

CS for EHB 2494

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THE STATE SENATE
Monday, April 5, 2004

Committee Substitute for
ENGROSSED
House Bill No. 2494

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2494 - By: ADKINS
and RICE of the House and COFFEE of the Senate.

An act relating to aircraft and airports; providing
definitions; prohibiting aircraft manufacturers from taking
certain actions; prohibiting aircraft manufacturers from
terminating certain agreements; providing exception;
providing remedies for aircraft dealers; providing
applicability; providing for codification; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 254.2 of Title 3, unless there
is created a duplication in numbering, reads as follows:

As used in Sections 1 through 4 of this act:

1. "Agreement" means any written or oral contract or agreement
between a dealer and a manufacturer which grants the dealer the
right to sell new or used aircraft manufactured by the manufacturer
or to sell aircraft parts or to perform service, maintenance, or
warranty work for the manufacturer;

2. "Dealer" means any dealer, licensee, franchisee, or other
authorized representative of an aircraft manufacturer which is
authorized by an aircraft manufacturer to sell new or used aircraft

1 or sell parts or to perform service, maintenance or warranty work
2 for the aircraft manufacturer; and

3 3. "Manufacturer" means a manufacturer or distributor of new or
4 used aircraft, aircraft parts and supplies, and any other person
5 which has granted a dealer the right to sell new or used aircraft or
6 aircraft parts manufactured or sold by the manufacturer or to
7 perform service, maintenance, or warranty work upon the aircraft
8 made or sold by the manufacturer.

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 254.3 of Title 3, unless there
11 is created a duplication in numbering, reads as follows:

12 Notwithstanding any contractual provision in any agreement to
13 the contrary, no manufacturer, directly or indirectly, in connection
14 with the offer, sale, purchase, operation, or transfer of any
15 license, dealership, franchise, or other agreement relating to the
16 sale or service of aircraft or aircraft parts shall:

- 17 1. Employ any device, scheme, or artifice to defraud; or
18 2. Make any untrue statement of a material fact or omit to
19 state a material fact in order to make the statements made, in light
20 of the circumstances, not be false or misleading; or
21 3. Engage in any act, practice, or course of business which
22 operates as a fraud, an unfair trade practice, an anticompetitive
23 practice, or a predatory trade practice against the dealer; or

1 4. Fail to comply with or alter or change in any materially
2 adverse way the fundamental relationship between the manufacturer
3 and a dealer without the prior written consent of the dealer,
4 including without limitation, making a material change in any
5 existing agreement in connection with the renewal; or

6 5. Engage in any capricious or arbitrary manner with respect to
7 any material provision in any agreement.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 254.4 of Title 3, unless there
10 is created a duplication in numbering, reads as follows:

11 A. No manufacturer may terminate, cancel, or fail to renew a
12 dealership, franchise, or license agreement authorizing the sale of
13 new or used aircraft, the sale or installation of aircraft parts,
14 the service or maintenance of aircraft, or the performance of
15 warranty work for the manufacturer without good cause. As used in
16 this subsection, "good cause" means that the dealer has:

17 1. Employed a material device, scheme, or artifice to defraud
18 the manufacturer in connection with the performance of the
19 agreement; or

20 2. Made false or materially misleading statements of a material
21 fact or omitted to state a material fact in order to make the
22 statements made, in light of the circumstances, not be false or
23 misleading in connection with the agreement, where the statements

1 made or omissions have had a material adverse effect upon the
2 manufacturer; or

3 3. Engaged in any act, practice, or course of business which
4 operates in a material way as a fraud upon the manufacturer; or

5 4. Failed to comply with any material provision of the
6 agreement which has had a material adverse effect upon the
7 manufacturer, and the time to cure the noncompliance has expired; or

8 5. Has been convicted of a felony or any other crime involving
9 fraud, dishonesty, deceit, or moral turpitude in connection with the
10 agreement; or

11 6. Has impaired in a material way the trademark of the
12 manufacturer, trade name, or similar commercial symbol; or

13 7. Has abandoned the business relating to the agreement for a
14 period of not less than sixty (60) consecutive days; or

15 8. Has been adjudicated as bankrupt or has become insolvent and
16 unable to pay debts as they become due.

17 B. Before any termination, cancellation, or failure to renew
18 any license, dealership, franchise, or other agreement becomes
19 effective, the manufacturer must first give the dealer not less than
20 ninety (90) days' prior written notice of the proposed termination
21 or nonrenewal, where the notice states specifically the reasons for
22 the proposed action and gives the dealer not less than forty-five
23 (45) days to cure the claimed deficiency. If the manufacturer

1 proposes to discontinue the manufacture of aircraft or other line of
2 business authorized to be performed by the dealer, the manufacturer
3 shall give the dealer not less than one hundred eighty (180) days'
4 prior notice of the effective date of the discontinuance.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 254.5 of Title 3, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Any dealer harmed by the failure of a manufacturer to comply
9 with this act shall be entitled to bring a private right of action
10 against the manufacturer for the recovery of the fair market value
11 of the business affected and to recover actual, punitive, special,
12 exemplary, extraordinary damages, lost profits and lost business
13 opportunities, and treble actual damages, and such other relief as
14 it may be entitled at law or in equity. The dealer shall be
15 entitled to recover its attorneys' fees and expenses and all costs
16 incurred by the private right of action. In addition, if a
17 manufacturer commits an act prohibited by this act, the manufacturer
18 shall purchase from the affected dealer the following items at the
19 following prices:

20 1. The fair market value of all aircraft in the inventory of
21 the dealer of aircraft held for resale; and

22 2. The current price list amounts of the manufacturer for all
23 parts and supplies acquired by the dealer from the manufacturer

1 which are in the inventory of the dealer at the time of the
2 violation of the manufacturer; and

3 3. The fair market value of all equipment and specialty tools
4 owned by the dealer and purchased from the manufacturer for use in
5 the sale, service, or maintenance of the aircraft manufactured or
6 sold to the dealer by the manufacturer. If any items are encumbered
7 or subject to any outstanding financing statement, the payments
8 shall be made jointly to the dealer and the secured party to the
9 extent of their respective interests. If any items are leased by
10 the dealer, the manufacturer shall assume all future obligations
11 under the lease.

12 B. This section shall apply only to dealers which have
13 contracts with manufacturers in effect on or after January 1, 2004.

14 SECTION 5. This act shall become effective November 1, 2004.

15 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 3-30-04 - DO
16 PASS, As Amended.