

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
PROPOSED RULES TO IMPLEMENT
S.B. 187 and H.B. 352**

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

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~~[(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor and to serve beer.]~~

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~~[(4) "COUNTER" means a level surface on which patrons consume food.]~~

* * *

~~[(14) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association.]~~

R81-1-3. General Policies.

~~[(1) Official State Label.~~

~~Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor that is at least 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.]~~

R81-1-9. Liquor Dispensing Systems.

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(4). Operational Restrictions.

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~~[(j) A licensee or his employee shall not:~~

~~(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron;
or~~

~~(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.]~~

~~[(k)] (j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:~~

~~(i) require the alteration or removal of any system,~~

~~(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.~~

R81-1-24. Responsible Alcohol Service Plan.

(3) Definitions.

* * *

(c) "Intoxication" and "intoxicated" [~~means a person who is actually, apparently, or obviously under the influence of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of alcoholic beverages or said substances, to a degree that the person may endanger himself or another.~~] are as defined in 32A-1-105(28).

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

* * *

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or [~~class D private~~] social club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or [~~class D private~~] social club where sexually-oriented entertainers may appear or perform in a state of seminudity.

* * *

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or [~~class D private~~] social club.

(b) A tavern or [~~class D private~~] social club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or [~~class D private~~] social club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or [~~class D private~~] social club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or [~~class D private~~] social club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

- (ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:
 - (A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;
 - (B) is configured so as to preclude a patron from:
 - (I) touching the sexually-oriented entertainer;
 - (II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;
 - (III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and
 - (IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.
- (iii) The person applying for approval of a stage or performance area shall submit with their application:
 - (A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;
 - (B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and
 - (C) evidence of compliance with any such applicable local ordinance.

****R81-3-13. Operational Restrictions.**

(1) Hours of Operation.

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~~[(e) A package agency, regardless of type, shall not operate on Sundays or legal holidays except to the extent authorized by 32A-3-106(10) for package agencies located in certain wineries. If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by Type 2 and 3 package agencies.]~~

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by 32A-3-106(9) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries; and

(B) a package agency held by a resort licensee that does not sell liquor in a manner similar to a state store which includes a Type 1, 4, and 5 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

* * *

~~[(f) Because Type 2 and 3 package agencies operate in manner similar to a state store, they may not be open to sell liquor on election days until after the polls have closed. Type 1, 4, and 5 package agencies do not operate in a manner similar to a state store and may remain open to sell liquor on elections days.]~~

****R81-4A-2. Application.**

[A] (1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32A-4-102, -103, and -105 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32A-1-107(5).

****R81-4A-10. Table, Counter, and "Grandfathered Bar Structure Service.**

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron[~~, provided the wine has an official state label affixed~~]. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure."

****R81-4A-11. Consumption at Patron's Table.**

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department[~~, but may not be located at the site where alcoholic beverages are dispensed to the server or stored~~].

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

[~~(3) All liquor consumed in a licensed restaurant must come from a container or package having an official state label affixed.~~]

****R81-4A-15. Grandfathered Bar Structures.**

(1) Authority and Purpose.

(a) This rule is pursuant to 32A-4-106(7)(a)(i) which provides that:

(i) a bar structure, as defined in 32A-1-105(4), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32A-4-106(7)(a)(ii) which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32A-4-106(7)(a)(i)(B)(I)(Bb) and 32A-4-106(7)(a)(ii) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32A-4-106(7)(a)(ii) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(C) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32A-4-106(6), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

****R81-4C-2. Application.**

[A] (1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32A-4-303, -304, and -306 have been met, a completed application has been received by the department, and the limited restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32A-1-107(5).

****R81-4C-9. Table, Counter and "Grandfathered Bar Structure" Service.**

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a

patron~~[, provided the wine has an official state label affixed]~~. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure."

****R81-4C-10. Consumption at Patron's Table, Counter, or "Grandfathered Bar Structure".**

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department~~[, but may not be located at the site where alcoholic beverages are dispensed to the server or stored]~~.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

~~[(3) All liquor consumed in a licensed restaurant must come from a container or package having an official state label affixed.]~~

****R81-4C-13. Grandfathered Bar Structures.**

(1) Authority and Purpose.

(a) This rule is pursuant to 32A-4-307(7)(a)(i) which provides that:

(i) a bar structure, as defined in 32A-1-105(4), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a limited restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32A-4-307(7)(a)(ii) which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32A-4-307(7)(a)(i)(B)(I)(Bb) and 32A-4-307(7)(a)(ii) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32A-4-307(7)(a)(ii) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(C) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32A-4-307(6), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule.

* * *

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; ~~and~~

(iii) that is in total at least 30,000 square feet unless the facility is a "grandfathered facility under 32A-4-401(8); and

~~[(iii)]~~ (iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

* * *

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105~~[(41)]~~ (44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(24).

****~~R81-4D-10. State Label.~~**

~~All liquor consumed on the premises of an on-premise banquet license must come from a container or package having an official state label affixed.]~~

R81-5-1. Licensing.

(1) ~~[Private club]~~ Club liquor licenses are issued to persons as defined in Section 32A-1-105~~[(41)]~~ (44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-5-102(4), 32A-5-103 and 32A-5-107~~[(40)]~~ (26).

(2)(a) At the time the commission grants a ~~[private]~~ club license the commission must designate whether the ~~[private]~~ club qualifies to operate as ~~[a class A, B, C, or D private]~~ an equity, fraternal, dining, or social club based on criteria in 32A-5-101.

(b) During the June 2009 renewal period, a class C private club licensee or class D private club licensee may request to convert to a different type of club license effective July 1, 2009. ~~[After the]~~ Also, after any club license is granted, a ~~[private]~~ club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32A-5-101.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the ~~[private]~~ club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(3)(a) A ~~[class C private]~~ dining club must operate as ~~[a dining club as defined]~~ described in 32A-5-101(3)~~[(e)]~~ (a)(ii)((C), and must maintain at least 50% of its total private club business from the sale of food, not including mix for alcoholic beverages, service charges, and membership fees.

(b) A ~~[class C private]~~ dining club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately reclassified by the commission as a ~~[class D private]~~ social club. If the commission grants the order to show cause, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be classified as a ~~[class C private]~~ dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 50%.

R81-5-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a [private] club license when the requirements of Sections 32A-5-102,-103, and -106 have been met, a completed application has been received by the department, and the [private] club premises have been inspected by the department.

R81-5-5. Advertising.

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(2) Purpose. This rule furthers the intent of 32A-5-107(~~(17)~~) (1) that [private] equity and fraternal clubs advertise in a manner that preserves the concept that [private] such clubs are private and not open to the general public.

(3) Application of Rule.

(a) Any public advertising by [~~a private~~] an equity or fraternal club, its employees, agents, or members, or by any person under contract or agreement with the club shall clearly identify the club as being "a private club for members". In print media, this club identification information must be no smaller than 10 point bold type.

(b) [~~A private~~] An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that runs counter to the concept that such clubs are private and not open to the general public such as:

- (i) offering or providing complimentary club memberships [~~or visitor cards~~] to the general public;
- (ii) offering or providing full or partial payment of membership fees or dues[~~, or visitor card fees~~] to members of the general public;
- (iii) offering or implying an entitlement to a club membership [~~or visitor card~~] to members of the general public; or
- (iv) offering to host members of the general public into the club.

R81-5-6. [Private] Club Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a [private] club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

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R81-5-7. [Private] Club Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32A-5-107(~~(27)~~) (14). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-5-9. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the [private] club as approved by the department.

R81-5-10. Alcoholic Product Flavoring.

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the ~~[private]~~ club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

R81-5-11. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer. A copy shall be kept on the club premises and available at all times for examination by ~~[the members, guests, and visitors to]~~ patrons of the club.

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R81-5-13. Brownbagging.

When private social functions or privately hosted events, as defined in 32A-1-105~~[(44)]~~ (47), are held on the premises of a licensed ~~[private]~~ club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

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R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) ~~[through (7) that private]~~ that equity and fraternal clubs operate in a manner that preserves the concept that ~~[private clubs]~~ they are private and not open to the general public.

(3) Application of Rule.

(a) Each ~~[private]~~ equity or fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club. ~~[However, the application fees shall not be less than \$4, and the monthly dues may not be less than one dollar per month.]~~

(b) ~~[A private]~~ An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

~~[(c) Notwithstanding section (3)(b), if a private club is located within a hotel, the hotel may assist the club in the issuance of a club membership to a guest of the hotel under the following conditions:~~

~~(i) the guest has booked a room and is staying at the hotel;~~

~~(ii) the costs of the membership application fee and membership dues are paid for by the guest either as a separate charge, or as part of the hotel room rate;~~

- (iii) ~~the private club receives payment of the fees and dues for all memberships issued to guests of the hotel;~~
- (iv) ~~the hotel and the club shall maintain a current record of each membership issued to a guest of the hotel as required by the commission;~~
- (v) ~~the records required by subsection (iv) shall be available for inspection by the department; and~~
- (vi) ~~the issuance of the membership is done in accordance with the procedures outlined in 32A-5-107(1) through (4).]~~

R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to 32A-5-107[(8)(a)(iv)] (2), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of [any class A, B, C, or D of private] an equity, fraternal, or dining club [except when the minor is employed by the club to perform maintenance and cleaning services during hours when the club is not open for business]. A minor may not be on the premises of a social club except to the extent allowed under 32A-5-107(2)(d), and may not be admitted into, use, or be on the premises of any lounge or bar area of a social club.

(2) "Lounge or bar area" includes:

- (a) the bar structure as defined in 32A-1-105(4);
- (b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or
- (c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of [a class A, B or C private] an equity, fraternal, or dining club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

~~[R81-5-16. Sexually Oriented Adult Entertainment or Businesses.~~

~~(1) Pursuant to 32A-5-107(8)(a)(v), a minor may not be admitted into, use, or be on the premises of any private club that provides sexually oriented adult entertainment or operates as a sexually oriented business. This includes any club:~~

- ~~(a) that is licensed by local authority as a sexually oriented business;~~
- ~~(b) that allows any person on the premises to dance, model, or be or perform in a state of nudity or semi-nudity; or~~
- ~~(c) that shows films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified anatomical areas or specified sexual activities.~~

~~(2) "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple.~~

~~(3) "Semi-nudity" means a state of dress in which any opaque clothing covers the genitals, anus, anal cleft or cleavage, pubic area, and vulva narrower than four inches wide in the front and five inches wide in the back, and less than one inch wide at the~~

narrowest point, and which covers the nipple and areola of the female breast narrower than a two inch radius.

(4) "Specified anatomical areas" means:

(a) human male genitals in a state of sexual arousal; or

(b) less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or a female breast.

(5) "Specified sexual activities" means acts of, or simulating:

(a) masturbation;

(b) sexual intercourse;

(c) sexual copulation with a person or a beast;

(d) fellatio;

(e) cunnilingus;

(f) bestiality;

(g) pederasty;

(h) buggery;

(i) sodomy;

(j) exeretory functions as part of or in connection with any of the activities set forth in (a) through (i).]

[R81-5-17. Visitor Cards.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to purchase or purchase in full or in part a visitor card for a member of the general public.

(b) Notwithstanding section (3)(a), if a private club is located within a hotel, the hotel may assist the club in the issuance of a visitor card to a guest of the hotel under the following conditions:

(i) the guest has booked a room and is staying at the hotel;

(ii) the cost of the visitor card is paid for by the guest either as a separate charge, or as part of the hotel room rate;

(iii) the private club receives payment of the fees for all visitor cards issued to guests of the hotel;

(iv) the hotel and the club shall maintain a current record of each visitor card issued to a guest of the hotel as required by the commission;

(v) the records required by subsection (iv) shall be kept for a period of three years and shall be available for inspection by the department; and

(vi) the issuance of the visitor card is done in accordance with the procedures outlined in 32A-5-107(6).]

****R81-5-18. Age Verification Dining and Social Clubs.**

(1) Authority. 32A-1-303 and 32A-1-304.5.

(2) Purpose.

(a) 32A-1-304.5 requires dining and social club licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32A.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

- (A) the type of proof of age identification document presented;
- (B) the number assigned to the individual's proof of age document by the issuing authority;
- (C) the expiration date of the proof of age identification document;
- (D) the date the proof of age identification document was presented;
- (E) the individual's name; and
- (F) the individual's date of birth.
- (c) Any data collected either electronically or otherwise:
 - (i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;
 - (ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Section 32A-5-107;
 - (ii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;
 - (iii) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and
 - (iv) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.
- (d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32A-1-303.