

073-270—August 13, 1973

ADULT RIGHTS LAW

**PERSONS EIGHTEEN YEARS OF AGE AND OLDER—ACCOMPANYING
DRIVER WITH RESTRICTED LICENSE**

To: Jerry G. Melvin, Representative, 5th District, Fort Walton Beach

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Is an eighteen- to twenty-year-old driver considered an adult for the purpose of accompanying a driver with a restricted license while that driver operates a motor vehicle?

SUMMARY:

Under §322.16(2) (a), F. S., a person eighteen to twenty years of age can accompany a restricted driver while that restricted driver operates a motor vehicle.

Chapter 73-21, Laws of Florida [§743.07, F.S.], the Adult Rights Law, removes the disability of nonage for all persons eighteen years of age or older. It also provides that such persons shall "enjoy and suffer the rights, privileges and obligations of all persons 21 years of age or older." The *only* exceptions are any right, privilege, or obligation excluded to eighteen- to twenty-year-olds by the Florida Constitution, and support for dependent or crippled children. I have already held that persons eighteen years old and over can now drink and be employed by places serving alcoholic beverages, obtain a licensè to operate a day-care center, drive a common-carrier motor vehicle, serve on juries and marry without parental consent—all of which formerly had an age requirement of twenty-one.

The statute now in question reads as follows:

In no instance shall a restricted license be issued to a minor under sixteen years of age, except on condition that such minor when operating a motor vehicle . . . shall be accompanied at all times by a licensed operator or chauffeur who is not less than twenty-one years of age . . . [Section 322.16(2)(a), F. S.]

Since the Adult Rights Law gives to persons eighteen years of age or older the same rights, privileges and obligations as possessed by twenty-one-year olds (the ability to accompany a restricted driver being one such privilege), I must hold that under §322.16(2)(a), F. S., a restricted driver, while operating a motor vehicle, must be accompanied by a licensed driver at least eighteen years of age.

Your question is, therefore, answered in the affirmative.

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ADULT RIGHTS LAW

EFFECT ON GIFTS TO MINORS ACT

To: Dan Scarborough, Senator, 7th District, Jacksonville

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

What effect does Ch. 73-21, the Adult Rights Law, have on

transactions under Ch. 710, F. S., the Florida Gifts to Minors Act, when the gifts involved took place prior to the effective date of the new act?

SUMMARY:

Pending judicial determination of whether the Adult Rights Law, Ch. 73-21, Laws of Florida, affects gifts to minors made pursuant to Ch. 710, F. S., prior to the effective date of the new law, the safest course for custodians of property to take would probably be to remain in control of the gift property. With respect to gifts made after this date, the age requirement of twenty-one found in §710.05(4) is changed to eighteen.

Chapter 73-21, Laws of Florida [§§1.01(14) and 743.07, F. S.], the Adult Rights Law, defines "minor" as a person under the age of eighteen years, and gives to persons eighteen years of age or older all the rights, privileges, and obligations previously possessed by all persons twenty-one years of age or older except as excluded by the Florida Constitution. Any inconsistent law is repealed to the extent of the inconsistency.

Chapter 710, F. S., is the Florida Gifts to Minors Act under which an adult may make a gift of a security, money, life-insurance policy, or annuity contract to a minor. Section 710.02(1) defines an adult as a "person who has attained the age of twenty-one years." Section 710.02(12) defines a minor as "a person who has not attained the age of twenty-one years." Section 710.05 describes the duties and powers of the custodian, with §710.05(4) providing that "[t]o the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years" Since under Ch. 73-21, a minor is a person under eighteen years of age and since the new law repeals any inconsistent law, it must be held that the age requirement in §710.05(4) is changed from twenty-one to eighteen years. Therefore, with respect to gifts made after July 1, 1973, a custodian shall deliver the gift property to the minor on his attaining the age of eighteen years.

The problem arising in connection with the Gifts to Minors Act, when a gift was made *before* the effective date of the Adult Rights Law, is not as easily resolved. In such cases, is the gift property to be turned over to the minor at age twenty-one or eighteen? Section 3, Ch. 73-21 [§743.07(3), F. S.], Laws of Florida, provides that "[t]his act shall operate prospectively and not retrospectively and shall not repeal the rights and obligations existing prior to the effective date of this act." A law is retrospective if it "takes away or impairs vested rights acquired under existing laws." Black's Law Dictionary, 4th ed. The question, therefore, becomes whether any existing right or obligation will be impaired if gift property is delivered to a person eighteen, nineteen, or twenty years of age, which gift was made before July 1, 1973. According to §710.05(4), F. S., as it read before Ch. 73-21 became effective, a minor had the *right* to receive his property when he became an adult, meaning twenty-one years of age. There is no provision in the law enabling the minor to receive the property any sooner. It could be argued that this is such a right as contemplated by §3 of the Adult Rights Law. Certainly, the donor made the gift under the existing language of the statute and assumed and intended the minor to receive the gift at age twenty-one. Section 710.04(2) states that "[b]y making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act" On the other hand, it may be claimed that the acceleration of the minor's right to receive his property takes nothing away from him and impairs no legal right.

Since I have been unable to find any authority on this subject, it would seem that judicial clarification is necessary in order to resolve this question. The best course for custodians to follow would probably be to keep control of the gift property until the donee reaches twenty-one or until there is a specific court order or judicial clarification.