

THE HOUSE OF REPRESENTATIVES
Monday, March 3, 2008

Committee Substitute for
House Bill No. 2501

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2501 - By: ADKINS of the House.

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, Section 4, Chapter 286, O.S.L. 2004, as last amended by Section 2, Chapter 198, O.S.L. 2007 and Section 3, Chapter 198, O.S.L. 2007 (3 O.S. Supp. 2007, Sections 254.1, 254.2, 254.3, 254.4, 254.5 and 254.6), 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; 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 amended by
- 2 Section 1, Chapter 67, O.S.L. 2003 (3 O.S. Supp. 2007, Section 254.1), is amended to read
- 3 as follows:

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

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

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

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

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

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

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

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

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

11 D. All licenses issued pursuant to this section shall expire on December 31 of the
12 second year following the date of issue. All licenses shall be nontransferable. All
13 applications for renewal of a license shall be submitted by November 1 of the year of
14 renewal, and such license shall be issued by January 1. If ~~applications have not been~~
15 ~~made for~~ a licensee has not made an application for renewal of the licenses by December
16 31, it shall be illegal for ~~any person~~ that licensee to sell new or used aircraft in this state
17 or to serve in the capacity of or act as a dealer of new or used aircraft in this state. If
18 after December 31 the license has not been renewed, then such licensee shall be required
19 to apply for a license as a new applicant.

20 E. The license fee to be charged and received by the Tax Commission for the license
21 issued pursuant to this section shall be Two Hundred Fifty Dollars (\$250.00). There

1 shall be no fee for renewal of a license unless the licensee is required pursuant to this
2 section to apply for a license as a new applicant.

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

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

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

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

13 4. Being a dealer who:

14 a. uses false or misleading advertising in connection with the business as
15 a dealer,

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

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

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

- 1 e. has committed a fraudulent act in selling, purchasing, or otherwise
2 dealing in aircraft, or has misrepresented the terms and conditions of a
3 sale, purchase, or contract for sale or purchase of an aircraft, or
4 f. has failed to meet or maintain the conditions and requirements
5 necessary to qualify for the issuance of a license; or

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

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

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

13 H. Any person holding a dealer license on July 1, 2000, issued pursuant to Section
14 254 of Title 3 of the Oklahoma Statutes shall be entitled to retain such license until
15 December 31, 2000. At such time, the dealer shall apply for a new license in accordance
16 with the provisions of this section.

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

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

21 1. "Agreement" means any written or oral contracts or agreements between a
22 dealer and a manufacturer ~~which grants~~ that were in effect prior to July 1, 2007, and all

1 revisions, modifications, extensions, amendments and replacements of such agreements,
2 that grant the dealer the right to sell new aircraft manufactured by the manufacturer
3 and either to sell aircraft parts or to perform service, maintenance, or warranty work for
4 the manufacturer ~~in connection therewith and were in effect prior to July 1, 2007, and all~~
5 ~~revisions, modifications, extensions, amendments and replacements of such agreements;~~

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

13 3. “Manufacturer” means a manufacturer or distributor of new aircraft; and

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

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

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

- 1 1. Employ any device, scheme, or artifice to defraud; or
- 2 2. Make any untrue statement of a material fact or omit to state a material fact in
- 3 order to make the statements made, in light of the circumstances, not be false or
- 4 misleading; or
- 5 3. Engage in any act, practice, or course of business which operates as a fraud, an
- 6 unfair trade practice, an anticompetitive practice, or a predatory trade practice against
- 7 the dealer; or
- 8 4. Fail to comply with or alter or change in any materially adverse way the
- 9 fundamental relationship between the manufacturer and a dealer without the prior
- 10 written consent of the dealer, including without limitation, making a material change in
- 11 any existing agreement in connection with ~~the~~ its renewal; or
- 12 5. ~~Engage~~ Act in any capricious or arbitrary manner with respect to any material
- 13 provision in any agreement.

14 SECTION 4. AMENDATORY Section 3, Chapter 286, O.S.L. 2004, as amended

15 by Section 3, Chapter 107, O.S.L. 2005 (3 O.S. Supp. 2007, Section 254.4), is amended to

16 read as follows:

17 Section 254.4 A. No manufacturer, in its dealings with a dealer, may terminate,

18 cancel, or fail to renew a dealership, franchise, or license agreement authorizing the sale

19 of new or used aircraft, the sale or installation of aircraft parts, the service or

20 maintenance of aircraft, or the performance of warranty work for the manufacturer

21 without good cause. As used in this subsection, “good cause” means that the dealer has:

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

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

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

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

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

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

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

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

20 B. Before any termination, cancellation, or failure to renew any license, dealership,
21 franchise, or other agreement becomes effective, the manufacturer must first give the
22 dealer not less than ninety (90) days' prior written notice of the proposed termination or

1 nonrenewal, where the notice states specifically the reasons for the proposed action and
2 gives the dealer not less than forty-five (45) days to cure the claimed deficiency. If the
3 manufacturer proposes to discontinue the manufacture of aircraft or other line of
4 business authorized to be performed by the dealer, the manufacturer shall give the
5 dealer not less than one hundred eighty (180) days' prior notice of the effective date of
6 the discontinuance.

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

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

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

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

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

12 B. This section shall apply only to ~~dealers which have agreements with~~ between
13 dealers and manufacturers in effect prior to July 1, 2007, and all revisions, modifications,
14 extensions, amendments and replacements of such agreements.

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

20 D. Any entity meeting the definition of “dealer” provided in paragraph 2 of Section
21 254.2 of this title on July 1, 2007, shall continue to be considered a dealer for the
22 purposes of this section and Sections 254.3, 254.4 and 254.6 of this title with regard to

1 any agreements that were in effect on or before July 1, 2007, notwithstanding that any
2 such agreement or portion thereof is terminated, cancelled, or not renewed by the
3 manufacturer.

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

6 Section 254.6 The provisions of Sections 254.2, 254.3, 254.4 and 254.5 of ~~Title 3 of~~
7 ~~the Oklahoma Statutes~~ this title shall apply only to dealers of new or used aircraft which
8 are licensed pursuant to the provisions of Section 254.1 of ~~Title 3 of the Oklahoma~~
9 ~~Statutes~~ this title and which have agreements or contracts with manufacturers in effect
10 prior to July 1, 2007, ~~and~~ Sections 254.2, 254.3, 254.4 and 254.5 of this title shall
11 likewise apply to all revisions, modifications, extensions, amendments and replacements
12 of ~~such~~ agreements or contracts between dealers and manufacturers that were in effect
13 prior to July 1, 2007. Sections 254.2, 254.3, 254.4 and 254.5 of ~~Title 3 of the Oklahoma~~
14 ~~Statutes~~ this title shall not apply, except as provided in this section, to dealers which
15 have agreements or contracts with manufacturers entered into on or after July 1, 2007.

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

17 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TECHNOLOGY, dated
18 02-28-08 - DO PASS, As Amended.