

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2501

By: Adkins of the House

and

Lamb of the Senate

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9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to aircraft and airports; amending 3
11 O.S. 2001, Section 254.1, as amended by Section 1,
12 Chapter 67, O.S.L. 2003, Section 1, Chapter 286,
13 O.S.L. 2004, as last amended by Section 1, Chapter
14 198, O.S.L. 2007, Section 2, Chapter 286, O.S.L.
15 2004, as amended by Section 2, Chapter 107, O.S.L.
16 2005, Section 3, Chapter 286, O.S.L. 2004, as amended
17 by Section 3, Chapter 107, O.S.L. 2005 and Section 4,
18 Chapter 286, O.S.L. 2004, as last amended by Section
19 2, Chapter 198, O.S.L. 2007 (3 O.S. Supp. 2007,
20 Sections 254.1, 254.2, 254.3, 254.4 and 254.5), which
21 relate to the registration of aircraft; requiring
22 dealer license to sell certain aircraft; adding web
23 sites as evidence of proof of bona fide dealer
24 status; specifying requirements and penalties for
failing to make an application for renewal of
license; modifying definitions; expanding list of
certain prohibited contractual activities; modifying
list of occurrence of certain activities; modifying
items that a manufacturer shall purchase under
certain conditions; prohibiting denial of a right of
action to a dealer if certain contractual conditions
occur; providing for continuation as a dealer if the
entity was considered a dealer as of a certain date;
specifying parties to certain agreements or
contracts; and declaring an emergency.

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

2 SECTION 1. AMENDATORY 3 O.S. 2001, Section 254.1, as
3 amended by Section 1, Chapter 67, O.S.L. 2003 (3 O.S. Supp. 2007,
4 Section 254.1), is amended to read as follows:

5 Section 254.1 A. It shall be unlawful for any person to engage
6 in the business of selling new or used aircraft in this state, or to
7 serve in the capacity of, or act as a dealer of new or used aircraft
8 in this state without first obtaining a dealer license as provided
9 in this section. Any person ~~having~~ utilizing more than one location
10 where such business is carried on or conducted shall be required to
11 obtain and hold a current license for each such location.

12 B. Dealer licenses issued pursuant to this section shall be
13 issued only to persons that prove to the satisfaction of the
14 Oklahoma Tax Commission that they are clearly recognizable as bona
15 fide dealers. Proof of bona fide dealer status shall include, but
16 not be limited to, the following:

17 1. Consistent identification of the business as a dealer
18 establishment in advertising, signs, telephone book listings, web
19 sites, and other similar means. The dealership shall be clearly
20 identifiable as such by any person who visits or deals with the
21 business; and

22 2. A picture, upon application for a new license, of the
23 business location which includes the office and business sign.

24

1 C. Applications for licenses required to be obtained pursuant
2 to this section shall be verified by the oath or affirmation of the
3 applicant and shall be made on forms prescribed by the Tax
4 Commission. The form shall contain such information as the Tax
5 Commission deems necessary to enable it to fully determine the
6 qualifications and eligibility of the applicant to receive the
7 license requested. The Tax Commission shall require in such
8 application information relating to:

9 1. Whether the applicant has an established place of business
10 and is primarily engaged in the pursuit or business of selling
11 aircraft;

12 2. Whether the applicant is able to properly conduct the
13 business for which the license has been requested; and

14 3. Such other pertinent information consistent with the
15 safeguarding of the public interest and the public welfare.

16 All applications for licenses shall be accompanied by the
17 appropriate fees in accordance with the provisions of this section.
18 In the event any application is denied and the license requested is
19 not issued, the entire license fee shall be returned to the
20 applicant.

21 D. All licenses issued pursuant to this section shall expire on
22 December 31 of the second year following the date of issue. All
23 licenses shall be nontransferable. All applications for renewal of
24 a license shall be submitted by November 1 of the year of renewal,

1 and such license shall be issued by January 1. If ~~applications have~~
2 ~~not been made for~~ a licensee has not made an application for renewal
3 of the licenses by December 31, it shall be illegal for ~~any person~~
4 that licensee to sell new or used aircraft in this state or to serve
5 in the capacity of or act as a dealer of new or used aircraft in
6 this state. If after December 31 the license has not been renewed,
7 then such licensee shall be required to apply for a license as a new
8 applicant.

9 E. The license fee to be charged and received by the Tax
10 Commission for the license issued pursuant to this section shall be
11 Two Hundred Fifty Dollars (\$250.00). There shall be no fee for
12 renewal of a license unless the licensee is required pursuant to
13 this section to apply for a license as a new applicant.

14 F. The Tax Commission may deny an application for a license, or
15 revoke or suspend a license, or impose a fine not to exceed Five
16 Hundred Dollars (\$500.00) against a dealer for each day that any
17 provision of this section is violated, or for any of the following
18 reasons:

19 1. On satisfactory proof of unfitness of the applicant in any
20 application for a license pursuant to this section;

21 2. For any material misstatement made by an applicant in any
22 application for a license pursuant to this section;

23 3. A change of condition after a license is granted resulting
24 in failure to maintain the qualifications for a license;

1 4. Being a dealer who:

2 a. uses false or misleading advertising in connection
3 with the business as a dealer,

4 b. has committed any unlawful act which resulted in the
5 revocation of any similar license in another state,

6 c. has failed or refused to perform any written agreement
7 with any retail buyer involving the sale of an
8 aircraft,

9 d. has been convicted of a crime involving moral
10 turpitude,

11 e. has committed a fraudulent act in selling, purchasing,
12 or otherwise dealing in aircraft, or has
13 misrepresented the terms and conditions of a sale,
14 purchase, or contract for sale or purchase of an
15 aircraft, or

16 f. has failed to meet or maintain the conditions and
17 requirements necessary to qualify for the issuance of
18 a license; or

19 5. Being a dealer who does not have an established place of
20 business.

21 The Tax Commission may also assess any excise tax, including
22 penalty and interest, against any dealer determined by the Tax
23 Commission to be in violation of this section for any aircraft sold
24 or purchased while such dealer was in violation of this section.

1 G. The Tax Commission may deny any application for a license,
2 or suspend or revoke a license issued or impose a fine, only after
3 appropriate notice and a hearing as set forth by rule of the Tax
4 Commission.

5 H. Any person holding a dealer license on July 1, 2000, issued
6 pursuant to Section 254 of Title 3 of the Oklahoma Statutes shall be
7 entitled to retain such license until December 31, 2000. At such
8 time, the dealer shall apply for a new license in accordance with
9 the provisions of this section.

10 SECTION 2. AMENDATORY Section 1, Chapter 286, O.S.L.
11 2004, as last amended by Section 1, Chapter 198, O.S.L. 2007 (3 O.S.
12 Supp. 2007, Section 254.2), is amended to read as follows:

13 Section 254.2 As used in Sections 254.2 through 254.5 of this
14 title:

15 1. "Agreement" means any written or oral contracts or
16 agreements between a dealer and a manufacturer ~~which grants~~ and all
17 revisions, modifications, extensions, amendments and replacements of
18 such agreements, that grant the dealer the right to sell new
19 aircraft manufactured by the manufacturer and either to sell
20 aircraft parts or to perform service, maintenance, or warranty work
21 for the manufacturer ~~in connection therewith and were in effect~~
22 ~~prior to July 1, 2007, and all revisions, modifications, extensions,~~
23 ~~amendments and replacements of such agreements;~~

24

1 2. "Dealer" means any dealer, licensee, franchisee, or other
2 authorized representative of an aircraft manufacturer which is
3 authorized by an aircraft manufacturer to sell new aircraft and
4 either to sell parts or to perform service, maintenance or warranty
5 work for the aircraft manufacturer ~~incorporated in this state prior~~
6 ~~to July 1, 2007, and all.~~ All successors and assigns thereof of a
7 dealer, together with all persons who purchase assets, business or
8 ownership thereof of a dealer shall also be considered dealers.
9 With the exception of paragraph 3 of this section, the provisions of
10 this section and Sections 254.3 through 254.5 of this title shall
11 not apply to any entity authorized to sell only new piston-powered
12 aircraft manufactured or distributed by a manufacturer,
13 notwithstanding the authorization of that entity to sell parts or to
14 perform service, maintenance or warranty work for the aircraft
15 manufacturer;

16 3. "Manufacturer" means a manufacturer or distributor of new
17 aircraft; and

18 4. "New aircraft" means a newly manufactured aircraft in its
19 entirety.

20 SECTION 3. AMENDATORY Section 2, Chapter 286, O.S.L.
21 2004, as amended by Section 2, Chapter 107, O.S.L. 2005 (3 O.S.
22 Supp. 2007, Section 254.3), is amended to read as follows:

23 Section 254.3 Notwithstanding any contractual provision in any
24 agreement to the contrary, no manufacturer, ~~in its dealings with a~~

1 ~~dealer, directly or indirectly,~~ in connection with the offer,
2 negotiation, sale, purchase, operation, or transfer of any license,
3 dealership, franchise, or other agreement relating to the sale or
4 service of aircraft or aircraft parts shall, directly or indirectly:

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

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

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

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

17 5. ~~Engage~~ Act in any capricious or arbitrary manner with
18 respect to any material provision in any agreement.

19 SECTION 4. AMENDATORY Section 3, Chapter 286, O.S.L.
20 2004, as amended by Section 3, Chapter 107, O.S.L. 2005 (3 O.S.
21 Supp. 2007, Section 254.4), is amended to read as follows:

22 Section 254.4 A. No manufacturer, in its dealings with a
23 dealer, may terminate, cancel, or fail to renew ~~a dealership,~~
24 ~~franchise, or license~~ an agreement ~~authorizing the sale of new or~~

1 ~~used aircraft, the sale or installation of aircraft parts, the~~
2 ~~service or maintenance of aircraft, or the performance of warranty~~
3 ~~work for the manufacturer~~ as defined in Section 254.2 of this title

4 without good cause. As used in this subsection, "good cause" means
5 that the dealer has:

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

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

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

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

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

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

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

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

9 9. Has, in the good faith judgment of the manufacturer, failed
10 to adequately perform the dealer's sales, marketing, or service
11 functions under the agreement; or

12 10. Has, in the good faith judgment of the manufacturer, failed
13 to keep or maintain proper facilities, equipment, or sales or
14 service staff to adequately meet the needs of the manufacturer's
15 customers or to support the market for the manufacturer's goods and
16 services in the sales territory of the dealer.

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
24 proposes to discontinue the manufacture of aircraft or other line of

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

4 SECTION 5. AMENDATORY Section 4, Chapter 286, O.S.L.
5 2004, as last amended by Section 2, Chapter 198, O.S.L. 2007 (3 O.S.
6 Supp. 2007, Section 254.5), is amended to read as follows:

7 Section 254.5 A. Any dealer harmed by the failure of a
8 manufacturer to comply with Section ~~254.2 et seq.~~ 254.3 or 254.4 of
9 this title 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 treble actual, ~~punitive, and~~
12 ~~special, exemplary, extraordinary damages, lost profits and lost~~
13 ~~business opportunities, and treble actual~~ damages, and such other
14 relief ~~as~~ to which it may be entitled at law or in equity. The
15 dealer shall be entitled to recover its reasonable attorney fees and
16 all expenses and ~~all~~ costs incurred ~~by~~ due to the private right of
17 action if the dealer prevails. In addition, if a manufacturer
18 commits an act prohibited by Section ~~254.2 et seq.~~ 254.3 or 254.4 of
19 this title, the manufacturer shall purchase from the affected dealer
20 the following items at the following prices:

21 1. ~~The fair market value of all~~ All aircraft in the inventory
22 of the dealer of aircraft held for resale at the fair market value;
23 and

24

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

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

15 B. ~~This section shall apply only to dealers which have~~
16 ~~agreements with manufacturers in effect prior to July 1, 2007, and~~
17 ~~all revisions, modifications, extensions, amendments and~~
18 ~~replacements of such agreements~~ If the relationship between a
19 manufacturer and a dealer is set forth in more than one contract or
20 agreement, then the revision, modification, amendment, replacement,
21 cancellation, termination, or failure to renew of one or more such
22 contracts or agreements shall not deny the dealer a right of action
23 under this section for any acts by the manufacturer relating to the
24 remaining contracts.

1 C. Any entity meeting the definition of "dealer" provided in
2 paragraph 2 of Section 254.2 of this title shall continue to be
3 considered a dealer for the purposes of this section and Sections
4 254.3, 254.4 and 254.6 of this title notwithstanding that any such
5 agreement or portion thereof is terminated, cancelled, or not
6 renewed by the manufacturer.

7 SECTION 6. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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