

Subdivision 1, Section 11, of Chapter 84, Session Laws of 1937, provides that:

"No licensee shall sell, deliver or give away, or cause or permit to be sold, delivered or given away, any liquor to:

1. Any minor actually under the age of twenty-one (21) years, unless such minor is accompanied by his parent or guardian."

Section 11566.1 provides:

"Sale of beer to minors unlawful, when. It shall be unlawful for any person to sell or dispose of beer to a minor unless such minor is accompanied by his or her parent or guardian."

Section 40, Chapter 84, 1937 Session Laws, provides:

"All acts and parts of acts in conflict hereto are hereby repealed, but this act shall not be construed to repeal or amend any provision or section of the state liquor control act of Montana, except in so far as the same is in conflict with this act."

Subdivision 1 of Section 11, Chapter 84, supra, has not expressly repealed Section 2815.115, but if there is any conflict therein, either under the rules of statutory construction or the express provision of Section 40, Chapter 84, supra, it is repealed, and subdivision 1, Section 11, Chapter 84, and Section 11566.1 are the existent laws.

Section 5673 provides:

"Minors and adults defined. Minors are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

All other persons are adults."

Under both Section 11566.1 and said Chapter 84, females under the age of eighteen years, and males under the age of twenty-one years are minors, the legislature having seen fit to apply a different age requirement to the two sexes. If the legislature had intended to prescribe the same age limit to both sexes, rather than use the language

**Opinion No. 189.**

**Montana Temperance Commission—  
Liquor—Beer—Sales to Minors—  
Minors, Who Are.**

HELD: 1. It is a violation of the law to sell or give liquor to minors, unless accompanied by parent or guardian.

2. Minors are males under the age of twenty-one and females under the age of eighteen years.

November 5, 1937.

Montana Temperance Commission  
Mr. R. J. Lewis, Secretary  
Helena, Montana

My Dear Mr. Lewis:

You have submitted a request for an opinion as to the laws of Montana relating to the sale of liquor and beer to minors.

Section 2815.115 provides:

"Age limit for sale of liquor. Except in the case of liquor given to a person under the age of twenty-one years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of twenty-one years, or permit any person under that age to consume liquor."

“any minor actually under the age of twenty-one years,” it would have used the language “any person actually under the age of twenty-one years.”

In Section 2815.115 the legislature used the language “person under the age of twenty-one years,” and of course such language included both male and female persons and without regard to the minority age of the female. However, the twenty-fifth legislative assembly made a discrimination between the age limit of the two sexes, and did not see fit to follow the language used in Section 2815.115.

Subdivision 1, Section 11 of Chapter 84 and Section 11566.1 permit the licensee to sell liquor to a minor, if the minor is accompanied by the parent or guardian; the necessary implication being, of course, that when such minor is so accompanied, consent to the sale of such liquor, which shall be evidenced in some form, shall be made by such parent or guardian, or that no objection shall be made thereto, as the case may be.

Section 5 of Chapter 201, Session Laws of 1937, provides:

“In the administration of this act, it is made the duty of the said commission to make such efforts and endeavor as may appear best calculated to prevent the sale of alcoholic liquors or alcoholic beverages to minors **in violation of the law**, and to prevent the use thereof by minors; it being hereby declared to be the public policy of this State that the use of alcoholic liquors by minors is injurious to both body and mind and detrimental to society, and that effective efforts should be made to enforce the law prohibiting the sale, or gift, of alcoholic liquors to minors.” (Underlining ours.)

Section 5 expressly provides that it is the duty of the commission to make such efforts as may appear best calculated to prevent the sale of alcoholic liquor or alcoholic beverages to minors **in violation of the law**, and is not in conflict with any other law upon the subject. The words “in violation of the law” exclude any conflict therein.

Therefore, it is my opinion that it is in violation of the law to sell, or give, liquor to minors, unless the minor is accompanied by his parent or guardian who consents thereto, and

that a minor is defined as a female under the age of eighteen years, or a male under the age of twenty-one years.