and paid by the department of health out of the appropriation allowed by the legislature for the care and treatment of persons affected with Hansen's disease."

SECTION 16. Section 326-38, Hawaii Revised Statutes, is amended to read as follows:

**"§326-38 Sheriff, powers.** The sheriff may appoint and dismiss and reappoint as many police officers as may be authorized by the department of health for the county [who,]. Patient residents, for the services rendered as police officers, shall receive pay as the department determines and which pay shall be taken out of and from the appropriation made by the legislature for the care and treatment of persons affected with Hansen's disease. The sheriff shall have other powers and duties within the county of Kalawao and appropriate thereto as are prescribed by law for the chiefs of police or police officers of the several counties respectively."

SECTION 17. Section 326-40, Hawaii Revised Statutes, is amended to read as follows:

**"§326-40 Kalaupapa; policy on residency.** The legislature finds that Hawaii's Hansen's disease victims have in many ways symbolized the plight of those afflicted with this disease throughout the world. Their sufferings and social deprivations helped eventually to bring the story of the disease and an understanding of its health ravages to people everywhere. Those patients who settled in Kalaupapa remain a living memorial to a long history of tragic separation, readjustment, and endurance.

It is the policy of the State that the patient residents of Kalaupapa shall be accorded adequate health care and other services for the remainder of their lives. Furthermore, it is the policy of the State that any patient resident of Kalaupapa desiring to remain at the [settlement] facility shall be permitted to do so for as long as [he] that patient may choose, regardless of whether or not [he] the patient has been successfully treated."

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

**Note**

1. Underscoring missing.