

1 HOUSE BILL 356

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jane E. Powdrell-Culbert

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10 AN ACT

11 RELATING TO FINANCIAL INSTITUTIONS; REQUIRING LICENSING OF
12 PERSONS ENGAGED IN THE BUSINESS OF MAKING LOANS SECURED BY
13 PROCEEDS OF AN INCOME TAX REFUND OR TAX CREDITS; REQUIRING
14 DISCLOSURES OF FEES AND INTEREST ASSOCIATED WITH TAX REFUND
15 ANTICIPATION LOANS; PROVIDING PENALTIES.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
19 cited as the "Refund Anticipation Loan Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Refund Anticipation Loan Act:

22 A. "consumer" means a person who enters into a loan
23 agreement and receives the loan proceeds in New Mexico, who
24 will file a federal or state personal income tax return and who
25 applies for a refund anticipation loan;

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1 B. "creditor" means any person who makes a refund
2 anticipation loan, issues a refund anticipation check or takes
3 an assignment of a refund anticipation loan or refund
4 anticipation check;

5 C. "department" means the regulation and licensing
6 department;

7 D. "director" means the director of the division;

8 E. "division" means the financial institutions
9 division of the department;

10 F. "license" means a permit issued under the
11 authority of the Refund Anticipation Loan Act to make loans and
12 collect charges therefor strictly in accordance with the
13 provisions of that act at a single place of business. It shall
14 constitute and shall be construed as a grant of a revocable
15 privilege only to be held and enjoyed subject to all the
16 conditions, restrictions and limitations contained in the
17 Refund Anticipation Loan Act and lawful regulations promulgated
18 by the director and not otherwise;

19 G. "licensee" means a person to whom one or more
20 licenses have been issued pursuant to the Refund Anticipation
21 Loan Act upon the person's written application electing to
22 become a licensee and consenting to exercise the privilege of a
23 licensee solely in conformity with the Refund Anticipation Loan
24 Act and the lawful regulations promulgated by the director
25 pursuant to that act and whose name appears on the face of the

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1 license;

2 H. "refund anticipation check" means a check,
3 stored value card or other payment mechanism:

4 (1) that represents the proceeds of a tax
5 refund or tax credits;

6 (2) that was issued by a depository
7 institution or other person that received a direct deposit of
8 the tax refund or tax credits; and

9 (3) for which a fee or other consideration is
10 paid;

11 I. "refund anticipation loan" means a loan that is
12 secured by or that the creditor arranges or expects to be
13 repaid, directly or indirectly, from the proceeds of the
14 consumer's federal or state personal income tax refunds or tax
15 credits, including any sale, assignment or purchase of a tax
16 refund or tax credit at a discount or for a fee; and

17 J. "refund anticipation loan fee" means the
18 charges, interest, fees or other consideration charged or
19 imposed, directly or indirectly, by the creditor for the making
20 of or in connection with a refund anticipation loan.

21 SECTION 3. [NEW MATERIAL] LICENSE AND REGISTRATION--
22 APPLICABILITY.--

23 A. Without first having obtained a license from the
24 director, a person shall not:

25 (1) solicit the execution of, process, receive

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1 or accept an application or agreement for a refund anticipation
2 loan; or

3 (2) collect upon a refund anticipation loan.

4 B. A banking corporation, savings and loan
5 association or credit union operating under the laws of the
6 United States or of a state is exempt from the licensing
7 requirements of this section.

8 SECTION 4. [NEW MATERIAL] APPLICATION--FEES--AGENT FOR
9 SERVICE OF PROCESS--INVESTIGATION--QUALIFICATIONS.--

10 A. Applications for a license to be a creditor
11 pursuant to the Refund Anticipation Loan Act and annual license
12 renewal applications shall be in writing under oath and in the
13 form prescribed by the director, shall give the exact location
14 where the business is to be conducted and shall contain such
15 other relevant information as the director may require,
16 including identification of all parties in interest and the
17 names and addresses of all the partners, officers, directors,
18 trustees and beneficiaries of any trust and of the principal
19 owners and members. An application shall also include a
20 statement accepting the license, if granted, as a privilege to
21 be enjoyed and exercised pursuant to the provisions of the
22 Refund Anticipation Loan Act and rules promulgated pursuant to
23 that act.

24 B. At the time of making an application for an
25 original license, an applicant shall pay to the director the

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1 sum of one thousand dollars (\$1,000). Additionally, at the
2 time of issuance of the original license and at each annual
3 renewal, the licensee for each licensed office shall pay to the
4 director a license fee for the period covered of five hundred
5 dollars (\$500). In the event the application for annual
6 renewal of the license is delinquent, the licensee shall also
7 pay a delinquency fee of ten dollars (\$10.00) per day for each
8 day the licensee is delinquent in filing an application for
9 renewal.

10 C. An application shall be accompanied by, and
11 every licensee shall at all times maintain on file with the
12 director, an appointed agent for service of process. In case
13 of noncompliance with this subsection, such service, including
14 service of all notices, may be made on the manager or person in
15 charge of the registered office or place of business of the
16 licensee, and the director may by order suspend the license
17 pending compliance with this section.

18 D. Upon the filing of an application, whether it is
19 an original or a renewal, the director shall investigate the
20 facts concerning the application and the requirements provided
21 in this section. An applicant for license, upon written notice
22 to do so by the director, shall, within twenty days after
23 service of the notice, furnish in writing, under oath, to the
24 director all additional information required by the director
25 that may be relevant or, in the opinion of the director,

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1 helpful in conducting the investigation.

2 E. Failure to comply with the director's
3 requirement for supplemental information or the willful
4 furnishing of false information is sufficient grounds for
5 denial of a license. False or misleading information willfully
6 and intentionally furnished to the director prior to the
7 issuance of any license is grounds for suspension or
8 revocation.

9 F. The director shall enter an order granting the
10 original application, file the director's findings and, upon
11 payment of the license fees, issue and deliver a license to the
12 applicant within sixty days from the filing of the application
13 and payment of required fees, unless the period is extended by
14 written agreement between the applicant and the director, if
15 the director finds that:

16 (1) the financial responsibility, character
17 and general fitness of the applicant for a license and of the
18 individual members, officers or directors of the applicant are
19 such as to warrant belief that the business will be operated
20 lawfully, honestly, fairly and efficiently pursuant to the
21 provisions of the Refund Anticipation Loan Act;

22 (2) allowing the applicant to engage in
23 business will promote the convenience and advantage of the
24 community in which the business of the applicant is to be
25 conducted; and

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1 (3) the applicant has available for operation
2 of the business at the specified location cash or its
3 equivalent, convertible securities or receivables of thirty
4 thousand dollars (\$30,000) or any combination thereof.

5 G. If the director does not make the findings for
6 the original application enumerated in Subsection F of this
7 section, the director shall enter an order denying the
8 application, notify the applicant of the denial and retain the
9 application fees. Within thirty days after the entry of the
10 order, the director shall prepare written findings and deliver
11 a copy to the applicant.

12 H. A written application for license renewal shall
13 be filed on or before March 31 of each year. The director
14 shall investigate the facts and review the files for the
15 licensee made by the director and of complaints filed by
16 consumers, if any. The director shall deliver a renewal
17 license to the licensee if the director finds that:

18 (1) no valid complaints of violations or
19 abuses of the Refund Anticipation Loan Act or of the rules
20 promulgated pursuant to that act have been filed by consumers;

21 (2) investigation of the affairs of the
22 applicant indicates the business has been conducted and
23 operated lawfully and efficiently pursuant to the provisions of
24 the Refund Anticipation Loan Act; and

25 (3) the experience and general fitness and

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1 character of the licensee remain such as to warrant the belief
2 that the business will continue to be operated lawfully and
3 efficiently pursuant to the provisions of the Refund
4 Anticipation Loan Act.

5 I. If the director does not make the findings for a
6 renewal application enumerated in Subsection H of this section,
7 the director may grant a temporary extension of the license not
8 exceeding sixty days pending a hearing, shall enter an order
9 fixing a date for a hearing upon the application, shall notify
10 the licensee, specifying the particular complaints, violations
11 or abuses or other reasons for the director's contemplated
12 refusal to renew the license and shall afford to the licensee
13 an opportunity to be heard. At the hearing, the director shall
14 produce evidence to establish the truth of the charges of
15 violation or other grounds specified in the notice, and the
16 licensee shall be accorded the right to produce evidence or
17 other matters of defense. If, after the hearing, the director
18 finds that the complaints of violations or other grounds
19 specified in the notice are not well-founded, the director
20 shall issue the renewal license. If the director finds the
21 complaints of violations or other grounds are well-founded, the
22 director shall enter an order denying the renewal application,
23 notify the licensee of the denial and retain the renewal
24 license fee tendered with the application. Within thirty days
25 after the entry of such an order, the director shall prepare

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1 written findings and shall deliver a copy of the findings to
2 the licensee.

3 J. The division shall maintain a list of licensees
4 and establish a complaint process whereby an aggrieved consumer
5 or other person may file a complaint against a licensee.

6 K. In determining the fitness and character of an
7 applicant or licensee pursuant to the provisions of this
8 section, the fact that the applicant or licensee is a member
9 of, interested financially in or connected or affiliated with,
10 controls or is controlled by or owns or is owned by any other
11 corporation, partnership, trust, association or other legal
12 entity engaged in the lending of money whose policies and
13 practices as to rates of interest, charges and fees and general
14 dealing with borrowers are questionable or would constitute
15 violation of law shall be given such consideration and weight
16 as the director determines appropriate.

17 SECTION 5. [NEW MATERIAL] LIMITATION OF AUTHORITY GRANTED
18 BY LICENSE--EFFECTIVE DATE OF LICENSE--MINIMUM ASSETS.--

19 A. No licensee pursuant to the Refund Anticipation
20 Loan Act shall use the words "bank", "banker" or "banking" in
21 its name or refer to itself as a bank or banker in any of its
22 advertising.

23 B. Each license shall remain in full force until
24 June 30 next following its date of issue, unless sooner
25 surrendered, revoked or suspended as provided in the Refund

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1 Anticipation Loan Act, and shall expire and terminate on June
2 30 following its issue unless renewed and reissued as provided
3 in that act. Such license shall entitle the person or persons
4 whose names appear on the face of the license, and no others,
5 to enjoy and exercise the revocable privileges and immunities
6 provided for in that act, but only in the manner and subject to
7 the restrictions herein provided for.

8 C. Every licensee shall maintain at all times cash
9 or its equivalent, convertible securities or receivables of
10 thirty thousand dollars (\$30,000), or any combination thereof.

11 SECTION 6. [NEW MATERIAL] JUDICIAL REVIEW.--Any applicant
12 or licensee or any person aggrieved by any act or order of the
13 director pursuant to the Refund Anticipation Loan Act may file
14 an appeal in the district court pursuant to the provisions of
15 Section 39-3-1.1 NMSA 1978.

16 SECTION 7. [NEW MATERIAL] REFUND ANTICIPATION LOANS--
17 REQUIRED DISCLOSURES.--

18 A. A licensee shall disclose the following
19 information to the consumer at the time that an application for
20 a refund anticipation loan is submitted:

21 (1) the fee schedule for refund anticipation
22 loans used by the licensee; and

23 (2) a written statement or, if the transaction
24 is conducted using electronic commerce, an electronic statement
25 containing the following information:

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1 (a) that the refund anticipation loan is
2 a loan that creates a legally enforceable debt and that the
3 loan is not the consumer's actual tax refund or tax credit;

4 (b) that the consumer may file a
5 personal income tax refund electronically without applying for
6 a refund anticipation loan;

7 (c) that neither the federal internal
8 revenue service nor the department guarantees a person will be
9 paid the full amount of an anticipated tax refund or tax
10 credit, nor do they guarantee that an anticipated tax refund or
11 tax credit will be deposited into a consumer's account or
12 mailed to a consumer on a specific date;

13 (d) that the consumer is responsible for
14 repayment of the refund anticipation loan, and payment of
15 related fees and charges, if the anticipated tax refund or tax
16 credit is not paid in the full anticipated amount;

17 (e) the estimated time frame within
18 which the proceeds of the refund anticipation loan will be paid
19 to the consumer if the loan is approved;

20 (f) the fee or charge that will be
21 imposed, if any, if the refund anticipation loan is not
22 approved;

23 (g) the estimated total interest, fees
24 and charges to be incurred by the consumer if the refund
25 anticipation loan is approved;

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1 (h) the estimated annual percentage rate
2 for the refund anticipation loan; and

3 (i) that the consumer is not required to
4 take out a refund anticipation loan.

5 B. The disclosures required pursuant to this
6 section shall be made in a ten-point or larger bold type and
7 shall be provided in English, Spanish or other language as
8 determined by the director.

9 C. Prior to executing a refund anticipation loan
10 agreement, a consumer shall provide to the licensee a statement
11 signed by the consumer stating that the consumer has received
12 the disclosures required pursuant to Subsection A of this
13 section.

14 SECTION 8. [NEW MATERIAL] REQUIREMENTS FOR REFUND
15 ANTICIPATION LOANS.--

16 A. No licensee shall make a refund anticipation
17 loan to a consumer that exceeds eighty-five percent of the
18 consumer's anticipated combined total federal and state tax
19 refunds and tax credits, inclusive of principal and all related
20 interest, fees and charges.

21 B. Without affecting the rights of a consumer to
22 prepay a refund anticipation loan at any time without
23 additional cost or penalty:

24 (1) no refund anticipation loan shall have a
25 stated maturity greater than thirty-one days; and

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1 (2) no refund anticipation loan shall have a
2 stated minimum term less than fifteen days.

3 C. A refund anticipation loan shall include a
4 provision granting the consumer the right to rescind the
5 transaction by returning in cash, or through certified funds,
6 one hundred percent of the amount advanced by a licensee for a
7 refund anticipation loan by no later than 5:00 p.m. on the
8 first day of business conducted by the licensee following the
9 execution of the refund anticipation loan. If a consumer
10 exercises the right of rescission pursuant to this subsection,
11 no interest or fee for the rescinded transaction shall be
12 charged to the consumer, and the licensee shall not charge or
13 impose on the consumer a fee for exercising the right of
14 rescission pursuant to this subsection. If this subsection is
15 applicable, any interest or fee collected by a licensee shall
16 be refunded in full to the consumer.

17 D. Prior to the consummation of a refund
18 anticipation loan, the licensee shall provide the consumer, or
19 each consumer if there is more than one, with copies of
20 disclosures required pursuant to Section 7 of the Refund
21 Anticipation Loan Act in English, Spanish or other language as
22 determined by the director. Consumers shall have the option to
23 decide which language version of the disclosures they wish to
24 receive.

25 E. The disclosure of the credit terms of a refund

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1 anticipation loan shall be according to and governed by the
2 requirements of 12 CFR 226, known as "Regulation Z". The
3 definitions and requirements of that regulation and commentary
4 shall apply to refund anticipation loans as if those provisions
5 are fully set out in this subsection.

6 F. A licensee shall collect on refund anticipation
7 loans in default in a professional, fair and lawful manner. A
8 licensee that complies with the requirements and prohibitions
9 set forth in 15 U.S.C. 1692c-1692f of the federal Fair Debt
10 Collection Practices Act shall be deemed to have operated in a
11 professional, fair and lawful manner.

12 SECTION 9. [NEW MATERIAL] REFUND ANTICIPATION LOAN
13 PERMITTED CHARGES.--The following provisions shall apply to
14 refund anticipation loans:

15 A. a licensee shall not charge or receive from a
16 consumer, directly or indirectly, interest, fees or charges
17 except as provided in this section;

18 B. upon the execution of a new refund anticipation
19 loan, the licensee may impose interest of not more than
20 eighteen dollars (\$18.00) per one hundred dollars (\$100) of
21 principal, which interest is fully earned and nonrefundable at
22 the time a refund anticipation loan agreement is executed
23 unless a refund anticipation loan is rescinded pursuant to
24 Subsection C of Section 8 of the Refund Anticipation Loan Act
25 and which interest is payable in full at the date due of the

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1 refund anticipation loan agreement or upon prepayment of the
2 refund anticipation loan;

3 C. a one-time charge of an amount not to exceed
4 seventy-five dollars (\$75.00) may be charged if a consumer has
5 not yet filed a tax return to defray the costs of preparing an
6 estimated tax return and other disclosures that may be required
7 by federal law;

8 D. a document fee not to exceed ten dollars
9 (\$10.00) per refund anticipation loan shall be permitted; and

10 E. a licensee shall not charge a consumer any
11 additional interest, fees or other charges on the outstanding
12 principal owed on a refund anticipation loan after the
13 effective due date.

14 SECTION 10. [NEW MATERIAL] PROHIBITED ACTS.--A licensee
15 shall not:

16 A. directly or indirectly represent a refund
17 anticipation loan as a refund or tax credit;

18 B. charge or impose any fee, charge or other
19 consideration in the making of a refund anticipation loan other
20 than the fees permitted pursuant to Section 9 of the Refund
21 Anticipation Loan Act;

22 C. require a consumer to enter into a loan
23 agreement in order to complete a tax return;

24 D. engage in a transaction, practice or course of
25 business that operates a fraud upon a consumer in connection

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1 with a refund anticipation loan, including making oral
2 statements contradicting any of the information required to be
3 disclosed pursuant to the Refund Anticipation Loan Act;

4 E. misrepresent a material fact or condition of a
5 refund anticipation loan;

6 F. take or arrange for a creditor to take
7 possession of or a security interest in any property of the
8 consumer other than the proceeds of the consumer's tax refund
9 or tax credit to secure payment of a refund anticipation loan;

10 G. advertise, display, distribute or broadcast in
11 any manner whatsoever a false, misleading or deceptive
12 statement or representation with regard to the charges, terms
13 or conditions for refund anticipation loans; or

14 H. withhold from a consumer, or from a dependent of
15 a consumer, original personal identification documents,
16 including:

- 17 (1) certificate of degree of Indian blood;
- 18 (2) census card;
- 19 (3) social security card;
- 20 (4) birth certificate;
- 21 (5) driver's license;
- 22 (6) military identification card; or
- 23 (7) passport.

24 SECTION 11. [NEW MATERIAL] DUTIES OF DIRECTOR.--

25 A. At least once each year, the director or the

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1 director's authorized representative shall make an examination
2 of the place of business of each licensee and the loans,
3 transactions, books, papers and records of the licensee insofar
4 as they pertain to the business licensed pursuant to the Refund
5 Anticipation Loan Act, as the director may deem necessary. The
6 licensee shall pay to the director for such annual examination
7 a fee of two hundred dollars (\$200).

8 B. The director may at any time suspend or revoke a
9 license on any ground on which the director might refuse to
10 grant a license, for failure to pay an annual fee or for the
11 violation of any provision of the Refund Anticipation Loan Act.

12 C. No license shall be suspended or revoked except
13 on fifteen days' notice to the licensee. Upon receipt of
14 notice, the licensee may, within five days of its receipt, make
15 written demand for a hearing at the licensee's cost. The
16 director shall thereafter with reasonable promptness hear and
17 determine the matter, and the director's decision shall be
18 subject to judicial review pursuant to the provisions of
19 Section 39-3-1.1 NMSA 1978.

20 D. The director may promulgate rules for the
21 administration and enforcement of the Refund Anticipation
22 Loan Act.

23 SECTION 12. [NEW MATERIAL] REVOCATION, SUSPENSION AND
24 REINSTATEMENT OF LICENSE.--

25 A. The director shall not suspend or revoke a

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1 license issued pursuant to the Refund Anticipation Loan Act
2 unless the director first serves upon the licensee a written
3 notice that states in general the grounds therefor, together
4 with the time and place of hearing, which shall be held not
5 less than fifteen days after the mailing of such notice to the
6 licensee by registered mail as provided in this section.

7 Following the hearing, the director may suspend or revoke a
8 license if the director finds that:

9 (1) the licensee, either knowingly or without
10 the exercise of due care to prevent the same, has violated a
11 provision of the Refund Anticipation Loan Act or a regulation
12 or order made pursuant to and within the authority of that act;
13 or

14 (2) a fact or condition exists at the time of
15 the proposed suspension or revocation that, if it had existed
16 at the time of the initial application for the license or for a
17 renewal thereof, clearly would have justified the director in
18 refusing to issue or renew the license.

19 B. If the director finds that probable cause exists
20 and that enforcement of the Refund Anticipation Loan Act
21 requires immediate suspension of a license pending
22 investigation, the director may, upon three days' written
23 notice by registered mail and a hearing, enter an order
24 suspending a license for a period not exceeding thirty days.

25 C. Whenever the director revokes or suspends a

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1 license issued pursuant to the Refund Anticipation Loan Act,
2 the director shall enter an order to that effect and shall
3 forthwith in writing notify the licensee of the revocation or
4 suspension by registered mail, which notice shall state the
5 grounds therefor.

6 D. A licensee may surrender a license by delivering
7 it to the director with written notice of its surrender, but
8 such surrender shall not affect any civil or criminal liability
9 of the licensee for acts committed prior thereto.

10 E. No revocation, suspension or surrender of a
11 license shall impair or affect the obligation of a preexisting
12 lawful contract between the licensee and an obligor thereon.

13 F. The director may reinstate a suspended license
14 or issue a new license to a person whose license or licenses
15 have been revoked if no fact or condition then exists that
16 clearly would have justified the director in initially refusing
17 to issue the license pursuant to the Refund Anticipation Loan
18 Act.

19 G. Whenever the Refund Anticipation Loan Act
20 provides for service of notice by registered mail, such service
21 shall be deemed complete upon deposit of such notice in the
22 post office. For the purpose of this section, mailing of
23 notice addressed to the person designated as the agent for
24 service of process pursuant to the Refund Anticipation Loan Act
25 or to the manager or person in charge of the licensed office

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1 shall be sufficient.

2 SECTION 13. [NEW MATERIAL] PENALTIES--GENERAL.--

3 A. Any person, copartnership, trust, association or
4 corporation and the several members, beneficiaries, officers,
5 directors, agents and employees thereof who violate or
6 participate in the violation of any provision of the Refund
7 Anticipation Loan Act are guilty of a misdemeanor and upon
8 conviction shall be punished by a fine of not less than five
9 hundred dollars (\$500) or more than one thousand dollars
10 (\$1,000) or by imprisonment of not more than six months or both
11 in the discretion of the court.

12 B. A person who facilitates refund anticipation
13 loans for residents of New Mexico without a license required
14 pursuant to Subsection A of Section 3 of the Refund
15 Anticipation Loan Act is guilty of a misdemeanor and upon
16 conviction shall be sentenced pursuant to the provisions of
17 Section 31-19-1 NMSA 1978.

18 SECTION 14. [NEW MATERIAL] PREEMPTION.--The state has
19 exclusive jurisdiction and authority regarding the terms and
20 conditions of permitted refund anticipation loans, and
21 counties, municipalities and other political subdivisions of
22 the state are preempted from any regulation of terms and
23 conditions of permitted refund anticipation loans by ordinance,
24 resolution or otherwise.

25 SECTION 15. SEVERABILITY.--If any part or application of
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1 the provisions of this act is held invalid, the remainder or
2 its application to other situations or persons shall not be
3 affected.

4 SECTION 16. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2015.

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