

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1105

S.P. 357

March 6, 2007

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### An Act To Strengthen Maine's Craft Brewers

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by President EDMONDS of Cumberland.  
Cosponsored by Senator PERRY of Penobscot and  
Representatives: Speaker CUMMINGS of Portland, DUNN of Bangor, FAIRCLOTH of  
Bangor, PINGREE of North Haven.

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

2 **Sec. 1. 28-A MRSA §1653** is enacted to read:

3 **§1653. Export tax credit**

4 A brewer is eligible for a credit against the excise tax imposed pursuant to this  
5 chapter as provided in this section.

6 **1. Eligibility.** A brewer is eligible for a credit under this section if the brewer:

7 A. Is licensed to and does manufacture malt liquor in this State;

8 B. Exports malt liquor for sale outside this State; and

9 C. Pays excise taxes imposed pursuant to section 1652.

10 **2. Amount of credit; schedule.** A brewer eligible under subsection 1 is entitled to a  
11 credit in the amount of 17.5¢ per gallon of malt liquor manufactured in this State and  
12 exported for sale outside this State, calculated annually for each year the credit is claimed  
13 according to the procedure in subsection 3:

14 A. For the fiscal year 2007-08, on 90% of the total amount manufactured and  
15 exported in that year;

16 B. For the fiscal year 2008-09, on 80% of the total amount manufactured and  
17 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in  
18 excess of 110% of the amount manufactured and exported in the previous year of  
19 participation;

20 C. For the fiscal year 2009-10, on 70% of the total amount manufactured and  
21 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in  
22 excess of 110% of the amount manufactured and exported in the previous year of  
23 participation;

24 D. For the fiscal year 2010-11, on 60% of the total amount manufactured and  
25 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in  
26 excess of 110% of the amount manufactured and exported in the previous year of  
27 participation;

28 E. For the fiscal year 2011-12, on 50% of the total amount manufactured and  
29 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in  
30 excess of 110% of the amount manufactured and exported in the previous year of  
31 participation;

32 F. For the fiscal year 2012-13, on 40% of the total amount manufactured and  
33 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in  
34 excess of 110% of the amount manufactured and exported in the previous year of  
35 participation;

36 G. For the fiscal year 2013-14, on 30% of the total amount manufactured and  
37 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in

1 excess of 110% of the amount manufactured and exported in the previous year of  
2 participation;

3 H. For the fiscal year 2014-15, on 20% of the total amount manufactured and  
4 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in  
5 excess of 110% of the amount manufactured and exported in the previous year of  
6 participation;

7 I. For the fiscal year 2015-16, on 10% of the total amount manufactured and  
8 exported in that year, plus an additional credit of 17.5¢ per gallon on the amount in  
9 excess of 110% of the amount manufactured and exported in the previous year of  
10 participation; and

11 J. For the fiscal year 2016-17, on the amount in excess of 110% of the amount  
12 manufactured and exported in the previous year of participation.

13 The credit available to a brewer under this subsection may not exceed 50% of the amount  
14 of excise taxes otherwise due from the brewer under section 1652.

15 **3. Procedure for claiming credit.** The credit calculated under subsection 2 on the  
16 initial threshold percentage of sales for the applicable year may be claimed on the  
17 brewer's monthly return under section 1652, subsection 2-A. The credit on amounts in  
18 excess of 110% of the amount manufactured and exported in the applicable year may be  
19 claimed on the return filed under section 1652, subsection 2-A for the last month of the  
20 applicable year.

21 **4. Rules; forms.** The bureau shall adopt rules necessary for the implementation of  
22 this section, including forms to be made available to brewers. Rules adopted pursuant to  
23 this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-  
24 A.

25 **5. Repeal.** This section is repealed March 1, 2011 unless the Commissioner of  
26 Economic and Community Development certifies to the Legislature under Title 36,  
27 section 6762 that the total number of new qualified employees of qualified brewers  
28 statewide for which reimbursement was made under Title 36, chapter 917 for calendar  
29 year 2010 exceeds the number of full-time equivalent employees of qualified brewers  
30 statewide for calendar year 2007 by 10%.

31 **Sec. 2. 36 MRSA §6753, sub-§3,** as enacted by PL 1995, c. 669, §5, is amended  
32 to read:

33 **3. Applicant.** "Applicant" means a qualified business or a qualified brewer that has  
34 submitted an application to the commissioner for approval of an employment tax  
35 increment financing development program.

36 **Sec. 3. 36 MRSA §6753, sub-§7,** as amended by PL 2005, c. 351, §22 and  
37 affected by §26, is further amended to read:

38 **7. Employment tax increment.** "Employment tax increment" means that level of  
39 employment, payroll and state income withholding taxes attributed to qualified  
40 employees employed by a qualified business or qualified brewer above the base level for

1 the qualified business or qualified brewer, adjusted pursuant to subsection 12 for shifts in  
2 employment by affiliated businesses.

3 **Sec. 4. 36 MRSA §6753, sub-§9**, as enacted by PL 1995, c. 669, §5, is amended  
4 to read:

5 **9. Gross employment tax increment.** "Gross employment tax increment" means  
6 that level of employment, payroll and ~~State state~~ income tax withholding taxes attributed  
7 to qualified employees employed by a qualified business or qualified brewer that is  
8 greater than the base level for the qualified business or qualified brewer.

9 **Sec. 5. 36 MRSA §6753, sub-§10-A** is enacted to read:

10 **10-A. Qualified brewer.** "Qualified brewer" means a for-profit business in this  
11 State that produces malt liquor for resale and that adds one or more qualified employees  
12 above its base level of employment in this State.

13 **Sec. 6. 36 MRSA §6753, sub-§12**, as amended by PL 2005, c. 351, §23 and  
14 affected by §26, is further amended to read:

15 **12. Qualified employees.** "Qualified employees" means new, full-time employees  
16 hired in this State by a qualified business or qualified brewer and for whom a retirement  
17 program subject to the Employee Retirement Income Security Act of 1974, 29 United  
18 States Code, Sections 101 to 1461, as amended, and group health insurance are provided,  
19 and whose income derived from employment with the applicant, calculated on a calendar  
20 year basis, is greater than the most recent annual per capita personal income in the county  
21 in which the qualified employee is employed and whose state income withholding taxes  
22 are subject to reimbursement to the qualified business or qualified brewer under this  
23 chapter. "Qualified employees" does not include employees shifted to a qualified business  
24 or qualified brewer from an affiliated business. The commissioner shall determine  
25 whether a shifting of employees has occurred.

26 **Sec. 7. 36 MRSA §6754**, as amended by PL 2005, c. 622, §32 and affected by  
27 §33, is further amended to read:

28 **§6754. Reimbursement allowed**

29 **1. Generally.** Subject to the provisions of subsection 2, a qualified business or  
30 qualified brewer is entitled to reimbursement of state income withholding taxes withheld  
31 during the calendar year for which reimbursement is requested and attributed to qualified  
32 employees after July 1, 1996 in the following amounts.

33 A. For qualified employees employed by a qualified business in state labor market  
34 areas in which the labor market unemployment rate is at or below the state  
35 unemployment rate at the time of application, the reimbursement is equal to 30% of  
36 withholding taxes withheld during each of the first 5 calendar years for which  
37 reimbursement is requested and attributed to those qualified employees. The  
38 percentage of reimbursement for the 6th to 10th years of the employment tax

1 increment financing development program is established based upon the labor market  
2 unemployment rate at the beginning of the 6th year.

3 B. For qualified employees employed by a qualified business in state labor market  
4 areas in which the labor market unemployment rate is greater than the state  
5 unemployment rate at the time of application, the reimbursement is equal to 50% of  
6 withholding taxes withheld during each of the first 5 calendar years for which  
7 reimbursement is requested and attributed to those qualified employees. The  
8 percentage of reimbursement for the 6th to 10th years of the employment tax  
9 increment financing development program is established based upon the labor market  
10 unemployment rate at the beginning of the 6th year.

11 C. For qualified employees employed by a qualified business in state labor market  
12 areas in which the labor market unemployment rate is greater than 150% of the state  
13 unemployment rate at the time of application, the reimbursement is equal to 75% of  
14 withholding taxes withheld during each of the first 5 calendar years for which  
15 reimbursement is requested and attributed to those qualified employees. The  
16 percentage of reimbursement for the 6th to 10th years of the employment tax  
17 increment financing development program is established based upon the labor market  
18 unemployment rate at the beginning of the 6th year.

19 D. For qualified Pine Tree Development Zone employees, as defined in Title 30-A,  
20 section 5250-I, subsection 18, employed directly in the qualified business activity of  
21 a qualified Pine Tree Development Zone business, as defined in Title 30-A, section  
22 5250-I, subsection 17, for whom a certificate of qualification has been issued in  
23 accordance with Title 30-A, section 5250-O, the reimbursement under this subsection  
24 is equal to 80% of the withholding taxes withheld each year for which reimbursement  
25 is requested and attributed to those qualified employees for a period of no more than  
26 10 years. In no event may reimbursement under this subsection be paid for years  
27 beginning after December 31, 2018.

28 E. For qualified employees hired by a qualified brewer, the reimbursement is equal  
29 to 50% of withholding taxes withheld during each of the 10 tax years for which  
30 reimbursement is requested and attributed to those qualified employees. In no event  
31 may reimbursement under this subsection be paid for years beginning after December  
32 31, 2017.

33 **2. Limitations.** Reimbursement to a qualified business or qualified brewer under  
34 this chapter is subject to the following limitations.

35 A. A business previously qualified and approved by the commissioner may not  
36 receive reimbursement under this chapter for any period of time in which it failed to  
37 maintain the minimum requirements for initial approval as a qualified business or  
38 qualified brewer.

39 B. Reimbursement to a qualified business approved pursuant to this chapter expires  
40 10 years after the date on which benefits commenced under the employment tax  
41 increment financing development program.

42 C. A business electing to take the jobs and investment tax credit under section 5215  
43 may not claim reimbursement under this chapter until the full amount of allowable

1 jobs and investment tax credit benefits have been claimed. This limitation does not  
2 apply to claims for reimbursement of withholding for qualified Pine Tree  
3 Development Zone employees as defined in Title 30-A, section 5250-I, subsection  
4 18, if those employees and any investment in the related Pine Tree Development  
5 Zone are not included in calculating the jobs and investment tax credit under section  
6 5215.

7 D. A business may not claim reimbursement under this chapter for income  
8 withholding taxes attributed to employees employed within any state tax increment  
9 financing district approved under Title 30-A, chapter 206.

10 E. Employee payroll withholding amounts are limited to the standard amount  
11 required to be withheld pursuant to chapter 827 and may not include any excess  
12 withholding.

13 F. The aggregate annual retained employment tax increment revenues for all  
14 employment tax increment financing programs may not exceed \$20,000,000, adjusted  
15 by a factor equal to the percentage change in the United States Bureau of Labor  
16 Statistics Consumer Price Index, United States City Average, from January 1, 1996 to  
17 the date of calculation.

18 **3. Multiple labor market areas.** The commissioner may by rule establish  
19 procedures for equitably apportioning reimbursement to a qualified business or qualified  
20 brewer employing qualified employees in multiple labor market areas in the State.

21 **Sec. 8. 36 MRSA §6755, first ¶**, as enacted by PL 1995, c. 669, §5, is further  
22 amended to read:

23 A qualified business or qualified brewer that applies to the commissioner for  
24 approval of its employment tax increment financing program shall submit, in a form  
25 acceptable to the commissioner, the following information:

26 **Sec. 9. 36 MRSA §6758**, as amended by PL 2005, c. 351, §25 and affected by  
27 §26, is further amended to read:

28 **§6758. Procedure for reimbursement**

29 **1. Reporting by qualified businesses and qualified brewers.** On or before April  
30 15th of each year, each qualified business and each qualified brewer approved by the  
31 commissioner pursuant to this chapter shall report the number of employees, the state  
32 income taxes withheld for the immediately preceding calendar year and any further  
33 information the State Tax Assessor may reasonably require.

34 **2. Determination by assessor.** On or before June 30th of each year, the assessor  
35 shall determine the employment tax increment of each qualified business and qualified  
36 brewer for the preceding calendar year. A qualified business or qualified brewer may  
37 receive up to 80% of the employment tax increment generated by that business as  
38 determined by the assessor, subject to the further limitations in section 6754, subsection  
39 2. That amount is referred to as "retained employment tax increment revenues."

1           **3. Deposit and payment of revenue.** On or before June 30th of each year, the  
2 Commissioner of Administrative and Financial Services shall deposit an amount equal to  
3 the total retained employment tax increment revenues for the preceding calendar year for  
4 approved employment tax increment financing programs in the state employment tax  
5 increment contingent account established, maintained and administered by the  
6 Commissioner of Administrative and Financial Services. On or before July 31st of each  
7 year, the Commissioner of Administrative and Financial Services shall pay to each  
8 approved qualified business and approved qualified brewer an amount equal to the  
9 retained employment tax increment revenues for the preceding calendar year.

10           **Sec. 10. 36 MRSA §6760, sub-§2, ¶A,** as enacted by PL 1995, c. 669, §5, is  
11 amended to read:

12           A. A person, which may include a qualified business or qualified brewer, to whom  
13 the record belongs or pertains has requested be designated confidential; or

14           **Sec. 11. 36 MRSA §6761,** as enacted by PL 1995, c. 669, §5, is amended to read:

15           **§6761. Audit process**

16           This chapter may not be construed to limit the authority of the State Tax Assessor to  
17 conduct an audit of a qualified business or qualified brewer. When it is determined by  
18 the State Tax Assessor upon audit that a qualified business or qualified brewer has  
19 received a distribution larger than that to which it is entitled under this chapter, the  
20 overpayment must be applied against subsequent distributions, unless it is determined that  
21 the overpayment is the result of fraud on the part of the qualified business or qualified  
22 brewer, in which case the State Tax Assessor may disqualify the business from receiving  
23 any future distributions. When there is no subsequent distribution, the qualified business  
24 or qualified brewer to which overpayments were made is liable for the amount of the  
25 overpayments and may be assessed pursuant to provisions of Part 1.

26           **Sec. 12. 36 MRSA §6762** is enacted to read:

27           **§6762. Elimination of reimbursement of qualified brewers**

28           Unless the commissioner certifies to the Legislature by March 1, 2011 that the total  
29 number of new qualified employees of qualified brewers statewide for which  
30 reimbursement was made under this chapter for calendar year 2010 exceeds the number  
31 of full-time equivalent employees of qualified brewers statewide for calendar year 2007  
32 by 10%, a qualified brewer may not claim reimbursement as a qualified brewer under this  
33 chapter for income tax withholding periods beginning on or after March 1, 2011.

34

**SUMMARY**

35           This bill provides tax incentives to malt liquor brewers to encourage them to increase  
36 their employment in Maine and the amount of malt liquor produced in Maine and  
37 exported for sale outside of Maine. Specifically, this bill:



1        1. Provides a tax credit against the excise taxes imposed on alcohol manufactured  
2 and sold in Maine by a brewer equal to 17.5¢ per gallon of malt liquor manufactured and  
3 exported by that brewer. This tax credit is limited to 50% of the amount of excise taxes  
4 due from a brewer. The percentage of malt liquor that is eligible for the credit is 90% of  
5 the amount produced and exported and is reduced by 10% each year. If a brewer  
6 increases its production and export of malt liquor by 10% in a year, an additional credit is  
7 allowed for the excess; and

8        2. Expands the employment tax increment financing program to provide an  
9 enhanced reimbursement for qualified brewers who add qualified employees.

10       The bill also provides that the excise tax credit and enhanced employment tax  
11 increment financing reimbursement are repealed March 1, 2011 unless the Commissioner  
12 of Economic and Community Development certifies that the number of new employees  
13 of qualified brewers for which reimbursement was made in 2010 has increased at least  
14 10% over total 2007 employment.