

1 ENGROSSED HOUSE
2 BILL NO. 2501

By: Adkins of the House

and

Lamb of the Senate

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7 An Act relating to aircraft and airports; amending 3
8 O.S. 2001, Section 254.1, as amended by Section 1,
9 Chapter 67, O.S.L. 2003, Section 1, Chapter 286,
10 O.S.L. 2004, as last amended by Section 1, Chapter
11 198, O.S.L. 2007, Section 2, Chapter 286, O.S.L.
12 2004, as amended by Section 2, Chapter 107, O.S.L.
13 2005, Section 3, Chapter 286, O.S.L. 2004, as amended
14 by Section 3, Chapter 107, O.S.L. 2005, Section 4,
15 Chapter 286, O.S.L. 2004, as last amended by Section
16 2, Chapter 198, O.S.L. 2007 and Section 3, Chapter
17 198, O.S.L. 2007 (3 O.S. Supp. 2007, Sections 254.1,
18 254.2, 254.3, 254.4, 254.5 and 254.6), which relate
19 to the registration of aircraft; requiring dealer
20 license to sell certain aircraft; adding web sites as
21 evidence of proof of bona fide dealer status;
22 specifying requirements and penalties for failing to
23 make an application for renewal of license; modifying
24 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; updating
statutory references; and providing an effective
date.

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

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

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

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

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

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

23 C. Applications for licenses required to be obtained pursuant
24 to this section shall be verified by the oath or affirmation of the

1 applicant and shall be made on forms prescribed by the Tax
2 Commission. The form shall contain such information as the Tax
3 Commission deems necessary to enable it to fully determine the
4 qualifications and eligibility of the applicant to receive the
5 license requested. The Tax Commission shall require in such
6 application information relating to:

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

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

12 3. Such other pertinent information consistent with the
13 safeguarding of the public interest and the public welfare.

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

19 D. All licenses issued pursuant to this section shall expire on
20 December 31 of the second year following the date of issue. All
21 licenses shall be nontransferable. All applications for renewal of
22 a license shall be submitted by November 1 of the year of renewal,
23 and such license shall be issued by January 1. If ~~applications have~~
24 ~~not been made for~~ a licensee has not made an application for renewal

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

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

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

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

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

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

23 4. Being a dealer who:
24

- a. uses false or misleading advertising in connection with the business as a dealer,
- b. has committed any unlawful act which resulted in the revocation of any similar license in another state,
- c. has failed or refused to perform any written agreement with any retail buyer involving the sale of an aircraft,
- d. has been convicted of a crime involving moral turpitude,
- e. has committed a fraudulent act in selling, purchasing, or otherwise dealing in aircraft, or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of an aircraft, or
- f. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license; or

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

The Tax Commission may also assess any excise tax, including penalty and interest, against any dealer determined by the Tax Commission to be in violation of this section for any aircraft sold 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 that~~
17 were in effect prior to July 1, 2007, and all revisions,
18 modifications, extensions, amendments and replacements of such
19 agreements, that grant the dealer the right to sell new aircraft
20 manufactured by the manufacturer and either to sell aircraft parts
21 or to perform service, maintenance, or warranty work for the
22 manufacturer ~~in connection therewith and were in effect prior to~~
23 ~~July 1, 2007, and all revisions, modifications, extensions,~~
24 ~~amendments and replacements of such agreements;~~

1 2. "Dealer" means any entity that was incorporated in this
2 state prior to July 1, 2007, and that is a dealer, licensee,
3 franchisee, or other authorized representative of an aircraft
4 manufacturer which is authorized by an aircraft manufacturer to sell
5 new aircraft and either sell parts or to perform service,
6 maintenance or warranty work for the aircraft manufacturer
7 ~~incorporated in this state prior to July 1, 2007, and all.~~ All
8 successors and assigns ~~thereof~~ of a dealer, together with all
9 persons who purchase assets, business or ownership ~~thereof~~ shall
10 also be considered dealers;

11 3. "Manufacturer" means a manufacturer or distributor of new
12 aircraft; and

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

15 SECTION 3. AMENDATORY Section 2, Chapter 286, O.S.L.
16 2004, as amended by Section 2, Chapter 107, O.S.L. 2005 (3 O.S.
17 Supp. 2007, Section 254.3), is amended to read as follows:

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

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

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

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

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

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

14 SECTION 4. AMENDATORY Section 3, Chapter 286, O.S.L.
15 2004, as amended by Section 3, Chapter 107, O.S.L. 2005 (3 O.S.
16 Supp. 2007, Section 254.4), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

14 SECTION 5. AMENDATORY Section 4, Chapter 286, O.S.L.
15 2004, as last amended by Section 2, Chapter 198, O.S.L. 2007 (3 O.S.
16 Supp. 2007, Section 254.5), is amended to read as follows:

17 Section 254.5 A. Any dealer harmed by the failure of a
18 manufacturer to comply with Section ~~254.2 et seq.~~ 254.3 or 254.4 of
19 this title shall be entitled to bring a private right of action
20 against the manufacturer for the recovery of the fair market value
21 of the business affected and to recover actual, punitive, special,
22 exemplary, and extraordinary damages, lost profits and lost business
23 opportunities, and treble actual damages, and such other relief as
24 it may be entitled at law or in equity. The dealer shall be

1 entitled to recover its attorney fees and expenses and all costs
2 incurred by the private right of action. In addition, if a
3 manufacturer commits an act prohibited by Section ~~254.2 et seq.~~
4 254.3 or 254.4 of this title, the manufacturer shall purchase from
5 the affected dealer the following items at the following prices:

6 1. ~~The fair market value of all~~ All aircraft in the inventory
7 of the dealer of aircraft held for resale at the fair market value;
8 and

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

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

23 B. This section shall apply only to ~~dealers which have~~
24 agreements ~~with~~ between dealers and manufacturers in effect prior to

1 July 1, 2007, and all revisions, modifications, extensions,
2 amendments and replacements of such agreements.

3 C. If the relationship between a manufacturer and a dealer is
4 set forth in more than one contract or agreement, then the revision,
5 modification, amendment, replacement, cancellation, termination, or
6 failure to renew of one or more such contracts or agreements shall
7 not deny the dealer a right of action under this section for any
8 acts by the manufacturer relating to the remaining contracts.

9 D. Any entity meeting the definition of "dealer" provided in
10 paragraph 2 of Section 254.2 of this title on July 1, 2007, shall
11 continue to be considered a dealer for the purposes of this section
12 and Sections 254.3, 254.4 and 254.6 of this title with regard to any
13 agreements that were in effect on or before July 1, 2007,
14 notwithstanding that any such agreement or portion thereof is
15 terminated, cancelled, or not renewed by the manufacturer.

16 SECTION 6. AMENDATORY Section 3, Chapter 198, O.S.L.
17 2007 (3 O.S. Supp. 2007, Section 254.6), is amended to read as
18 follows:

19 Section 254.6 The provisions of Sections 254.2, 254.3, 254.4
20 and 254.5 of ~~Title 3 of the Oklahoma Statutes~~ this title shall apply
21 only to dealers of new or used aircraft which are licensed pursuant
22 to the provisions of Section 254.1 of ~~Title 3 of the Oklahoma~~
23 ~~Statutes~~ this title and which have agreements or contracts with
24 manufacturers in effect prior to July 1, 2007, ~~and~~ Sections 254.2,

1 254.3, 254.4 and 254.5 of this title shall likewise apply to all
2 revisions, modifications, extensions, amendments and replacements of
3 such agreements or contracts between dealers and manufacturers that
4 were in effect prior to July 1, 2007. Sections 254.2, 254.3, 254.4
5 and 254.5 of ~~Title 3 of the Oklahoma Statutes~~ this title shall not
6 apply, except as provided in this section, to dealers which have
7 agreements or contracts with manufacturers entered into on or after
8 July 1, 2007.

9 SECTION 7. This act shall become effective November 1, 2008.

10 Passed the House of Representatives the 10th day of March, 2008.

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13 Presiding Officer of the House of
14 Representatives

15 Passed the Senate the ____ day of _____, 2008.

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18 Presiding Officer of the Senate
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