

Arizona employer-sanctions law is legal, federal judge rules

PHOENIX — Arizona's month-old law punishing companies that knowingly hire undocumented workers is legal, a federal judge ruled Thursday. In a 37-page opinion, U.S. District Judge Neil Wake rejected a series of arguments by business groups and others that the statute, the first of its kind in the nation, is unconstitutional. Among Wake's findings:

• Federal statutes do not preempt the state from suspending or revoking the licenses of firms that break the law.

• Companies do not first have to be found guilty by a federal hearing officer of having hired an undocumented worker before a state judge can suspend their right to do business in Arizona.

• There is nothing illegal about requiring all firms check the legal status of new workers with the federal government's E-Verify system.

• The costs for companies to run those computer checks are so minimal as not to be an undue financial burden.

• State law provides employers with sufficient protections against having their licenses suspended or revoked without due process.

Thursday's ruling is a major setback for challengers of the law who hoped to convince Wake that the law, enacted last year by the Legislature and approved by Gov. Janet Napolitano, is unfair and illegal.

It was, however, not entirely unexpected. Farrell Quinlan, a representative of three groups that sued, said they always anticipated the issue would wind up before the 9th U.S. Circuit Court of Appeals.

The next step for challengers will be to ask the appellate judges to block companies from being prosecuted while the legality of the statute is debated.

Wake refused to issue such an injunction. But he did get verbal assurances by representative of the 15 county attorneys that they would not bring charges against companies before March 1, leaving challengers enough time to seek a restraining order from the 9th Circuit.

The law requires all companies to use the federal database to ensure new employees are legally entitled to work in this country. A judge may suspend all state licenses and permits for up to 10 days if a company is found guilty of knowingly hiring an unauthorized worker. A second violation in three years puts the firm out of business.

Lawyers for the challengers sued, saying only the federal government can regulate immigration and employment. Wake, however, noted the federal pre-emption covers civil or criminal penalties "other than through licensing and similar laws."

The judge acknowledged the state penalties — which could be a "death penalty" for errant employers — are harsher than the fines routinely imposed by the federal government on employers who hire undocumented workers. But he said that is because Congress recognized the costs of having an undocumented work force are not borne by the federal government.

"The pervasive adverse effects of such employment fall directly on the states," Wake wrote.

"Congress could reasonably conclude that states are better equipped than Congress to judge which licenses to sanction, and how much," the judge continued. "It left the strong deterrence of licensing sanctions to individual states to implement in their own circumstances."

Wake also rejected complaints that a state judge could suspend the license of a company solely because a federal database said a worker was undocumented.

He noted the law requires prosecutors to prove not just that the worker was here illegally but that the employer knew it. Wake said that means companies accused of breaking the law can present any evidence they have to refute an accusation that an employee was here illegally, or that they knew it.

Wake acknowledged the law provides unequal protection for companies depending on when the worker was hired.

Firms that use the E-Verify system have a "rebuttable presumption" of innocence. That option, though, was not generally available to employers before the law took effect Jan. 1.

This is the second time Wake has upheld the law. But his earlier decision came on a technical point.