

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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tributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such just adjustment cannot be made, the commission shall refund said amount without interest, from the fund. For like cause and within the same period, an adjustment or refund may be so made on the commission's own initiative. (Act Dec. 24, 1936, Ex. Ses., c. 2, §14.)

4337-35. Protection of rights and benefits—A. Waiver of rights void.—No agreement by an individual to waive release or commute his rights to benefits or any other rights under this Act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

B. No assignment of benefits—Exemptions.—No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid. (Act Dec. 24, 1936, Ex. Ses., c. 2, §15.)

4337-36. Penalties.—A. Whoever violates any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$100.00 or by imprisonment of not longer than 90 days.

(b) Any person who wilfully makes a false statement of representation to obtain any benefit or payment under the provisions of this Act either for himself or another person or to cause or attempt to cause a lower contribution to be paid to the fund, or any person who wilfully refuses to pay a contribution to the fund shall be guilty of a misdemeanor and punished by a fine of not more than \$100.00 or by imprisonment of not longer than 90 days. (Act Dec. 24, 1936, Ex. Ses., c. 2, §16.)

4337-37. Representation in court.—In any civil action to enforce the provisions of this Act the com-

mission and the State may be represented by any qualified attorney who is a regular salaried employee of the commission and is designated by it for this purpose or at the commission's request by the Attorney General; an aggrieved employee shall be entitled to appear before any court by himself or with a licensed attorney. (Act Dec. 24, 1936, Ex. Ses., c. 2, §17.)

4337-38. Nonliability of state.—Benefits shall be deemed to be due and payable under this Act only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and neither the State nor the commission shall be liable for any amount in excess of such sum. (Act Dec. 24, 1936, Ex. Ses., c. 2, §18.)

4337-39. Saving clause.—The legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this Act at any time. If for any reason the excise tax on wages provided for in Title IX of the Social Security Act is held to be invalid by the Supreme Court of the United States or the contributions imposed under this Act are held to be invalid by a court of last resort, or in case the Social Security Act is repealed, no further contributions shall be collected under this Act, and no further benefits paid, and any moneys in the unemployment compensation fund shall be held in a separate account by the Treasurer of the State of Minnesota pending the disposition thereof as may be provided by law. The contribution imposed under this Act shall not be collected for the calendar year 1936, if this Act is not approved by the Social Security Board and the State of Minnesota certified to the Secretary of the Treasury, as provided in Section 903 of the Social Security Act, previous to January 1, 1937. (Act Dec. 24, 1936, Ex. Ses., c. 2, §19.)

4337-40. Separability of provisions.—If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby, and if this Act should be held invalid in any of its provisions which differ from the Federal Social Security Act then, and in that event, the provisions of the Federal Social Security Act shall be read into and become a part of the provisions of this Act. (Act Dec. 24, 1936, Ex. Ses., c. 2, §20.)

4337-41. Short title.—This Act shall be known and may be cited as the "Minnesota Unemployment Compensation Law." (Act Dec. 24, 1936, Ex. Ses., c. 2, §21.)

4337-42. Effective date.—This Act shall take effect and be in force from and after its passage. (Act Dec. 24, 1936, Ex. Ses., c. 2, §22.)

CHAPTER 24

Soldiers' Home, Relief, Etc.

4344. Soldiers' Home—who may be admitted.—The Minnesota Soldiers' Home shall be maintained at Minneapolis, under the management of seven Trustees, one of whom shall be a woman, to be known as the "Soldiers' Home Board," as a home for honorably discharged soldiers, sailors and marines of the United States who served in the Mexican War, the War of the Rebellion, the Spanish-American War, or the Philippine Insurrection, or the Boxer Rebellion, or

members of the Minnesota National Guard mustered into Federal Service in 1916, and served on the Mexican border, or the war of 1917 and 1918 commonly called the "World War," and for persons who actually served in any campaign against the Indians in this state in the year 1862, whether as soldiers of the United States or not. But no person shall be admitted to the Home who has not been a resident of the state for three years next preceding the date of his

application, unless he served in a Minnesota regiment, or was credited to the state, or served in the Indian Campaign as aforesaid. Nor shall any person be admitted unless he is without adequate means of support, and is unable, by reason of wounds, disease, old age or infirmity to properly maintain himself. (R. L. '05, §1835; G. S. '13, §3953; Apr. 16, 1931, c. 176.)

Purchase of supplies and equipment for soldiers' home is to be made under direction and with approval of department of administration and finance. Op. Atty. Gen. (980a-12), Aug. 30, 1937.

Inmate cannot be discharged because he has accumulated property by saving pension money after entrance. Op. Atty. Gen. (394a), Jan. 27, 1938.

4345. Persons who may be admitted to the soldiers' home.—The object of the soldiers' home shall be to provide a home for all honorably discharged ex-soldiers, sailors and marines who served in the army or navy of the United States during the War of the Rebellion, or the Mexican War, or in the war begun in the year 1898 between the Kingdom of Spain and the United States or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal service in 1916 and served on the Mexican Border, or the war of 1917 and 1918 commonly called "The World War", who now are or may hereafter become citizens of the State of Minnesota. All persons who are otherwise entitled under the provisions unable to earn their living, who, by reason of wounds, disease, or old age or infirmities are unable to earn their living, and who have no adequate means of support. No applicant shall be admitted to the soldiers' home who has not been a resident of the State of Minnesota for three years next preceding the time of having his application, unless he served in a Minnesota regiment or was accredited to the State of Minnesota. All persons who are otherwise entitled under the provisions of this section to admission to said soldiers' home who actually served in any campaign against the Indians within the United States shall be entitled to admission to such soldiers' home, notwithstanding such person was not regularly enlisted, mustered into or discharged from the military service of the United States.

The board of trustees are hereby authorized to admit wives with their husbands, and the widows or mothers to those who are, or if living, would be, eligible to admission under this act, but no wife or widow of a soldier of the war of the Rebellion, or of a soldier who actually served in any campaign against the Indians within the United States shall be admitted unless she shall have been married to her soldier husband prior to the year 1905 and no wife or widow of an honorably discharged ex-soldier, sailor or marine, who served in the army or navy of the United States in the war begun in the year 1898 between the Kingdom of Spain and the United States or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal service in 1916 and served on the Mexican Border, shall be admitted unless she shall have been married to her soldier husband prior to the year September 1, 1922 and then only in the event that by reason of physical disabilities, infirmities or old age she is unable to support herself and has no other adequate means of support; and no wife, widow or mother shall be admitted unless she shall have been a resident of the State of Minnesota no less than five (5) years next preceding the date of her application, and no wife, widow or mother shall be admitted unless she shall have attained the age of fifty-five (55) years at the time of making such application, provided however that a widow eligible to admission, except that her soldier husband did not serve in a Minnesota regiment or was not a resident of Minnesota at time of his death, may be admitted, who has

resided in this state not less than fifteen years next preceding the date of her application for admission.

Provided, however, that in case such widow had been married to her soldier husband who was a veteran of the Civil War, since prior to January 1, 1870 and had lived with her husband until his death in 1919, and such widow is now past eighty years of age and has been a bona fide resident of the State of Minnesota for more than six years last past and is otherwise eligible to admission, is hereby declared to be eligible to admittance to the soldiers' home of the State of Minnesota.

Provided further that in case such wife, widow or mother who had previously been a resident of Minnesota for not less than ten years, and who has lost her residence in this state by removal therefrom for the benefit of her health or the health of her husband or son and who has returned to this state for the purpose of making it her home, may be admitted to said soldiers' home after having been a resident of this state not less than one year next preceding the date of her application, provided such applicant is otherwise eligible to admission under the provisions of this section, and provided further, that all soldiers of the Minnesota National Guard and who heretofore have lost or hereafter may lose an arm or leg or his sight or may become permanently disabled from any cause while in the line and discharge of duty and are not able to support themselves, may be admitted to the home under such rules and regulations as the board of trustees may adopt, and any soldier of the Minnesota National Guard suffering from illness or injury sustained from any cause in the line and discharge of military duty shall be admitted to the soldiers' home hospital for medical treatment and hospital service until recovery from such illness or injury under such rules and regulations as the board of trustees may adopt. ('87, c. 148, §3; '99, c. 166, §1; '05, c. 222, §1; G. S. '13, §3954; '15, c. 259, §1; '17, c. 205, §1; '19, c. 79, §1; '25, c. 168, §1; Apr. 24, 1929, c. 333; Apr. 25, 1931, c. 349; Mar. 9, 1933, c. 66, §1.)

Sec. 2 of Act Mar. 9, 1933, cited, provides that the act shall take effect from its passage.

One reporting for military service under draft and discharged on account of physical disability is not eligible to admission to Minnesota Soldier's Home. Op. Atty. Gen., May 17, 1932.

Common-law wife of soldier may be admitted as widow. Op. Atty. Gen. (300f), Jan. 29, 1935.

Mother adopting a son 18 years old who later served in World War would be entitled to admission to soldiers' home, if the adopted son would be eligible to admission. Op. Atty. Gen. (394a), May 2, 1938.

Section 4345 refers to qualifications necessary to gain admittance to home, while §4365 refers to qualifications necessary to obtain relief outside of home, and the two are not inconsistent. Op. Atty. Gen. (394i), May 27, 1938.

This section refers exclusively to qualifications necessary to obtain admission to soldiers' home, and requirements imposed upon widows of war veterans are not applicable to their right to obtain relief outside of home. Id.

4349. Trustees of soldiers' home board to receive expenses in addition to per diem compensation.

Bond should run to state and not to board or any individual, and should be in form prescribed by §9687. Op. Atty. Gen. (394b), Nov. 5, 1937.

There is no requirement that deputy treasurer file a bond, but there is no objection to such a bond if state does not pay premium. Op. Atty. Gen. (394b), Nov. 5, 1937.

Trustees are not permitted to charge statutory per diem for expenses while investigating relief applications. Op. Atty. Gen. (349j), Mar. 23, 1938.

Trustees are entitled to receive compensation and actual expenses for attending meeting of any committee of the board. Op. Atty. Gen. (394j), Nov. 12, 1938.

4350. Officers of Soldiers' Home—Secretary, etc.

Board of Minnesota Soldiers' Home may require inmates to suffer physical examination and to desist from driving automobiles if physically or mentally incapable. Op. Atty. Gen., Dec. 5, 1931.

Profits made from canteen operated at soldiers' home do not belong to the state and may be extended by board of trustees with consent of members to provide recreation facilities. Op. Atty. Gen. (394k), June 4, 1937.

Majority of members of board present at regular or special meetings may amend or repeal rules and by-laws. Op. Atty. Gen. (394k), Aug. 9, 1937.

4351. Meetings—executive committee.

Executive committee may exercise only such powers of the board as the by-laws permit. Op. Atty. Gen. (394f), June 7, 1935.

4352. Officers and employees.

Filing of bond for commandant is not necessary, and state cannot pay premium on such a bond, though a bond may be voluntarily given. Op. Atty. Gen. (394b), Nov. 5, 1937.

4355. Relief fund, how used.

A widow of a war veteran, to be entitled to relief, must show that her soldier, if living, would have been entitled to admission to the home, but widow is not required herself to be eligible to admission and need not possess requirements as to marriage and residence set forth in §4345. Op. Atty. Gen. (394i), May 27, 1938.

4356. County agents.

Persons appointed to look up or investigate special relief in several counties are not entitled to compensation. Op. Atty. Gen. (394h), Nov. 12, 1938.

4360. Inmates to retain pension.

Inmate cannot be discharged because he has accumulated property by saving pension money after entrance. Op. Atty. Gen. (394a), Jan. 27, 1938.

Widow cannot be required to agree to set aside portion of pension to establish \$150 fund to defray funeral expenses. Op. Atty. Gen. (394G), May 23, 1939.

4365. Soldiers' Home relief extended.—In addition to the persons to whom the Soldiers' Home Board is now authorized to extend relief outside the Minnesota Soldiers' Home from the soldiers' relief fund, the board is hereby authorized to extend relief, outside the home, to the widow, deserted wife or any minor child under fourteen years of age of any honorably discharged ex-soldier, ex-sailor, or ex-marine who served in the army or navy of the United States during the War of the Rebellion, War with Spain, Philippine Insurrection, China Relief Expedition, or World War, provided any such widow or deserted wife is more than fifty-five (55) years of age and shall have married her soldier husband prior to the year 1903; provided, further, that no such relief shall be granted under the provisions of this act to any person unless he or she shall have been a resident of the state of Minnesota for at least five (5) years next preceding his or her application for such relief. The granting of such relief and the extent and character thereof shall in all cases be in the discretion of the board and subject to such terms as it may prescribe. (G. S. '13, §3973; '13, c. 186, §1; '27, c. 285; Mar. 22, 1929, c. 79.)

Section 4345 refers to qualifications necessary to gain admittance to home, while §4365 refers to qualifications necessary to obtain relief outside of home, and the two are not inconsistent. Op. Atty. Gen. (394i), May 27, 1938.

4366. Personality of inmates—Will.

Where sole and residuary legatee predeceased inmate of Minnesota Soldiers' Home, lapsed legacy should be disposed of in accordance with this section and go to the state of Minnesota. Op. Atty. Gen. (394e), Jan. 24, 1935.

MISCELLANEOUS PROVISIONS

4367. Exemption from license fee—Veterans, etc.—regulations.—No license fee or other charge provided by any law of the State of Minnesota shall be required of any honorably discharged soldier, sailor or marine who served the United States in the Civil War, in the Spanish-American War, in the Philippine Rebellion or in the Boxer uprising, or in the recent war against the German Empire and its allies, for the privilege of hawking or peddling goods and merchandise, not prohibited by law or ordinance, in the county where he has established a bona fide residence, solely upon his own account, providing that nothing herein contained shall prevent any city, village, borough or other municipality from levying and collecting such license fees for hawking or peddling within its corporate limits. Upon application therefor, accompanied by proof of such discharge to any clerk or other officer authorized to issue such license, the same shall forthwith be granted. Every such clerk

or other officer issuing such license shall ascertain that the applicant is entitled thereto; and any such clerk or other officer issuing a license to any person who is not entitled to receive one under the provisions of this act shall be guilty of a misdemeanor. Every violation hereof shall be deemed a misdemeanor, the minimum punishment whereof shall be a fine of ten dollars. (R. L. '05, §1849; '07, c. 393, §1; G. S. '13, §3975; '17, c. 230, §1; '19, c. 415; '21, c. 434, §1; '25, c. 236; Apr. 24, 1935, c. 281.)

This section does not exempt veterans from payment of fees for licenses for hotels, restaurants, lodging houses, boarding houses or places of refreshment. Op. Atty. Gen., May 25, 1932.

Service with militia in federal service on Mexican border in 1916-1917 did not entitle one to exemption. Op. Atty. Gen., Feb. 23, 1933.

Veterans are not required to pay license fee imposed under state law and only under state law for privilege of hawking or peddling goods not prohibited by law or ordinance outside corporate limits of municipalities and solely upon their own account, but a veteran may be required to pay to take out license inside a municipality. Op. Atty. Gen., June 5, 1933.

Discharged soldier is not entitled to wholesale produce dealer's license without payment of license fee. Op. Atty. Gen. (832i), Nov. 13, 1934.

Where a veteran conducting a general merchandise business employs another veteran to peddle from house to house, veteran operating store need not obtain a peddler's license, but his employee, though a veteran, must purchase license. Op. Atty. Gen. (290j), Dec. 7, 1937.

4368. Preference to war veterans in public appointments.—That in every public department and upon all public works in the state of Minnesota and the counties, cities and towns thereof, honorably discharged soldiers, sailors and marines, from the army, navy or marine corps of the United States in the Civil War, Spanish-American War, Philippine Insurrection, China Relief Expedition, or World War, wherein the United States of America and the allied nations of England, France, etc., were engaged in war against the Imperial German Government and its allies, who are citizens and have been residents of the state of Minnesota five years immediately preceding their application, or enlisted from the State of Minnesota, shall be entitled to preference in appointments, employment and promotion over other applicants therefor, and the persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of his age or by reason of any physical disability, provided such age and disability does not render him incompetent to perform properly the duties of the position applied for and when such soldier, sailor or marine shall apply for appointment or employment under this act, the officer, board or person whose duty it is, or may be, to appoint or employ such person to fill such position or place, shall before appointing or employing anyone to fill such position or place, make an investigation as to the qualifications of said soldier, sailor or marine for such place or position, and if he is a man of good moral character, and can perform the duties of said position applied for by him, as hereinbefore provided, said officer, board or person shall appoint said soldier, sailor or marine to such position or place of employment.

A refusal to allow the preference provided for in this and the next succeeding section to any such honorably discharged soldier, sailor, or marine, or a reduction of his compensation intended to bring about his resignation or discharge, shall entitle such honorably discharged soldier, sailor or marine to a right of action therefor in any court of competent jurisdiction for damages, and also for a remedy for mandamus for righting the wrong. ('07, c. 263, §1; C. L. '13, §3976; '17, c. 499, §1; '19, c. 14; '19, c. 192, §1; '37, c. 121; June 24, 1937, Sp. Ses., c. 6, §1.)

Sec. 2 of Act Mar. 31, 1937, c. 121, provides that the act shall take effect from its passage. Sec. 3 of such act provides: "The amendatory matter constituting this Act shall be considered severable from the original act amended and if found to be invalid shall not render section 4368 invalid."

Where civil service rules required appointment to be made from three highest on eligible list, one within preference act, but not one of the three, was not entitled to appointment. 171M164, 213NW738.

This act does not prescribe or require formal notice to employer of status of employe. 173M485, 217NW681.

The word "towns" includes villages. 173M485, 217NW 681.

It is only when there is a failure on the part of the council to act or a manifest by arbitrary action on its part that a court may interfere. 178M277, 226NW841.

Does not apply to school districts. Holmquist v. L. 180 M550, 231NW406(1).

The appointment of an assistant public examiner is at the pleasure of the comptroller, and an honorably discharged soldier was not entitled to a preference. State v. Rines, 185M49, 239NW670. See Dun. Dig. 7986.

Laws 1929, c. 57 (sections 1933-23 to 1933-41), is complete of itself and controlling, and the provision of this section that age shall not prevent a preference if the applicant is qualified is not effective. State v. MacDonald, 185M194, 240NW361. See Dun. Dig. 6560, 6600, 7986.

A county highway engineer under §2569 is not within the operation of §4368, 4369, known as the Soldiers' Preference Employment Act. State v. Walleen, 185M329, 241NW318. See Dun. Dig. 7986(9).

The purpose of Laws 1931, c. 347, was to make operative §4368, 4369, and it operated as an amendment to Laws 1929, c. 57. State v. McDonald, 188M157, 246NW900.

Findings that city council, for political or personal reasons, appointed another person to same position and employment that plaintiff had theretofore held, held sustained by evidence. State v. City of Eveleth, 189M 229, 249NW184.

Court was justified in holding that position of deputy city clerk held by plaintiff prior to Jan. 5, 1932, was not one of a "strictly confidential relation to the appointing officer." Id.

Rejection by a city council of application of one claiming under soldier's preference law on adequate evidence having been found not arbitrary, will not be disturbed on appeal. State v. Barker, 190M370, 251NW673. See Dun. Dig. 6560.

Finding of a jury that a village council arbitrarily rejected a veteran's application for employment held not justified by evidence. State v. Village of Bovey, 191M 401, 254NW456. See Dun. Dig. 7986.

Soldiers' preference acts are not controlling in respect of appointment to position of inheritance tax examiner by attorney general. State v. Peterson, 194M60, 259NW 696. See Dun. Dig. 7986.

Position of municipal court officer is subject to soldiers' and sailors' preference law. State v. City of Eveleth, 194M44, 260NW223. See Dun. Dig. 7986.

Act does not give a service man right to remain in employment as against another competent employee, in same grade of service, who is senior to service man, where for lack of funds employment of one of them must be and is terminated. State v. City of Duluth, 195 M563, 262NW681. See Dun. Dig. 6560.

Soldiers' Preference Act is not applicable to school districts. Op. Atty. Gen., May 21, 1929.

The Soldiers' Preference Act did not apply to school districts, and the situation was not changed by Laws 1931, c. 347. Op. Atty. Gen., May 4, 1931.

The Soldiers' Preference Act was not applicable to school districts and was not enlarged as to its application by the 1931 Act. Op. Atty. Gen., May 20, 1931.

Laws 1931, c. 347, makes no change in the rule laid down in State v. Scott, 163Minn190, 171Minn208, and does not affect the seniority right of members of a fire department coming under Laws 1929, c. 57. Op. Atty. Gen., Sept. 29, 1931.

Veterans preference law is applicable to any regularly enlisted or commissioned member of the army nurse corps during the late World War. Op. Atty. Gen., Jan. 21, 1932.

Veteran is entitled to preference to a city position only when he appears as one of the eligibles. Op. Atty. Gen., Aug. 26, 1932.

An honorable discharge from the national guard does not give preference as honorably discharged soldier from army of United States. Op. Atty. Gen., Feb. 1, 1933.

Clerk of municipal court does not come within provisions of Soldiers' Preference Law. Op. Atty. Gen., Mar. 13, 1933.

Soldiers' Preference Law applies to the office of village marshal. Op. Atty. Gen., Apr. 5, 1933.

Act does not prohibit a town board from abolishing a position held by an honorably discharged soldier. Op. Atty. Gen., May 4, 1933.

Preference act does not apply to appointment as temporary road overseer. Op. Atty. Gen., May 4, 1933.

Soldiers' Preference Act applies only to those world war veterans who served between Apr. 6, 1917, and Nov. 11, 1918. Op. Atty. Gen., Aug. 3, 1933.

Township road overseer comes within statute. Op. Atty. Gen., Sept. 25, 1933.

Non-soldier appointee may not be removed to make place for temporary soldier employe. Op. Atty. Gen., Dec. 9, 1933.

Village "pumpman" within Soldiers' Preference Act. Op. Atty. Gen., Mar. 16, 1934.

Act is not applicable to school districts. Op. Atty. Gen. (85f), June 9, 1934.

Facts of former judgment determining incompetency govern only as to conditions existing at that time, and if, in opinion of appointing power, and with lapse of time, former objections may have been removed, then a present and another investigation should be made. Op. Atty. Gen. (85d), Jan. 8, 1935.

If appointing body knows that applicant for employment is a veteran, it is immaterial that applicant does not mention that he is a soldier and is claiming appointment under preference law. Id.

This act applies to employees of bureau of criminal apprehension. Op. Atty. Gen. (618a-2), July 27, 1935.

Soldiers' preference is not waived by indefinite leave of absence. Op. Atty. Gen. (85e), Sept. 26, 1935.

Veteran must be appointed if he possesses required degree of fitness, even though his non-veteran competitor has a higher rating or grade. Op. Atty. Gen. (85e), Aug. 4, 1937.

Seniority rule applies to qualified non-veteran employees and their positions may not be vacated for purpose of permitting initial appointment of qualified soldier applicants, who are not in employ of state, under merit system proposed to be established. Id.

Act has no application to school district or appointment of janitor. Op. Atty. Gen. (85f), Sept. 10, 1937.

Dairy inspector of a village is not subject to act if he is head of department. Op. Atty. Gen. (85i), Feb. 10, 1938.

Manager of municipal liquor store retained on an annual basis at a monthly salary does not come under act. Op. Atty. Gen. (85i), Dec. 23, 1938.

Act does not give a service man right to remain in employment as against a competent employee, in same grade of service, who is senior to the service man, where for lack of work employment of one of them is terminated and position abolished, but if position should be reinstated, veteran would have right to appointment. Op. Atty. Gen. (85G), May 5, 1939.

4369. Removal forbidden; right of mandamus; certiorari; burden of proof.—Any person whose rights may be in any way prejudiced contrary to any of the provisions of this section, shall be entitled to a writ of mandamus to remedy the wrong. No person holding a position by appointment or employment in the state of Minnesota or in the several counties, cities or towns thereof, who is an honorably discharged soldier, sailor or marine, having served as such in the army and navy of the United States in the late Civil and Spanish and Philippine Insurrection wars and the China relief expedition, and the late World War wherein the United States of America and the allied nations of England, France, etc., were engaged in war against the Imperial German Government and its allies, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employe or appointee to review by writ or certiorari. The burden of proving incompetency or misconduct shall rest upon the party alleging the same. Nothing in this act shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer. ('07, c. 263, §2; C. L. '13, §3977; '17, c. 499, §1; '19, c. 14; '19, c. 192, §2; '37, c. 121; June 24, 1937, Sp. Ses., c. 6, §2.)

171M164, 213NW738; note under §4368.

State v. Rines, 185M49, 239NW670; note under §4368.

State v. Walleen, 185M329, 241NW318; note under §4368.

State v. City of Eveleth, 194M44, 260NW223; note under §4368.

Op. Atty. Gen., Feb. 1, 1933; note under §4368.

Op. Atty. Gen., Mar. 13, 1933; note under §4368.

Op. Atty. Gen., Apr. 5, 1933; note under §4368.

Employment of village fireman held not for a fixed term and he was protected by this act. 173M485, 217NW 681.

The position of Superintendent of Waterworks in the City of Eveleth is within this act, such officer not being the head of a department. 179M99, 228NW447.

This act is constitutional. Moses v. O., 192M173, 255 NW617.

Section does not apply to position of assistant chief of fire department of city of Duluth. State v. Fisher, 194M175, 259NW694. See Dun. Dig. 7986.

Does not apply where office itself is terminated or suspended and its occupant let out for that reason alone rather than for incompetence or misconduct. State v. City of Duluth, 195M563, 262NW681. See Dun. Dig. 6564.

Mandamus will not lie to compel re-employment of a veteran who was temporarily suspended "on account of necessity of curtailment of expenditures," the position remaining unfilled and vacant. State v. City of Duluth, 195M563, 263NW912. See Dun. Dig. 6560, 7986.

Civil service rules attempting to make rule of relative efficiency a test is without effect to extent that it runs counter to this law. *Id.*

On review of judgment of district court affirming county board, finding discharged veteran incompetent, supreme court is limited to a determination of whether there is evidence reasonably sufficient to sustain finding, and it does not weigh evidence or pass upon credibility of witnesses. *State v. Eklund*, 196M216, 264NW582. See *Dun. Dig.* 6560, 7986.

Where evidence was heard by county board on two hearings, it was not error for board to consider evidence received on both hearings in arriving at its findings. *Id.*

Evidence held sufficient to sustain findings that plaintiff was not qualified by ability, judgment, or experience to properly fill position of road patrol foreman in road maintenance department of St. Louis County. *Id.*

Where city police civil service commission classified all police employees of city, and classification made is alleged to be erroneous, and in violation of soldiers' preference act, proper remedy is certiorari to review the classification made and not mandamus to compel a reclassification. *State v. Ernest*, 197M599, 268NW208. See *Dun. Dig.* 6560.

Veteran acting as part time foreman who got possessed with idea that because of his standing as an ex-soldier he had right to work full time to exclusion of another foreman and kept on coming to work contrary to directions of his superiors when it was other foreman's turn to oversee crew was properly dismissed for insubordination and disobedience. *State v. Twigg*, 203M 74, 279NW828. See *Dun. Dig.* 6560, 6564, 7986.

Burden of proof is upon one making charges against veteran. *Id.*

Discharged soldier employed as road overseer by town board at first meeting in April, 1932, may not be discharged when new board meets in April, 1933, without giving veteran a hearing. *Op. Atty. Gen.*, Mar. 21, 1933.

Town board may not remove veteran, holding position of road overseer, and replace him with another veteran without a hearing. *Op. Atty. Gen.*, Mar. 21, 1933.

Statute is applicable to chief of police of Nashwauk. *Op. Atty. Gen.*, Aug. 3, 1933.

Deputy clerk of district court is not entitled to soldiers' preference. *Op. Atty. Gen.*, Jun. 15, 1934.

On incorporation of city of fourth class with home rule charter right of those holding position under soldier's preference law in village to retain their positions depends upon whether departments in which they are employed are continued or discontinued under the new government. *Op. Atty. Gen.* (484a-2), Nov. 7, 1934.

Whether secretary of Itasca County Poor and Hospital Commission who is an ex-service man may be removed "except for incompetency and misconduct" shown after a hearing on stated charges" depends upon details of work performed by him, and he cannot be removed without a hearing unless it can be said that he is a private secretary or deputy of the board, or unless he occupies a strictly confidential relation to such board. *Op. Atty. Gen.* (85e), Feb. 26, 1935.

Veteran may not be discharged without cause for purpose of retirement under state retirement fund act. *Op. Atty. Gen.* (85e), June 27, 1935.

Soldiers' preference is not waived by indefinite leave of absence. *Op. Atty. Gen.* (85e), Sept. 26, 1935.

It is not necessary to have new man appear to go to work in order to file charges and to have a hearing. *Op. Atty. Gen.* (85e), Jan. 31, 1936.

Confidential relationship held not to exist between commissioner of securities and auditor and examiner respectively. *Op. Atty. Gen.* (85j), March 27, 1939.

Where town board during year 1936-37 employed veteran as road overseer, and also employed him for the year 1937-38, town board at expiration of term of overseer could not employ a discharged soldier for ensuing year without preferring charges against veteran. *Op. Atty. Gen.* (85h), May 11, 1939.

Reducing salary of war veteran policeman while leaving another policeman on full time would violate this section. *Op. Atty. Gen.* (785p), August 7, 1939.

Rights of war veterans to secure and hold positions in classified service of state are now in no way affected by confidential nature of the work. *Op. Atty. Gen.* (644), August 14, 1939.

4369-1. Veterans preference act.—The provisions of Mason's Minnesota Statutes of 1927, sections 4368 and 4369, known as the Veterans' Preference Law, and acts amendatory thereof, shall apply to and govern the appointment, employment, promotion, and removal of all employees of the state and of all other governmental agencies within the state enumerated in said sections and amendatory acts, notwithstanding any provision to the contrary in any other existing law or in any city charter relating thereto. (Act Apr. 25, 1931, c. 347, §1.)

Act is not retroactive and does not aid honorably discharged soldier who was refused employment prior to its enactment. *State v. Rines*, 185M49, 239NW670. See *Dun. Dig.* 7986.

This act is not retroactive and does not affect a case where the facts arose prior to its enactment. *State v. MacDonald*, 185M194, 240NW361. See *Dun. Dig.* 6560, 6600, 7986.

This act is constitutional. *State v. McDonald*, 183M 157, 246NW900. See *Dun. Dig.* 6560.

The purpose of Laws 1931, c. 347, was to make operative §§4368, 4369, and it operated as an amendment to Laws 1929, c. 57. *Id.*

Veteran taking examination under Laws 1929, c. 57 (Mason's 1931 Supp., §1933-23 et seq.), was entitled to preference under this act, which took effect prior to determination of result of examination. *Id.* See *Dun. Dig.* 7986.

Soldiers' preference acts are not controlling in respect of appointment to position of inheritance tax examiner by attorney general. *State v. Peterson*, 194M60, 259NW 686. See *Dun. Dig.* 7986.

This act was intended to apply to state departments only. *Op. Atty. Gen.*, Mar. 13, 1933.

Clerk of municipal court does not come within provisions of Soldiers' Preference Law. *Op. Atty. Gen.*, Mar. 13, 1933.

4369-2. Applications of act.—No provision of any subsequent act relating to any such appointment, employment, promotion, or removal shall be construed as inconsistent herewith or with any provision of said Mason's Minnesota Statutes of 1927, sections 4368 and 4369, or any act amendatory thereof, unless and except only so far as expressly provided in such subsequent act that the provisions of said sections or amendatory acts shall not be applicable or shall be superseded, modified, amended, or repealed. Every city charter provision hereafter adopted which is inconsistent herewith or with any provision of said sections or of any act amendatory thereof shall be void to the extent of such inconsistency. (Act Apr. 25, 1931, c. 347, §2.)

4369-3. Laws amended.—All acts, parts of acts, and city charter provisions inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act. (Act Apr. 25, 1931, c. 347, §3.)

4370. Burial of soldiers.—The adjutant general shall cause to be decently buried, within or without the state, at a cost to the state of not more than one hundred dollars, the body of any soldier, sailor, marine or nurse who served the United States as such in the Civil or Spanish American War, the Philippine Insurrection, Boxer Rebellion, Mexican Border Campaign or the recent war with the German Empire and its Allies, and of any person not a soldier who actually served in this state, or is a resident thereof, in the Indian war of 1862, and who dies within the state or is brought thereto for interment, and has not left sufficient means to defray the expenses of suitable burial. Such interment shall not be made in any place used exclusively for the burial of the pauper dead, and the relatives or comrades of the deceased, if they so desire, shall be permitted to conduct the burial service. The adjutant general shall furnish at a cost or not to exceed seven dollars a United States flag for each such veteran. All funds appropriated for the purposes of this act shall be disbursed by the adjutant general in the same manner which other funds of the department are disbursed. The adjutant general shall promulgate such regulations as are necessary to carry out the provisions of this act. (R. L. '05, §1850; '07, c. 129; G. S. '13, §3978; '19, Ex. Ses., c. 37, §1; Apr. 25, 1931, c. 363, §1.)

County board discharges responsibility of making funeral arrangements, but may approve arrangements made for the funeral where first presented to it after the funeral. *Op. Atty. Gen.*, Sept. 6, 1930.

Expenditure for funeral is authorized where deceased leaves no property, even though there may be relatives with sufficient means to pay the funeral expenses. *Op. Atty. Gen.*, Sept. 6, 1930.

Expenses of administration and other allowances under the laws are to be paid before estate may be said to have sufficient funds for a funeral. *Op. Atty. Gen.*, Sept. 6, 1930.

Adjutant general could not pay burial allowance for veteran who was entitled to federal aid but did not apply therefor, in view of Laws 1931, c. 395, §5. *Op. Atty. Gen.*, Jan. 14, 1932.

4371. Headstones.—The adjutant general shall cause to be placed a headstone at the grave of every such person, bearing his name, and if ascertainable, the date of his birth and death, and the designation of the organization to which he belonged or in which he served. The cost of such headstone shall not exceed fifteen dollars, finished and in place. It shall not be furnished by the state until the adjutant general shall have applied unsuccessfully to the federal government therefor. When the federal government furnishes such stone, without a base, the adjutant general, at a cost to the state of not more than seven dollars and fifty cents, shall cause the same to be properly placed. When such headstone heretofore has been furnished and erected other than by the state or the federal government and does not bear the designation of the organization to which such person belonged or in which he served, upon written request of the next of kin of such person or of the state commander of the Grand Army of the Republic, the board, at a cost to the state of not more than seven dollars and fifty cents, shall cause to be graven thereon the designation of the organization to which such person belonged or in which he served. (R. L. '05, §1851; G. S. '13, §3979; '25, c. 418; Apr. 25, 1931, c. 363, §2.)

State is warranted in making an allowance of \$15 for purchase of headstone which cannot be secured for \$15. Op. Atty. Gen. (2b). Oct. 25, 1935.

4372. Expense.—The expense of such interments, of headstones not furnished by the federal government, and of base stones shall be borne by the state. The person in charge of the interment shall report all expenditures, with vouchers approved by the adjutant general, and the state auditor shall issue his warrant for the amount. The sum of twenty-five hundred dollars is hereby appropriated annually for the defraying of such expenses. (R. L. '05, §1852; G. S. '13, §3980; Apr. 25, 1931, c. 363, §3.)

4373. May provide markers.—That the adjutant general shall upon the petition of any five reputable freeholders of any township or municipality, or of any patriotic or ex-service men's organization procure for and furnish to said petitioners some suitable and appropriate metal socket for the grave of each and every soldier, sailor, marine or nurse who served with honor in the forces of the United States and who is buried within the limits of the state, to be placed on the grave of such soldier, sailor, marine or nurse for the purpose of permanently marking, and designating said grave for memorial purposes. ('09, c. 299, §1; G. S. '13, §3981; Apr. 25, 1931, c. 363, §4.)

Laws 1931, c. 363, §4, purports in its body to amend this section, but the section is not included in the title.

4374. Petitions to state names.—That in all petitions to the adjutant general the petitioners shall state in said petition the names of soldiers buried and number of such graves in their said township or municipality at the time of petitioning. ('09, c. 299, §2; G. S. '13, §3982; Apr. 25, 1931, c. 363, §5.)

4384-2. State to provide office building for veteran organization.—The governor of this State shall set apart a suitably furnished room in the State Capitol Building, or other state office building, for the use of each of the following Veteran organizations: the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars of the United States, and the Disabled American Veterans of the World War, incorporated, or when incorporated, under the laws of the State of Minnesota. Such room shall be under the charge of the Minnesota State Commander of the Department of Minnesota of the Veteran organization assigned thereto, and such person as he may in writing designate, and shall be used for the purpose of keeping therein, records, archives, trophies, supplies and other Veteran property of said organization and as its general headquarters office

for the Department of Minnesota. (Act Apr. 27, 1929, c. 434.)

4385. Preservation of flags.—The flags and colors carried by Minnesota troops in the Civil War, Spanish American War, Mexican Border Campaign and World War shall be preserved in the capitol, under the especial care of the adjutant general. They shall be suitably encased and marked, and, so far as the adjutant general may deem it consistent with their safety, shall at all times be publicly displayed. (R. L. '05, §1856; G. S. '13, §3993; Apr. 25, 1931, c. 363, §6.)

4393. State board of control to secure land for recreation camp for disabled soldiers.

Editorial note.—Powers of state board of control under §§4393 to 4397-1, 4397-2, 4397-21, 4397-22, and 4397-23 transferred to the adjutant general by Act Apr. 22, 1939, c. 431, Art. 7, §2, ante §3199-102(11)(b).

4394. Membership of Board of Governors of recreation and recuperation camps.—There is hereby established a Board of Governors who shall have and exercise supervision, care, control, and management of such recreation and recuperation camp, which board shall consist of ten members who shall be selected and appointed as follows: Two members thereof shall be selected and appointed by the State Department of the American Legion, two members thereof shall be selected and appointed by the State department of the Veterans of Foreign Wars of the United States, two members thereof shall be selected and appointed by the state department of the United Spanish War Veterans, two members thereof shall be selected and appointed by the state department of the Disabled American Veterans of the World War, one member thereof shall be selected and appointed by the state department of the American Red Cross, and one member, who shall act as the chairman of the said Board of Governors, shall be selected and appointed by the State Board of Control. The members of said Board of Governors shall be appointed in the first instance for the term ending on the first Monday in January, 1925, and thereafter for the term of two years, ending the first Monday of January of the odd numbered year next after the appointment and qualification of their successors. Any vacancies at any time occurring in said Board of Governors shall be filled by appointment in like manner as hereinbefore provided for members of said board. If any organization fails to make the appointments hereinbefore provided within thirty days from the passage hereof, the State Board of Control is hereby authorized and required to make appointments for and on behalf of such organization. ('23, c. 309, §2; Apr. 3, 1929, c. 130.)

4397-1. Appropriation for operation of veteran rest camps.—The board of public welfare or similar welfare body of any city and county in this state, may annually expend an amount not in excess of \$9,000.00 in the operation and maintenance of a rest camp now being operated or which hereafter may be located or operated within such county or outside the limits thereof, for disabled or needy American War Veterans and their families having a legal settlement in such county, and for such other disabled and needy veterans and their families, whose cost of maintenance while at said camp is paid by the state or some other person or agency. (Apr. 24, 1929, c. 312, §1; Mar. 19, 1937, c. 73, §1.)

Editorial note.—Powers of state board of control transferred to the adjutant general by Act Apr. 22, 1939, c. 431, Art. 7, §2, ante §3199-102(11)(b).

4397-2. County boards may appropriate money for rest camps in certain counties.—That the Board of County Commissioners of any county having a population of over 500,000 in which a rest camp for disabled American War Veterans is being operated, may annually expend an amount not in excess of the sum of \$3,000.00 to assist in the operation and maintenance of said rest camp. (Act Apr. 24, 1931, c. 324.) See note under §4397-1, ante.

Laws 1931, c. 405.

Act Apr. 25, 1931, c. 405, makes an appropriation for relief of veterans of Spanish American War, Philippine Insurrection and China Relief Expedition. The act creates a board for administration of the fund, and provides that its functions shall cease June 30, 1935. The act is omitted as temporary.

Laws 1931, c. 405, §9. Amended. Laws 1935, c. 193.

Act Apr. 17, 1935, c. 204, repeals §10 of Laws 1931, c. 405.

Act Jan. 27, 1936, Sp. Ses. 1935-36, c. 94, appropriates \$42,500 from fund created by Laws 1931, c. 405, for payment of claims under Laws 1935, c. 213.

Laws 1937, c. 228, makes appropriation to carry out Laws 1931, c. 405.

\$50,000 appropriated for claims. Laws 1939, c. 157.

Minnesotans who served after Spanish American War in regular army or navy at point far distant and in manner wholly disconnected with Philippine Insurrection or China Relief Expedition are not entitled to relief. State v. Walsh, 188M412, 247NW523.

4397-3. Definitions.—The term "Council" as used in this Act shall refer to the State Executive Council.

The term "Board" as used in this Act shall refer to the State Board of Control.

The term "Division" as used in this Act shall refer to the State Division of Soldiers' Welfare. (Act Feb. 28, 1935, c. 33, §1.)

Editorial note.—Powers of executive council under §§4397-3 to 4397-9 transferred to director of social welfare by Act Apr. 22, 1939, c. 431, Art. 7, §2(11)(c), ante §3199-102(11)(c).

4397-4. Executive council may extend direct relief.

—The Council is authorized to extend direct relief to disabled veterans of all wars and their families who are residents of the State of Minnesota. (Act Feb. 28, 1935, c. 33, §2.)

4397-5. Who may receive relief.—The Council, within the limits of the appropriation provided herein, is authorized to appropriate to the Board to be used and expended by the Division such sums as may be necessary to provide necessary direct relief to disabled veterans of all wars and their families who are residents of the State of Minnesota. (Act Feb. 28, 1935, c. 33, §3.)

4397-6. Appropriations for relief.—To provide funds necessary to carry out the provisions of this act there is hereby appropriated to the Council out of any funds in the State Treasury not otherwise appropriated, the sum of Two Hundred Thousand Dollars (\$200,000.00). (Act Feb. 28, 1935, c. 33, §4.)

Appropriation of \$200,000 was not intended to be in addition to \$5,000,000 appropriated by Laws 1935, c. 51. Op. Atty. Gen. (928c-12), Apr. 28, 1938.

4397-7. May issue certificates of indebtedness.—If sufficient funds, as needed, are not available in the State Treasury, the Council is hereby authorized and directed to issue and sell certificates of indebtedness at not less than par value thereof, earning interest after the issuance and sale thereof, payable annually at a rate not greater than 4% per annum, which certificates shall become due within not more than one year from the date of issuance. The Council is hereby authorized and directed to redeem and pay such certificates of indebtedness as may be issued under authority of this act out of any funds which may hereafter be made available to the Council for direct relief. (Act Feb. 28, 1935, c. 33, §5.)

4397-8. May sell certificates.—The Council shall sell such certificates to such persons, associations and corporations, including the State of Minnesota, as it deems advisable. (Act Feb. 28, 1935, c. 33, §6.)

4397-9. Provisions severable.—The various provisions of this act shall be severable. Should any provision of this act be held invalid by any court of competent jurisdiction the remaining portions of this act shall remain in full force and effect. (Act Feb. 28, 1935, c. 33, §7.)

4397-11. Definitions.—The word "soldier" as used in this act shall mean any officer, soldier, sailor, marine, nurse, student nurse, or dietitian who was in the military or naval forces of the United States and who was a bona fide resident of the state of Minnesota at

the time he was commissioned, enlisted, inducted, appointed or mustered into the military or naval service of the United States, and who entered such service prior to November 11, 1918, or who, having enlisted or been inducted prior to November 11, 1918, acquired an active duty status on or after such date, and who has received an honorable or ordinary discharge, or release from such service; or who may still be in such service under honorable conditions, at the time of making application for the benefits of this act; provided, however, that the word "soldier," as used in this act shall not be construed to mean, and shall not include any person in such service during a period of enlistment, reenlistment, extended enlistment, or other service which began after November 10, 1918, provided, that where discharge was given for the purpose of allowing promotion and acceptance of a commission and continuous service was performed thereunder, such subsequent service shall not be deemed to be a period of service beginning after November 10, 1918. Any person who, while in such service, received pay as a civilian employee shall not be entitled to the benefits of this act for the period of such employment. (Act Apr. 18, 1935, c. 213, §1.)

Appropriation, '37, c. 228.

4397-12. Soldier's bonus.—That any soldier shall be entitled to receive, as funds are made available, from the State of Minnesota as herein provided the sum of \$15.00 for each and every month or fraction thereof of service given by him as such soldier subsequent to April 6, 1917 and prior to July 31, 1920, provided that the amount received hereunder by any such soldier shall not be less than \$50.00. (Act Apr. 18, 1935, c. 213, §2.)

4397-13. Must file application.—That before receiving any such sum under the provisions of this act, said soldier shall file with the adjutant general application therefor on forms provided by the adjutant general. Such application shall state facts sufficient to establish the status of such applicant as a soldier as defined herein, and shall be duly verified. (Act Apr. 18, 1935, c. 213, §3.)

4397-14. Widow or dependents may receive bonus.—Where any soldier, as herein defined, died and left surviving him a widow, or children now under eighteen years of age, or parent or parents, such widow, if still single, or if there be no widow, or children now under eighteen years of age, or if there be neither such mother, or if there be neither widow, children now eighteen years of age, or mother, then such father shall be entitled to the amount which such deceased soldier would have received hereunder for the period of his active service, if living; provided, that where the parents of such deceased soldier are separated or divorced, then and in that event the parent with whom the soldier last resided and who become responsible for his funeral expenses and the expenses of his last illness shall receive the sum which such deceased soldier would have received for the period of his active service if living. (Act Apr. 18, 1935, c. 213, §4.)

4397-15. Adjutant general to administer act.—The administrative duties hereunder shall be performed by the adjutant general. It shall be the duty of the adjutant general to examine into such applications and he shall make any other examination necessary to establish the facts and approve or disapprove the same, or set apart as held for lack of facts sufficient to establish the right of such soldier to said compensation sixty days after request for such information. No assignment of any right or claim to benefits hereunder made prior to the granting of any relief hereunder and payment of the relief so granted shall be valid, and any transfer or attempt to transfer any such right or claim or any part thereof by any beneficiary prior thereto and the acquiring of or attempting to acquire by any person of any interest in or title to such claim prior to the payment of the relief

granted shall be a misdemeanor and punishable as such. (Act Apr. 18, 1935, c. 213, §5.)

4397-16. Adjutant general to promulgate rules.—The adjutant general is hereby authorized and empowered to promulgate such rules and regulations as may be necessary for the administration of this act not inconsistent with the provisions hereof, and there is hereby appropriated out of any moneys in the state treasury the sum of \$10,000, or so much thereof as may be necessary, for the administration of this act, of which \$5,000 shall be available June 1, 1935, and \$5,000 available June 1, 1936, for the use of the adjutant general as herein provided. (Act Apr. 18, 1935, c. 213, §6.)

4397-17. Not to apply to soldiers who have received bonus.—The provisions of this act shall not apply to any soldier who has heretofore received a soldiers' bonus from the State of Minnesota under any law relating thereto. (Act Apr. 18, 1935, c. 213, §7.)

4397-18. Adjutant general to report to legislature.—Any application for relief approved pursuant to the provisions of this act shall be reported by the adjutant general at the next session of the legislature, and no payment of any relief granted or approved pursuant to the provisions of this act shall be paid until the necessary funds for the payment thereof have been made available by the legislature. (Act Apr. 18, 1935, c. 213, §8.)

4397-19. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act. (Act Apr. 18, 1935, c. 213, §9.)

4397-20. Provisions severable.—If any section, part, or provision hereof be found unconstitutional such determination shall not affect the validity of the remaining provisions hereof. (Act Apr. 18, 1935, c. 213, §10.)

4397-20a. Appropriation for payment of claims for soldiers' etc., relief.—There is hereby appropriated out of the Spanish War Veterans' Relief Fund, created by Laws 1931, Chapter 405, Section 4, the sum of \$50,000.00 for the payment of claims approved under the provisions of Laws 1935, Chapter 213, and for the administration thereof, to provide relief and assistance for certain officers, soldiers, sailors, marines, nurses, dieticians and the surviving wives, minor children, mothers and fathers of certain deceased officers, soldiers, sailors and marines who have not heretofore received relief or assistance under the provisions of law. The Adjutant General is charged with the administration of this act and the delivering of the warrants to the persons and parties entitled thereto. (Act Apr. 8, 1939, c. 157, §1.)

4397-20b. Same—To be concluded June 30, 1941.—The Adjutant General shall conclude the duties under the provisions of this act June 30, 1941. (Act Apr. 8, 1939, c. 157, §2.)

Sec. 3 of Act Apr. 8, 1939, cited, provides that the act shall take effect at its passage.

4397-21. Appropriation for education of certain children.—The sum appropriated under the provisions of this act shall be used for the sole purpose of providing for matriculation fees, board and room rent and books and supplies for the use and benefit of the children not under 16 and not over 22 years of age and who have for two years had their domicile in the state of Minnesota, of those who were killed in action or died from other causes during the World War, from April 6, 1917, to July 2, 1921, while serving in the Army, Navy or Marine Corps of the United States or as a result of such service; which children are attending or may attend any educational or training institution of a secondary or college grade located within the state of Minnesota and approved by the state board of education. Said children shall be ad-

mitted to state institutions of secondary or college grade free of tuition. (Act Apr. 29, 1935, c. 350, §1.)

Editorial note.—Powers of state board of control under §§4599 to 4605-2 transferred to the adjutant general by Act Apr. 22, 1939, c. 431, Art. 7, §2, ante §3199-102(11)(b).
Fund may be expended for orphan children of veterans who died after they left the service as a result of injury or sickness acquired as a result of service. Op. Atty. Gen. (88a-25), Sept. 20, 1935.

Children may attend university, but tuition must be paid out of appropriation. Op. Atty. Gen. (618a-5), Nov. 13, 1936.

Requirement that aid may be given only for expenses in schools in state of Minnesota cannot be waived in behalf of one designated by president of the United States to take examination for entry to Naval Academy at Annapolis, though he desires to prepare for those examinations at a preparatory school at Annapolis, and the state of Minnesota does not have an institution which could properly prepare one for that examination. Op. Atty. Gen. (310r), Aug. 23, 1937.

Educational opportunities may be extended to children of veteran who received severe gunshot wound during war and who just recently died as result of this wound. Op. Atty. Gen. (310r), Oct. 28, 1937.

4397-22. Monies to be paid to educational institutions.—The amounts that may be or may become due to any educational or training institution, not in excess of the amount specified in section 3 hereof, shall be payable to such institution from the fund hereby created on vouchers approved by the state soldiers welfare director. Said director shall determine the eligibility of the children who may make application for the benefits provided for in this act; satisfy himself of the attendance of such children at any such institution and of the accuracy of the charge or charges submitted to said director by the authorities of any such institution, on account of the attendance thereof of any such children. (Act Apr. 29, 1935, c. 350, §2.)

See note under §4397-21, ante.

4397-23. Appropriation.—The sum of \$4,000.00, or so much thereof as may be necessary, is hereby appropriated for the fiscal year ending June 30, 1936, and annually thereafter until 1942, for carrying out the provisions of this act: Provided, that not more than \$200.00 shall be paid under said provisions for any one child for any one year. (Act Apr. 29, 1935, c. 350, §3.)

See note under §4397-21, ante.

4397-24. Unexpended balances reappropriated.—Any unexpended balance remaining at the end of any fiscal year shall be and remain available for expenditure until June 30, 1942, and thereupon all sums in said fund remaining unexpended shall revert to the state treasury. (Act Apr. 29, 1935, c. 350, §4.)

4397-25 to 4397-27. [Repealed.]

Repealed Apr. 22, 1939, c. 422, §42.
The repealed sections consisted of Act Apr. 24, 1937, c. 446, §§1-3.

ANNOTATIONS UNDER REPEALED SECTIONS

4397-26. Appropriations.
Balance remaining in fund appropriated carries over into fiscal year beginning July 1, 1939, and does not revert to general revenue fund. Op. Atty. Gen. (640a), July 19, 1939.

4397-28. Insurance benefits of deceased to pass to next of kin on disappearance of wife of veteran.—That whenever a resident of the State of Minnesota shall have died intestate when serving in the military or naval forces of the United States of America during the World War, and whose spouse shall have deserted him prior to his enlistment, and the whereabouts of said spouse shall have been unknown for a period of twenty years or more last past, then such spouse shall be presumed to have pre-deceased him; and any and all benefits due and payable to his estate under and by virtue of any War Risk Insurance Act or Acts amendatory thereof shall descend to the next of kin as of the date of the death of any such enlisted person, and such estate shall be distributed as provided by the Laws of the State of Minnesota for the distribution of the estate of persons dying intestate. (July 14, 1937, Sp. Ses., c. 13.)