



# Keystone Novelties Distributors, LLC

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Testimony provided by:

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Respectfully submitted to:

Pennsylvania State House  
Agriculture and Rural Affairs Committee  
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Good morning Chairman Casper, Chairman Pashinski and members of the committee. Thank you for providing Keystone Novelties Distributors, LLC (KND) with the opportunity to provide testimony on Rep. Farry's HB 1687, which seeks to increase fines and strengthen regulations on the sales and use of consumer fireworks. Generally speaking, KND supports statewide regulations limiting the hours that fireworks can be used and supports tougher enforcement and penalties for bad actors who violate the sales and use provisions for consumer fireworks. However, we do not support the provision in HB 1687 that limits the sale of consumer fireworks to ONLY fixed retail locations.

By way of background, KND is headquartered and operates a 35,000 square foot facility in Lancaster, PA along with a second 30,000 square foot facility in Denver, PA. We employ or contract with nearly 250 full-time, part-time and seasonal workers at nearly 150 temporary retail tent locations spread across 59 Pennsylvania counties. We have no fixed store operations in Pennsylvania. All 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 of fireworks headquartered in the state. 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.

Act 43 of 2017 finally gave Pennsylvania residents the same right to buy and use consumer fireworks that non-Pennsylvania residents within the commonwealth's borders enjoyed for years. KND supported this effort wholeheartedly. Fixed retail locations could sell the full line of consumer fireworks, 365 days a year, while temporary retail locations, tents, could sell a limited line of these products for no more than twenty days of the year around the Fourth of July, New Year's Day and other national holidays. This system was in place for only one year before a ruling from the Commonwealth Court of Pennsylvania struck down sections of the new law concerning sales at temporary locations. In the Court's view, the Legislature unconstitutionally delegated its responsibility for ensuring consumer fireworks are sold safely by relying solely on National Fire Protection Association safety standards. This ruling has placed my business and other temporary retail locations in an untenable position within the fireworks industry by mandating that we can only sell novelty fireworks like sparklers, fountains and handheld devices. If forcing temporary structures to compete on this uneven playing field continues, it could very well lead to most temporary structures going out of business. We are currently working on legislation in the Senate to prevent this from happening. This legislation would address the Court's concerns and give temporary structures the ability to sell consumer fireworks again. For reference, over the past two years, Act 43 legislation combined with the court ruling and the uneven playing field it has created, resulted in our company's termination of over 130 lease agreements with PA landowners representing \$500,000 in income to these PA property owners. This also constituted the termination of hiring opportunities for another 150 contractors, like teachers and college students representing an additional \$500,000 in compensation to these PA operators.

To exclude temporary retail locations from HB 1687 will have several important ramifications that must be considered:

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 throughout the commonwealth benefiting from over \$1,000,000 in lease revenue from the tent operators.

Despite these concerns, we support the spirit of the legislation to restrict use of consumer fireworks to ensure the safety and quality of life for the residents of the commonwealth. However, we believe the legislation should go farther in this regard by mandating at the state level a period of use limited to the dates and time of day during the July 4<sup>th</sup> holiday period as described in the draft along with New Year's Eve also as described in the current draft of HB1687. This approach to limiting use at the state level rather than relying on inconsistent local legislative activity improves on the current draft by:

1. Pleasing the most discriminating local officials seeking to implement limits on use;
2. Eliminating the hodgepodge of local use laws resulting from the current approach;
3. Eliminating the conflict along borders that will surely result from the current approach; and,
4. Avoiding consumer confusion by providing consistency for compliance and enforcement throughout the commonwealth.

Prior to Act 43, fixed store operators in Pennsylvania resided primarily on the commonwealth's borders selling consumer fireworks to residents outside the state. Our tents, and those who operated other tents around the state, sold only novelty fireworks and did everything possible to serve the residents of Pennsylvania while maintaining the highest standards of safety and convenience for our citizens. To again ban the sale of consumer fireworks from temporary structures makes no sense and was clearly not the will of the Legislature when Members voted on the legislation that became Act 43. We want to continue this service and convenience to Pennsylvania residents.

As ACT 43's underlying legislation was being debated, KND strongly advocated for 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;
- A requirement to maintain a minimum in product liability insurance;
- A 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.

We did not want special consideration because of the limited days we are in operation or the limited line of consumer fireworks we were allowed to sell, we wanted an even playing field.

It should also be mentioned that those who oppose consumer firework sales at temporary locations have also tried to perpetuate several myths about temporary retail sales. These include the myth that selling consumer fireworks from temporary locations is not safe or that the operators of temporary locations are not professional. 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 proposed and advocated for language in Act 43 to require all operators of temporary structures who want to sell consumer fireworks to complete the above-mentioned requirements. For reference, most jurisdictions in Pennsylvania already require operating permits, and in most cases, inspections to ensure 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 HB 1687 which is to provide stronger enforcement of Pennsylvania's fireworks laws for both the sales and the use of fireworks. 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. The Pennsylvania Legislature voted in 2017 to allow temporary structures to sell a limited line of consumer fireworks to Pennsylvania residents and we believe temporary structure retailers should again have this opportunity.

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