

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
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St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

E. If not later than three years after the date of payment of any amount as contributions or interest thereon, an employer who has made such payment 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 if the director shall determine that payment of such contributions or interest or any portion thereof was erroneous, the director shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the director shall refund from the fund, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the director's own initiative.

F. Nothing in this act, or any part thereof, shall be construed to authorize any refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. (As amended Act Apr. 28, 1941, c. 554, §13.)

4337-35. Protection of rights and benefits.—A. Any agreement by an individual to waive, release or commute his rights to benefits or any other rights under this act shall be void. Any 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 void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, require or accept any waiver of any right hereunder by any individual in his employ, or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of any employer who violates any provision of this subsection shall, for each offense, be guilty of a misdemeanor.

B. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; 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. Any waiver of any exemption provided for in this subsection shall be void. (As amended Act Apr. 28, 1941, c. 554, §14.)

4337-36. Penalties.—A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this act or under the employment security law of any state or of the federal government, either for himself or any other person shall be guilty of a misdemeanor.

B. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming

or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this act or under the employment and security law of any state or of the federal government, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports at the time when required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a misdemeanor. (As amended Act Apr. 28, 1941, c. 554, §15.)

4337-37. Representation in court.—A. In any civil action to enforce the provisions of this act the director shall be represented by the attorney general. (As amended Act Apr. 28, 1941, c. 554, §16.)

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 director shall be liable for any amount in excess of such sums. (As amended Act Apr. 28, 1941, c. 554, §17.)

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. (As amended Act Apr. 28, 1941, c. 554, §18.)

Provision in Indiana Unemployment Compensation Act that if any part of Federal Social Security Act shall become inoperative, provisions of Indiana Act shall likewise become inoperative does not contemplate only a situation where whole federal act is repealed or held unconstitutional, and where federal statutes abate taxes of receivership of bank under Federal Social Security Act, the taxes are abated also under State Unemployment Compensation Act. *State v. Scheumann*, 31NE(2d)(Ind) 632.

4339-40. 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. (As amended Act Apr. 28, 1941, c. 554, §19.)

4337-41. Short title.—This act shall be known and may be cited as the "Minnesota Employment and Security Act." (As amended Act Apr. 28, 1941, c. 554, §20.)

4337-42. Effective date.—This act shall take effect and be in force from and after its passage unless otherwise specifically provided therein except that sections 4337-22, 4337-23, 4337-25, 4337-26, 4337-27, 4337-30 and 4337-33, Mason's Supplement 1940, as amended by this act shall take effect and be in force from and after July 1, 1941; provided, further, that sections 4337-22, 4337-25, 4337-26, Mason's Supplement 1940, as amended by this act shall not affect the determination of, or rights to, benefits with respect to claims filed prior to July 1, 1941. (As amended Act Apr. 28, 1941, c. 554, §21.)

4337-43. Repealer.—Mason's Supplement 1940, Sections 4337-32a and 4337-32b are hereby repealed.

CHAPTER 24

Soldiers' Home, Relief, Etc.

4345. Persons who may be admitted to soldiers' home.

Wife of member of home less than 55 years of age and having mental condition which would bar her from being admitted to the home may be given relief outside home. Op. Atty. Gen. (3941), Sept. 5, 1940.

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

Per diem cannot be paid to a member of board for attendance at conventions which are not meetings of the board or a committee thereof. Op. Atty. Gen., (3947), May 23, 1940.

Member of board attending veterans' meeting on official business is not attending a board or committee meeting, since board meetings may only be held at the home. Op. Atty. Gen. (394f), Oct. 11, 1940.

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

Position of secretary to soldiers' home board is within classified service. Op. Atty. Gen., (644), Dec. 6, 1939.

4351. Meetings—Executive committee.

Board meetings may only be held at the home. Op. Atty. Gen. (394f), Oct. 11, 1940.

MISCELLANEOUS PROVISIONS

4368. Preference to war veterans in public appointments.

State veterans' preference act does not give a veteran a vested right in his employment and such employment may be abolished by legislative act. State v. Stassen, 294NW647. See Dun. Dig. 7986.

Laws 1939, c. 441, §38, civil service law, affects this section only with respect to employment in state service. Op. Atty. Gen., (85a), Jan. 15, 1940.

Janitor in charter city of fourth class is entitled to benefits of this law, and if applicant has degree of fitness stated by statute, his relative efficiency when compared with that of his competitors is unimportant. Id.

If an appointing officer or body has actual notice that an applicant is a war veteran, it is immaterial that applicant for employment does not give formal notice that he is a war veteran. Op. Atty. Gen., (851), Feb. 16, 1940.

City health officer is protected by statutes. Op. Atty. Gen., (2251-1), April 18, 1940.

Employees of the state in the unclassified service are still entitled to soldier's preference, subject to limitations upon its application which have heretofore existed. Op. Atty. Gen., (644), May 10, 1940.

County agricultural agents are employees of the University of Minnesota and do not come under Veterans' Preference Law. Op. Atty. Gen. Aug. 1, 1940.

4369. Removal forbidden; right of mandamus; certiorari; burden of proof.

An action against members of state industrial commission to compel reinstatement of a dismissed employe is triable in Ramsey county where commission maintains its office. State v. District Court of St. Louis County, 287NW601. See Dun. Dig. 10113a.

Where a veteran would have been blanketed into civil service on effective date of civil service act if he had not been discharged prior to that date, he is entitled to be placed in same position as he would have been had he not been discharged, if discharge was unlawful. State v. Stassen, 294NW647. See Dun. Dig. 7986.

Where a veteran was discharged prior to passage of civil service act, he could not maintain mandamus for reinstatement after passage of that act, mandamus being only available by statutory grant and such statutes being repealed by the civil service act so far as he was concerned. Id.

Whatever rights a veteran has in his employment must be found in civil service act once his status matured under that act. Id.

Where city council had knowledge that operator of sewage disposal plant was an honorably discharged veteran when he was employed and where his employment was continuous, he could not be discharged without notice and a hearing, and did not waive right to hearing by filing a new application for appointment each year thereafter, including year when application was rejected. State v. City of Bemidji, 295NW514. See Dun. Dig. 6560.

In mandamus and certiorari by a discharged war veteran, there being no showing to the contrary, assumption is that relator was honorably discharged from army. Id.

There being evidence from which city council could find incompetency, its action in discharging veteran cannot be overturned by court, even though motives of triers of facts may be subject to suspicion. Id.

Where police civil service commission qualified an extra policeman, a veteran, as a "regular special policeman" and permitted him to take police civil service examination with regular force, and then erroneously certified him at head of list of eligible appointees for position of "regular" policeman, commission has authority to revise its list and strike his name from it, without formality of notice or hearing, but this would not affect preferential position arising from his status as a veteran if and when a position as regular policeman is open. Op. Atty. Gen., (785E-2), May 17, 1940.

Soldiers' Preference Act is without application to position of city attorney. Op. Atty. Gen. (85a), Dec. 31, 1940.

Position of village attorney is not subject to act. Op. Atty. Gen. (85a), Jan. 10, 1941.

4369-2. Applications of act.

State v. Stassen, 294NW647; note under §4369.

Repeal of veterans' preference act by civil service act took away statutory remedy of mandamus for a wrongfully discharged state employe, including a pending action in mandamus which was not perfected by final judg-

ment, even though trial had been had before repeal, and a cause of action for damages, as long as it remained inchoate and not merged in final judgment, was equally destroyed by repeal of statute which created it. State v. Railroad and Warehouse Com'n., 296NW906. See Dun. Dig. 8223.

4382. Quarters for meetings of Grand Army and other organizations.

Permitting American Legion to construct a building on land of a village and lease of such building to American Legion Post for a reasonable time would constitute a "public purpose" within deed of land to village for public purposes only with right of reversion. Op. Atty. Gen., (469a-9), March 29, 1940.

4393. State board of control to secure land for recreation and recuperative camps for disabled veterans.—The state board of control is hereby authorized and directed to secure by lease or purchase from the owners thereof land for the establishment of a recreation and recuperative camp for the use and benefit of disabled veterans of the world war and other wars, resident in the state of Minnesota; said land to contain not less than 50 acres nor more than 100 acres, suitably located with reference to the health and convenience of the beneficiaries hereunder, as may be recommended by the board of governors hereinafter provided. Any funds derived from any appropriations, contributions, unexpended balances or revenues heretofore or hereafter existing to the credit of any such veterans' camp operating under the provisions of this act may be used for the purchase of land for such camp. (As amended Act Apr. 28, 1941, c. 514, §1.)

4397-2. County boards may appropriate money; etc.

Laws 1931, c. 405.

In passing Laws 1931, c. 405, legislature sought to restrict relief granted thereby to persons who were residents of state in commonly accepted meaning of that term, and soldiers at Fort Snelling were not within that meaning of the term, but such a soldier could be a resident. Op. Atty. Gen. (310N), June 14, 1940.

4397-21. Appropriation for education of certain children.

A person attending a state institution of secondary or college grade is entitled to receive full amount of \$200 for board, room rent, and supplies, in addition to free tuition, if Adjutant General makes an administrative determination that such amount is reasonably necessary. Op. Atty. Gen., (310r), Sept. 23, 1939.

Child is entitled to receive aid until it reaches 23rd birthday. Id.

4397-23. Appropriation.

Phrase "for any one year" refers to school year which may be less than but not more than a twelve months period. Op. Atty. Gen., (310r), Sept. 23, 1939.

4397-27a. Aid for disabled soldiers, sailors, etc.—Soldiers, sailors and marines who were disabled in military service during the world war and their dependents, are entitled to the same privilege as are now enjoyed by all other veterans. (Act Apr. 24, 1941, c. 425, §1.)

4397-27b. Appropriation.—There is hereby appropriated from the general revenue fund of the state of Minnesota, the sum of \$7,500 for each of the fiscal years ending June 30, 1942, and June 30, 1943 to be expended by the disabled American veterans of the world war of Minnesota for the purposes of assisting world war veterans in the preparation and presentation of their claims to the United States government for compensation and other benefits to which they are entitled as a result of disabilities incurred in military service. (Act Apr. 24, 1941, c. 425, §2.)

4397-27c. Purpose of act.—This act is hereby declared to be in the interest of the preservation of the public peace, health and safety, the support of the state government and the existing public institutions, and for the purpose of assisting veterans who are entitled to compensation from the United States government but have been unable to obtain it and in many instances have had to rely upon local assistance and charity, and shall take effect and be in force from and after its passage. (Act Apr. 24, 1941, c. 425, §3.)