

SB 902

THE STATE SENATE
Tuesday, February 22, 2005

Senate Bill No. 902

As Amended

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 manufactures 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 ~~±~~ 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

1 parts or to perform service, maintenance, or warranty work for the
2 manufacturer in connection therewith;

3 2. "Dealer" means any dealer, licensee, franchisee, or other
4 authorized representative of an aircraft manufacturer which is
5 authorized by an aircraft manufacturer to sell new ~~or used~~ aircraft
6 ~~or~~ and either sell parts or ~~to~~ perform service, maintenance or
7 warranty work for the aircraft manufacturer; ~~and~~

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

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

16 SECTION 2. AMENDATORY Section 2, Chapter 286, O.S.L.
17 2004 (3 O.S. Supp. 2004, Section 254.3), is amended to read as
18 follows:

19 Section 254.3 Notwithstanding any contractual provision in any
20 agreement to the contrary, no manufacturer, in its dealings with a
21 dealer, directly or indirectly, in connection with the offer, sale,
22 purchase, operation, or transfer of any license, dealership,

1 franchise, or other agreement relating to the sale or service of
2 aircraft or aircraft parts shall:

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

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

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

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

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

17 SECTION 3. AMENDATORY Section 3, Chapter 286, O.S.L.
18 2004 (3 O.S. Supp. 2004, Section 254.4), is amended to read as
19 follows:

20 Section 254.4 A. No manufacturer, in its dealings with a
21 dealer, may terminate, cancel, or fail to renew a dealership,
22 franchise, or license agreement authorizing the sale of new or used
23 aircraft, the sale or installation of aircraft parts, the service or

1 maintenance of aircraft, or the performance of warranty work for the
2 manufacturer without good cause. As used in this subsection, "good
3 cause" means that the dealer has:

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

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

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

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

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

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

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

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

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

16 SECTION 4. AMENDATORY Section 4, Chapter 286, O.S.L.
17 2004 (3 O.S. Supp. 2004, Section 254.5), is amended to read as
18 follows:

19 Section 254.5 A. Any dealer harmed by the failure of a
20 manufacturer to comply with this act shall be entitled to bring a
21 private right of action against the manufacturer for the recovery of
22 the fair market value of the business affected and to recover
23 actual, punitive, special, exemplary, extraordinary damages, lost

1 profits and lost business opportunities, and treble actual damages,
2 and such other relief as it may be entitled at law or in equity.

3 The dealer shall be entitled to recover its attorneys' fees and
4 expenses and all costs incurred by the private right of action. In
5 addition, if a manufacturer commits an act prohibited by this act,
6 the manufacturer shall purchase from the affected dealer the
7 following items at the following prices:

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

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

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

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON AEROSPACE, COMMUNICATIONS &
6 TECHNOLOGY, dated 2-14-05 - DO PASS, As Amended and Coauthored.