

Testimony provided by:

John F. May, Managing Director
Keystone Novelties Distributors, LLC

Respectfully submitted to:

Pennsylvania State Senate
Agriculture and Rural Affairs Committee
February 10, 2016

Chairman Vogel, Chairman Schwank and members of the committee. Thank you for providing Keystone Novelties Distributors, LLC (KND) with the opportunity to provide testimony on the proposal to expand the sale of "consumer fireworks" to Pennsylvania residents as proposed by the provisions of Senate Bill 1055. Like the sponsors of this legislation, we at KND believe Pennsylvania residents should have the same right as out-of-state citizens to legally purchase consumer fireworks within Pennsylvania's borders. However, we are concerned that SB 1055, as it is currently written, only allows operators of fixed retail structures to sell these types of fireworks to Pennsylvania residents while prohibiting the operators of temporary retail structures from participating in this opportunity.

By way of background, KND is headquartered and operates a 35,000 square foot facility in Lancaster, PA. We employ or contract with nearly 500 full-time, part-time and seasonal workers at nearly 300 temporary retail tent locations spread across 59 Pennsylvania counties. We have no fixed store operations in Pennsylvania. All of our revenue is generated through temporary retail locations. We have been operating in Pennsylvania for nearly 20 years and believe we are the largest retailer dedicated to the sale of sparklers, fountains and other novelty items currently approved for sale to Pennsylvania residents. Over the two decades of operating in Pennsylvania, we have built relationships with 250 local municipalities who are responsible for issuing the permits and licenses required for seasonal retailers.

As stated above, KND agrees that Pennsylvania residents should be able to purchase consumer fireworks within Pennsylvania's borders. However, the current draft of SB 1055 excludes retail sales of consumer fireworks through temporary structures creating an uneven playing field for retailers. We believe the bill should not be limited to permanent structures only.

Each July 4th holiday season it is estimated that over 600 temporary structures are operated in Pennsylvania for the sole purpose of the retail sale of state approved sparklers, fountains and handheld devices. The current language of the proposed legislation has several important ramifications:

1. It threatens unemployment for thousands of summer seasonal workers including, school bus drivers, teachers and students relying on this income.
2. The limitation of sales to fixed stores restricts potential increased license and sales tax revenue to the state.
3. It threatens revenue to local property owners benefiting from over \$1,000,000 in lease revenue from the tent operators.

Under the current fireworks regulations, fixed store operators in Pennsylvania have resided primarily on the Commonwealth's borders targeting residents outside the state. Our tents, and those who operate

other tents around the state, have played by the rules and done everything possible to serve the residents of Pennsylvania while maintaining the highest standards of safety and convenience for our citizens. Therefore, we propose that language be included in SB 1055 to allow temporary structures to continue their service and convenience to Pennsylvania residents by providing them with the same opportunity to sell consumer fireworks as is being provided to fixed structures.

With this opportunity will come added responsibilities for the operators of temporary structures. KND recommends that SB 1055 is amended to include stringent registration, permitting and license fees and requirements for temporary structure operators including:

- A significant yearly license fee;
- A date certain for application submission to help reduce last minute applications;
- An inspection by a state agency or its designee prior to commencing sales of consumer fireworks;
- Requirement to maintain a minimum in product liability insurance;
- Requirement to provide training to employees and contractors with written documentation that training was completed;
- Restrict licensing from convicted felons or to an entity where a convicted felon owns any percentage of the equity interest in the entity;
- All other operating restrictions consistent with those imposed on fixed store operators (smoking, access by minors, prohibit use of controlled substance, etc.) data reporting, collection of PA First Responder 10% excise tax etc., required of fixed store operators related to the sale of consumer fireworks must also be required of licensees of temporary structures. Sparklers, fountain and other novelty items outside of the definition of Consumer Fireworks shall not be subject to the 10% excise tax; and,
- All penalties and confiscation provision for violations under current proposed legislation for permanent stores must also apply to temporary structures.

Finally, KND believes that new licensing fees should be used to offset any new costs the provisions of SB 1055 cause the state licensing agency to incur.

During the course of this hearing you are likely to hear some myths which have been used to advocate for the sale of consumer fireworks from only permanent retail locations. These myths include the claim that temporary structures are inherently not as safe for the sale of consumer fireworks as permanent structures. This is simply untrue. KND requires our operators to provide 24 hour security at all retail locations and has operated over 2,500 temporary sales in Pennsylvania over the past 20 years with zero safety incidents related to the method of sale through tents. Further, 20 states, or an overwhelming majority of states that permit the sale of consumer fireworks to their residents include temporary structures as authorized retailers. In these 20 states, we are not aware of any safety incidents that occurred due to the method of sale through temporary structures.

A second myth is that the transient nature of tents and the operators running them presents risks for accountability and control. Again, KND believes these claims are baseless. We propose, and welcome language added to SB 1055 to require all operators of temporary structures who want to sell consumer fireworks to complete the above mentioned requirements. For reference, a majority of jurisdictions in Pennsylvania already require operating permits, and in most cases, inspections to insure that the temporary structures meet all local building and zoning code requirements. This local oversight will

continue. Local jurisdictions are logistically aware of and vigilant in shutting down rouge operators. Townships will continue to have the authority to approve or disapprove of transient retailers and temporary structures in their jurisdiction.

Most temporary structure operators in fact are well trained and experienced. For example, all of our operators must pass a 1.5 hour online training course including the need to score an 80% or better on the course exam. Approximately 60% of these operators return each year and include teachers, students, school bus drivers and other responsible individuals seeking to supplement their primary means of income. In many cases in Pennsylvania operators of temporary structures are non-profit organizations seeking to raise funds of churches, schools and youth activities.

Again, Keystone Novelties Distributors, LLC supports the underlying goal of SB 1055 which is to provide a means for Pennsylvania residents to conveniently, safely and legally purchase consumer fireworks within the borders of Pennsylvania. We do not however, agree that this goal can be achieved by requiring consumer fireworks to be sold only at permanent retail structures. The current language restrains trade with no evidence supporting the claim that temporary structures are inherently dangerous for these types of sales. This is supported by the fact that most other states which permit the sale of consumer fireworks also permit those sales at temporary structures. KND and other temporary structure retailers have a proven record of safely and responsibly providing fireworks to residents across Pennsylvania and we believe SB 1055 should be amended to give temporary structure retailers the opportunity to sell consumer fireworks to Pennsylvania residents.

Thank you for the opportunity to testify before you today and I welcome any questions you may have.

