ENGROSSED SENATE
BILL NO. 902

By: Capps and Coffee of the Senate

and

Piatt of the House

An Act relating to aircraft and airports; amending Section 1, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.2), which relates to definitions; modifying definitions; adding definition; amending Section 2, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.3), which relates to prohibiting aircraft manufacturers from taking certain actions; limiting scope of certain prohibitions; amending Section 3, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.4), which relates to prohibiting aircraft manufacturers from terminating certain agreements; clarifying and limiting scope of certain prohibitions; amending Section 4, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.5), which relates to providing certain remedies for aircraft dealers; modifying application of provision of law; and providing an effective date.

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

SECTION 1. AMENDATORY Section 1, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.2), is amended to read as follows:

Section 254.2 As used in Sections ~~1~~ 254.2 through ~~4~~ 254.5 of this ~~act~~ title:

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

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

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

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

4. New aircraft means a newly manufactured aircraft in its entirety.

SECTION 2. AMENDATORY Section 2, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.3), is amended to read as follows:

Section 254.3 Notwithstanding any contractual provision in any agreement to the contrary, no manufacturer, in its dealings with a dealer, directly or indirectly, in connection with the offer, sale, purchase, operation, or transfer of any license, dealership, franchise, or other agreement relating to the sale or service of aircraft or aircraft parts shall:

1. Employ any device, scheme, or artifice to defraud; or

2. Make any untrue statement of a material fact or omit to state a material fact in order to make the statements made, in light of the circumstances, not be false or misleading; or

3. Engage in any act, practice, or course of business which operates as a fraud, an unfair trade practice, an anticompetitive practice, or a predatory trade practice against the dealer; or

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

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

SECTION 3. AMENDATORY Section 3, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.4), is amended to read as follows:

Section 254.4 A. No manufacturer, in its dealings with a dealer, may terminate, cancel, or fail to renew a dealership, franchise, or license agreement authorizing the sale of new or used aircraft, the sale or installation of aircraft parts, the service or maintenance of aircraft, or the performance of warranty work for the manufacturer without good cause. As used in this subsection, "good cause" means that the dealer has:

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

2. Made false or materially misleading statements of a material fact or omitted to state a material fact in order to make the statements made, in light of the circumstances, not be false or misleading in connection with the agreement, where the statements made or omissions have had a material adverse effect upon the manufacturer; or

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

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

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

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

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

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

B. Before any termination, cancellation, or failure to renew any license, dealership, franchise, or other agreement becomes effective, the manufacturer must first give the dealer not less than ninety (90) days' prior written notice of the proposed termination or nonrenewal, where the notice states specifically the reasons for the proposed action and gives the dealer not less than forty-five (45) days to cure the claimed deficiency. If the manufacturer proposes to discontinue the manufacture of aircraft or other line of business authorized to be performed by the dealer, the manufacturer shall give the dealer not less than one hundred eighty (180) days' prior notice of the effective date of the discontinuance.

SECTION 4. AMENDATORY Section 4, Chapter 286, O.S.L. 2004 (3 O.S. Supp. 2004, Section 254.5), is amended to read as follows:

Section 254.5 A. Any dealer harmed by the failure of a manufacturer to comply with this act shall be entitled to bring a private right of action against the manufacturer for the recovery of the fair market value of the business affected and to recover actual, punitive, special, exemplary, extraordinary damages, lost profits and lost business opportunities, and treble actual damages, and such other relief as it may be entitled at law or in equity. The dealer shall be entitled to recover its attorneys' fees and expenses and all costs incurred by the private right of action. In addition, if a manufacturer commits an act prohibited by this act, the manufacturer shall purchase from the affected dealer the following items at the following prices:

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

2. The current price list amounts of the manufacturer for all parts and supplies acquired by the dealer from the manufacturer which are in the inventory of the dealer at the time of the violation of the manufacturer; and

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

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

SECTION 5. This act shall become effective November 1, 2005.

Passed the Senate the 9th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House of Representatives