

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2007

C. Makes a written commitment to invest a minimum of ~~\$2,000,000~~ \$225,000 in its expansion at one of its current locations.

See title page for effective date.

CHAPTER 469
I.B. 2 - L.D. 1856

**An Act To Allow a Tax Credit
for College Loan Repayments**

**Be it enacted by the People of the State of
Maine as follows:**

PART A

Sec. A-1. 20-A MRSA c. 428-C is enacted to read:

CHAPTER 428-C

**JOB CREATION THROUGH EDUCATIONAL
OPPORTUNITY PROGRAM**

§12541. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Accredited Maine junior college, college or university. "Accredited Maine junior college, college or university" means:

- A. Any campus of the Maine Community College System;
- B. Any campus of the University of Maine System;
- C. The Maine Maritime Academy;
- D. Any educational institution that is located in this State and has authorization to confer an associate degree or a bachelor's degree, in accordance with sections 10704 and 10704-A;
- E. Any educational institution that is located in this State and is exempted from chapter 409 under section 10708, subsections 1 and 2; and
- F. Any educational institution that is located in this State and is operating under a certificate of temporary approval from the state board under section 10703, to the extent that a student is ultimately able either to obtain an associate or a bachelor's degree at that institution or to transfer to and obtain a degree from an institution described in paragraphs A to E.

2. Benchmark loan payment. "Benchmark loan payment" means the figure described in section 12542, subsection 2, paragraph C.

3. Educational institution. "Educational institution" has the same meaning as in section 10701, subsection 3.

4. Educational opportunity tax credit. "Educational opportunity tax credit" means the tax credit provided for in Title 36, section 5217-D.

5. Maine resident. "Maine resident" means an individual who qualifies for Maine residence under Title 21-A, section 112.

6. Opportunity contract. "Opportunity contract" means the contract described in section 12542, subsection 3.

7. Principal cap. "Principal cap" means the cap described in section 12542, subsection 2.

§12542. Program established

1. Program created; goals. The Job Creation Through Educational Opportunity Program, referred to in this chapter as "the program," is created to reimburse education-related costs for Maine residents who obtain an associate degree or a bachelor's degree in this State, and live, work and pay taxes in this State thereafter. The program is designed to achieve the following goals:

- A. Promote economic opportunity for people in this State by ensuring access to the training and higher education that higher-paying jobs require;
- B. Bring more and higher-paying jobs to this State by increasing the skill level of this State's workforce;
- C. Offer educational opportunity and retraining to individuals impacted by job loss, workplace injury, disability or other hardship;
- D. Keep young people in this State through incentives for educational opportunity and creation of more high-paying jobs; and
- E. Accomplish all of the goals in this subsection with as little bureaucracy as possible.

2. Principal cap. The principal cap limits the loan principal that can serve as the basis for claiming the educational opportunity tax credit. The cap is based on in-state tuition and mandatory fees for either the Maine Community College System or the University of Maine System, depending on whether the opportunity contract is for pursuit of an associate degree or of a bachelor's degree, respectively.

- A. For an individual earning a degree from the Maine Community College System or from the University of Maine System, the relevant financial aid office shall certify, once the individual has earned the degree, whether or not the total principal of loans the individual received as part of that individual's financial aid package exceeds the cost of in-state tuition and mandatory fees incurred in

pursuit of the degree. That cost constitutes the principal cap for such an individual.

B. For an individual earning a degree from any other accredited Maine junior college, college or university, the relevant financial aid office shall certify, once the individual has earned the degree, whether or not the total principal of loans the individual received as part of that individual's financial aid package exceeds the published in-state tuition and mandatory fees for full-time enrollment in the Maine Community College System or in the University of Maine System, depending on whether the degree is an associate degree or a bachelor's degree, respectively, during the relevant years. The published in-state tuition and mandatory fees constitute the principal cap for such an individual. If the individual has not attended full time throughout the pursuit of that individual's degree, an appropriate principal cap must be determined in a manner consistent with the principles set out in this subsection.

C. For an individual whose student loans exceed the principal cap, a benchmark loan payment must be calculated as follows. The financial aid office shall calculate what the monthly payment would be on a loan for the amount of the principal cap, to be paid over 10 years, at the interest rate offered for federal Stafford loans under 20 United States Code, Section 1077a, during the individual's last year of enrollment. The benchmark loan payment must be specified on the individual's opportunity contract.

3. Opportunity contract. The state board shall draft an opportunity contract for use in enrolling individuals in the program. The terms of the opportunity contract must require an individual who wishes to participate in the program to:

A. Certify that that individual is a Maine resident;

B. Agree to attend and to obtain a specified degree, either an associate degree or a bachelor's degree, from an accredited Maine junior college, college or university. The individual need not obtain the degree from the institution in which that individual originally enrolled, so long as all course work toward the degree is performed at accredited Maine junior colleges, colleges or universities;

C. Agree to live in this State while pursuing the degree. The individual shall also agree to live in this State after obtaining the degree during any period when that individual seeks to take advantage of the educational opportunity tax credit;

D. Agree to maintain records relating to loan payments claimed under the educational opportunity tax credit for 5 years after those payments are claimed; and

E. With respect to educational loans, agree to the following:

(1) The individual may claim the educational opportunity tax credit only with respect to loans that are part of that individual's financial aid package and that have a term of at least 8 years;

(2) If the individual in any way accelerates repayment, the individual forfeits any right to claim an educational opportunity tax credit for that taxable year or any future taxable year; and

(3) The individual may refinance said loans only if they remain separate from other debt and if the effect of the refinancing is to decrease both the annual repayment and the total remaining indebtedness.

In exchange for the consideration outlined in paragraphs B to E, the State shall agree to permit the individual to take advantage of the educational opportunity tax credit.

The opportunity contract must leave space for the accredited Maine junior college, college or university to certify that the individual has obtained the relevant degree, and to certify whether or not the loan principal that the individual incurs in pursuing the relevant degree exceeds the principal cap.

4. Administration. The program must be administered as follows.

A. Any Maine resident who gains admission to an accredited Maine junior college, college or university and who receives financial aid in the form of loans must have the opportunity to participate in the program. The financial aid office of the relevant institution shall offer to such individuals the chance to sign an opportunity contract with the State. The financial aid office shall retain the opportunity contract until the individual obtains the degree.

B. When the individual obtains the degree, the individual shall specify on the opportunity contract the source, principal amount, interest rate and term of any loans that are part of the individual's financial aid package. The opportunity contract must contain certification that the individual has obtained the relevant degree and must specify whether the individual's loans exceed the principal cap and, if appropriate, what the benchmark loan payment is. The individual shall then file the opportunity contract with the Secretary of State. Every accredited Maine junior college, college and university shall develop procedures to facilitate this process, in consultation with the Secretary of State.

C. When the individual files the opportunity contract with the Secretary of State pursuant to paragraph B, that individual becomes eligible to claim the educational opportunity tax credit, subject to the requirements of this chapter and of Title 36, section 5217-D. The individual may thereafter take advantage of any forbearance or deferment provisions in the relevant loan agreements without forfeiting the right to claim the educational opportunity tax credit when the individual resumes repayment.

5. Effective date; participation by individual already enrolled in degree program. The program must commence for the first semester that begins after the effective date of this chapter. Maine residents who when the program commences are enrolled in an associate or a bachelor's degree program at an accredited Maine junior college, college or university may participate, subject to the same essential terms as other program participants. When such an individual obtains the relevant degree, it must be specified in the individual's opportunity contract what percentage of the course work completed in pursuit of the degree was performed while the individual was participating in the program. The principal cap and benchmark loan payment must be calculated in the ordinary way as provided in this chapter, but the individual must then apply the percentage in this subsection to actual payments or to the benchmark loan payment, whichever applies, in determining the amount the individual can claim under the educational opportunity tax credit for a given year.

§12543. Effect on funding of higher education

It is the intent of the Legislature that neither the existence of the program nor the benefits provided under the educational opportunity tax credit serve as justification to decrease other funds appropriated or allocated to accredited Maine junior colleges, colleges or universities, including institutions in the Maine Community College System and the University of Maine System, or to other higher education programs.

§12544. Rules

The state board shall, in accordance with section 3, adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, as necessary to carry out the purposes of this chapter.

PART B

Sec. B-1. **36 MRS**A §5217-D is enacted to read:

§5217-D. Credit for educational opportunity

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Benchmark loan payment" has the same meaning as in Title 20-A, section 12541, subsection 2.

B. "Employer" has the same meaning as the term "employing unit," as defined in Title 26, section 1043, subsection 10.

C. "Full time" employment means employment with a normal workweek of 32 hours or more.

D. "Part time" employment means employment with a normal workweek of between 16 and 32 hours.

E. "Qualified employee" means an employee who is eligible for the credit provided in this section and who is employed at least part time.

F. "Opportunity contract" means the contract described in Title 20-A, section 12542, subsection 3.

G. "Opportunity program participant" means an individual who enters into an opportunity contract with the State, obtains the specified degree and complies with the requirements under Title 20-A, section 12542, subsections 3 to 5.

H. "Resident individual" has the same meaning as in section 5102, subsection 5.

I. "Seasonal employment" has the same meaning as in Title 26, section 1251 and in regulations promulgated thereunder.

J. "Term of employment" includes all months when the individual is actually employed. It includes time periods when an individual is on leave or vacation. It extends to the full year for individuals working for employers who customarily operate only during a regularly recurring period of 9 months or more in a calendar year. For individuals working for employers who customarily operate only during regularly recurring periods of less than 9 months in a calendar year, including seasonal employment, the term of employment extends only to time periods when the individual is actually working.

2. Credit allowed. A taxpayer constituting an opportunity program participant or an employer of a qualified employee is allowed a credit against the tax imposed by this Part for each taxable year under the terms established in this section. The credit is created to implement the Job Creation Through Educational Opportunity Program established under Title 20-A, chapter 428-C.

The credit may not reduce the tax otherwise due under this Part to less than zero. A taxpayer entitled to the credit for any taxable year may carry over and apply to the tax liability for any one or more of the next succeeding 10 years the portion, as reduced from year to year, of any unused credits. More than one taxpayer may claim a credit based on loan payments actually

made to a relevant lender or lenders to benefit a single opportunity program participant, but no 2 taxpayers may claim the credit based on the same payment.

3. Calculation of the credit. The following provisions govern the calculation of the credit in this section.

A. If the relevant opportunity program participant's opportunity contract limits the amount of the credit to a benchmark loan payment, and the relevant opportunity program participant's actual monthly payment due is higher than that amount, then the credit claimed may not exceed the product of the benchmark loan payment and the number of months in which the taxpayer made loan payments.

B. If the relevant opportunity program participant's opportunity contract certifies that the principal for the relevant loans is at or below the level of the principal cap, or if the relevant opportunity program participant's actual monthly payment is below the benchmark loan payment, the taxpayer may claim a credit based only on regularly scheduled loan payments actually made.

C. If the credit is claimed on behalf of an individual who was already enrolled in an associate or a bachelor's degree program at an accredited Maine junior college, college or university, as defined in Title 20-A, section 12541, subsection 1, on the commencement of the Job Creation Through Educational Opportunity Program under Title 20-A, chapter 428-C, the percentage figure listed in the opportunity contract, as specified under Title 20-A, section 12542, subsection 5, must be applied to the amount determined under paragraph A or B.

4. Conditions for an opportunity program participant claiming the credit. An opportunity program participant may claim the credit only if the participant is a resident individual. The participant may claim the credit based only on regular payments made during months in which the individual was working for an employer located in this State. A married couple filing jointly under Title 36, section 5221 may claim the credit only to the extent that the spouse on whose behalf the credit is claimed meets these requirements.

5. Conditions for an employer claiming the credit. A taxpayer constituting an employer may claim the credit under this section under the following circumstances. The employer may undertake to make partial or full loan payments directly to the relevant lender or lenders on behalf of a qualified employee, having taken reasonable steps to ascertain that the employee is in fact a qualified employee, and may claim a credit based on amounts that came due and were paid by the employer during the term of employment. To receive the credit, the employer must retain for 5 years

any proof of eligibility that the employee or independent contractor provides.

The employer may claim a credit for the amount that the qualified employee could have claimed during any months when the qualified employee was employed, had the qualified employee made the partial or full loan payments instead, under conditions where the qualified employee had sufficient income to claim the full credit for the taxable year. If the qualified employee is employed only on a part-time basis, the employer may claim a credit only up to half of the total that the qualified employee could have claimed had the qualified employee made all payments and earned sufficient income to claim the full credit for the taxable year, but the amount the employer claims must still be based on amounts actually paid.

An employer claiming this credit on behalf of a qualified employee for a taxable year may not simultaneously claim a credit under section 5219-V on the behalf of the same employee.

See title page for effective date.