

ENROLLED HOUSE
BILL NO. 2501

By: Adkins of the House

and

Lamb of the Senate

An Act relating to aircraft and airports; amending 3 O.S. 2001, Section 254.1, as amended by Section 1, Chapter 67, O.S.L. 2003, Section 1, Chapter 286, O.S.L. 2004, as last amended by Section 1, Chapter 198, O.S.L. 2007, Section 2, Chapter 286, O.S.L. 2004, as amended by Section 2, Chapter 107, O.S.L. 2005, Section 3, Chapter 286, O.S.L. 2004, as amended by Section 3, Chapter 107, O.S.L. 2005 and Section 4, Chapter 286, O.S.L. 2004, as last amended by Section 2, Chapter 198, O.S.L. 2007 (3 O.S. Supp. 2007, Sections 254.1, 254.2, 254.3, 254.4 and 254.5), which relate to the registration of aircraft; requiring dealer license to sell certain aircraft; adding web sites as evidence of proof of bona fide dealer 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.

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

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

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

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

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

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

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

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

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

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

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

D. All licenses issued pursuant to this section shall expire on December 31 of the second year following the date of issue. All licenses shall be nontransferable. All applications for renewal of a license shall be submitted by November 1 of the year of renewal, and such license shall be issued by January 1. ~~If applications have not been made for a licensee has not made an application for renewal of the licenses by December 31, it shall be illegal for any person that licensee to sell new or used aircraft in this state or to serve in the capacity of or act as a dealer of new or used aircraft in this state.~~ If after December 31 the license has not been renewed, then such licensee shall be required to apply for a license as a new applicant.

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

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

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

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

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

4. Being a dealer who:

- 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.

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

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

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

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

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

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

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

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

SECTION 3. AMENDATORY Section 2, Chapter 286, O.S.L. 2004, as amended by Section 2, Chapter 107, O.S.L. 2005 (3 O.S. Supp. 2007, 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, negotiation, 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, directly or indirectly:

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~~ its renewal; or
5. ~~Engage~~ Act in any capricious or arbitrary manner with respect to any material provision in any agreement.

SECTION 4. AMENDATORY Section 3, Chapter 286, O.S.L. 2004, as amended by Section 3, Chapter 107, O.S.L. 2005 (3 O.S. Supp. 2007, 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~~ an 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 as defined in Section 254.2 of this title 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~~ 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~~ Impaired in a material way the trademark, trade name, or similar commercial symbol of the manufacturer, trade name, or similar commercial symbol; ~~or~~

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

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

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

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

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 5. AMENDATORY Section 4, Chapter 286, O.S.L. 2004, as last amended by Section 2, Chapter 198, O.S.L. 2007 (3 O.S. Supp. 2007, 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 ~~Section 254.2 et seq. 254.3 or 254.4~~ of this title 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 treble actual, punitive, and special, exemplary, extraordinary damages, lost profits and lost business opportunities, and treble actual damages, and such other relief ~~as to which~~ it may be entitled at law or in equity. The dealer shall be entitled to recover its reasonable attorney fees and all expenses and all costs incurred by due to the private right of action if the dealer prevails. In addition, if a manufacturer commits an act prohibited by ~~Section 254.2 et seq. 254.3 or 254.4~~ of this title, the manufacturer shall purchase from the affected dealer the following items at the following prices:

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

2. ~~The current price list amounts of the manufacturer for all~~ 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 at the current price list amounts of the manufacturer; and

3. ~~The fair market value of all~~ 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 at the fair market value. 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~~ agreements with between dealers and manufacturers in effect prior to July 1, 2007, and all revisions, modifications, extensions, amendments and replacements of such agreements.

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

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

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

Passed the House of Representatives the 22nd day of May, 2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 23rd day of May, 2008.

Presiding Officer of the Senate