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# Business sections of new Alabama immigration law likely to be unimpeded by court tests, lawyers say

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By **Stan Diel -- The Birmingham News**

Participants in a protest against Alabama's new law against illegal immigration march through Linn Park, Saturday, June 25, 2011, in Birmingham, Ala. The new law takes effect Sept. 1, 2011, and makes it a crime to knowingly hire illegal immigrants, rent them places to live or give them rides. It also requires schools to determine the immigration status of their students and report it to the state, although children in the country illegally would not be refused enrollment. (The Birmingham News/ Mark Almond)

HOMEWOOD, Alabama -- Employers need to have a solid understanding of Alabama's tough new immigration law because lawsuits challenging it aren't likely to strike down the portions that will most directly effect business, a panel of lawyers told concerned business owners and managers Wednesday.

The state's new immigration law, passed by the Legislature last month, has drawn legal challenges and national attention because of provisions that will give police greater authority to investigate immigration status, criminalize knowingly giving an illegal immigrant a ride and require schools to verify that students are in the state legally. Those portions of the law have been challenged in three federal lawsuits and one suit in state court.

But the law also requires employers to verify the legal status of new hires and bars them from "knowingly" employing illegal immigrants. Those portions aren't directly challenged in the suits and are likely to go into force as scheduled beginning next year, said Ted Hosp, an attorney with the Birmingham firm Maynard Cooper & Gale.

"Employers should not expect the courts to block the sections most relevant to them," Hosp said.

The stakes are high for employers, because the law is sometimes broadly worded and sets harsh penalties for violations.

Any employer who is found to have knowingly employed an illegal alien on three separate occasions will have all business licenses and permits in the state revoked permanently, barring the company from ever doing business in Alabama.

"It provides very stiff penalties in a very scary enforcement scheme that does not exist in federal law," said Keith Covington, an attorney with Bradley Arant Boult Cummings. "Three strikes and the employer truly is out."

The law also is vague in defining "knowingly," Covington said. Federal regulations define "knowing" to include both "actual" and "constructive" knowledge. So an employer with no direct knowledge of an employee's illegal status could face penalties if it's determined that he should have known, he said.

Hosp, Covington and Balch & Bingham's Wendy Padilla-Madden spoke at a seminar organized by the Alabama chapter of Associated Builders and Contractors and the group Alabama Employers for Immigration Reform.

Before a nearly-packed house in a ballroom at Homewood City Hall, the attorneys outlined the provisions of the new law most important to employers:

• All employers will be required to use **E-Verify** to verify the legal status of all new hires, with most being required to do so beginning on April 1, 2012. The free Internet service is a joint project of the U.S. Department of Homeland Security, the Social Security Administration and the U.S. Department of State.

• Employers are barred from knowingly hiring, employing or continuing to employ illegal immigrants. A first violation draws a 10-day suspension of business licenses and permits, and a three-year probationary period during which the employer must file quarterly reports. After a second violation an employer's business licenses and permits are permanently revoked for the operation at the site of the offense. After a third violation the revocation is made statewide.

• Businesses may not declare wages or other compensation paid to illegal immigrants a deductible expense on state taxes.

• The law creates a "private cause of action" entitling rejected job applicants or fired employees to sue for discrimination if the employer hires or retains illegal immigrants.

• Contractors and subcontractors doing business with the state or any state entity must submit an affidavit stating they are not employing illegal immigrants. Contractors can limit their liability by obtaining affidavits from subcontractors.

• Government contracts can be voided and a contractor's business license suspended for 60 days after one violation. A contractor's business licenses can be revoked permanently after a second violation.

Rules and regulations that will provide an infrastructure for application of the new law remain to be written, and in the meantime employers are left to wonder about many details, Hosp said.

As the law stands now, for example, doctors and pharmacies could be subject to portions of the law governing government contractors because they receive federal money in the form of Medicaid and Medicare funds. And the law also appears to require the state to swiftly investigate and adjudicate allegations of violations that could come from disgruntled employees, competing businesses or even malicious ex-spouses, he said.

The law likely will be "narrowed" as the state writes rules interpreting it, Hosp said.

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