

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1718

H.P. 1228

House of Representatives, January 9, 2014

An Act To Improve the Job Creation Through Educational Opportunity Program

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative GOODE of Bangor.

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

2 **Sec. 1. 20-A MRSA §12541, sub-§2**, as amended by PL 2009, c. 553, Pt. A, §2,
3 is repealed.

4 **Sec. 2. 20-A MRSA §12541, sub-§2-A**, as enacted by PL 2009, c. 553, Pt. A, §3,
5 is repealed.

6 **Sec. 3. 20-A MRSA §12541, sub-§4-A**, as enacted by PL 2009, c. 553, Pt. A, §4,
7 is repealed and the following enacted in its place:

8 **4-A. Financial aid package.** "Financial aid package" means financial aid obtained
9 by a student after December 31, 2007 for attendance at an accredited Maine community
10 college, college or university after December 31, 2007. For purposes of a qualified
11 individual claiming an educational opportunity tax credit for tax years beginning on or
12 after January 1, 2013, "financial aid package" may include financial aid obtained for up to
13 30 credit hours of course work at an accredited non-Maine community college, college or
14 university earned prior to transfer to an accredited Maine community college, college or
15 university, if the 30 credit hours were earned after December 31, 2007 and the transfer
16 occurred after December 31, 2012. For purposes of an employer claiming an educational
17 opportunity tax credit for tax years beginning on or after January 1, 2013, "financial aid
18 package" may include financial aid obtained by a qualified employee after December 31,
19 2007 for attendance at an accredited non-Maine community college, college or university
20 after December 31, 2007. The financial aid package may include private loans or less
21 than the full amount of loans under federal programs, depending on the practices of the
22 accredited Maine or non-Maine community college, college or university. Loans are
23 includable in the financial aid package only if entered into prior to July 1, 2023.

24 **Sec. 4. 20-A MRSA §12541, sub-§7**, as amended by PL 2009, c. 553, Pt. A, §7,
25 is repealed.

26 **Sec. 5. 20-A MRSA §12541, sub-§8** is enacted to read:

27 **8. Qualified employee.** "Qualified employee" has the same meaning as in Title 36,
28 section 5217-D, subsection 1, paragraph E.

29 **Sec. 6. 20-A MRSA §12541, sub-§9** is enacted to read:

30 **9. Qualified individual.** "Qualified individual" has the same meaning as in Title 36,
31 section 5217-D, subsection 1, paragraph G.

32 **Sec. 7. 20-A MRSA §12542, sub-§1**, as enacted by PL 2007, c. 469, Pt. A, §1, is
33 amended to read:

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

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

11 **Sec. 8. 20-A MRS §12542, sub-§2-A**, as amended by PL 2011, c. 548, §7, is
12 repealed.

13 **Sec. 9. 20-A MRS §12542, sub-§3**, as amended by PL 2011, c. 665, §§2 and 3,
14 is repealed.

15 **Sec. 10. 20-A MRS §12542, sub-§3-A**, as amended by PL 2011, c. 665, §4, is
16 repealed.

17 **Sec. 11. 20-A MRS §12542, sub-§4-A, ¶C**, as enacted by PL 2009, c. 553, Pt.
18 A, §13, is amended to read:

19 C. An accredited Maine community college, college or university must document for
20 the student information required for purposes of the educational opportunity tax
21 credit, including, once the student has earned the degree, the total principal of loans
22 the student received as part of that student's financial aid package related to course
23 work completed at the accredited Maine community college, college or university.
24 The accredited Maine community college, college or university shall provide an
25 original or certified copy to the student and shall retain a copy of the documentation
26 in its files for at least 10 years after the student graduates.

27 **Sec. 12. 20-A MRS §12542, sub-§4-A, ¶D**, as enacted by PL 2009, c. 553, Pt.
28 A, §13, is repealed.

29 **Sec. 13. 20-A MRS §12542, sub-§5**, as amended by PL 2009, c. 553, Pt. A,
30 §14, is further amended to read:

31 **5. Effective date; participation by individual already enrolled in degree**
32 **program.** The program must commence for the first semester that begins after the
33 effective date of this chapter. A Maine resident who when the program commences is
34 enrolled in an associate or a bachelor's degree program at an accredited Maine
35 community college, college or university may participate, subject to the same essential
36 terms as other program participants. ~~Such an individual need only meet the eligibility~~
37 ~~requirements in subsection 3 from January 1, 2008 forward.~~

1 **Sec. 14. 36 MRSA §5122, sub-§2, ¶FF**, as amended by PL 2011, c. 138, §1 and
2 affected by §4, is further amended to read:

3 FF. To the extent included in federal adjusted gross income, student loan payments
4 made by the taxpayer's employer in accordance with section 5217-D, whether or not
5 the employer claims, or could claim, the credit provided by section 5217-D,
6 subsection 5;

7 **Sec. 15. 36 MRSA §5217-D**, as amended by PL 2011, c. 665, §§7 to 12 and
8 affected by §13, is further amended to read:

9 **§5217-D. Credit for educational opportunity**

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

12 A. "Benchmark loan payment" ~~has the same meaning as in Title 20-A, section~~
13 ~~12541, subsection 2~~ means the monthly loan payment for the amount of the principal
14 cap paid over 10 years at the interest rate for federally subsidized Stafford loans
15 under 20 United States Code, Section 1077a applicable during the individual's last
16 year of enrollment at an accredited Maine community college, college or university.

17 A-1. "Accredited non-Maine community college, college or university" means an
18 institution located outside the State that is accredited by a regional accrediting
19 association or by one of the specialized accrediting agencies recognized by the
20 United States Secretary of Education.

21 A-2. "Accredited Maine community college, college or university" has the same
22 meaning as in Title 20-A, section 12541, subsection 1.

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

25 B-1. "Financial aid package" means financial aid obtained by a student after
26 December 31, 2007 for attendance at an accredited Maine community college,
27 college or university after December 31, 2007. For purposes of a qualified individual
28 claiming a credit under this section for tax years beginning on or after January 1,
29 2013, the financial aid package may include financial aid obtained for up to 30 credit
30 hours of course work at an accredited non-Maine community college, college or
31 university earned prior to transfer to an accredited Maine community college, college
32 or university, if the 30 credit hours were earned after December 31, 2007 and the
33 transfer occurred after December 31, 2012. For purposes of an employer claiming a
34 credit under this section for tax years beginning on or after January 1, 2013, the
35 financial aid package may include financial aid obtained by a qualified employee
36 after December 31, 2007 for attendance at an accredited non-Maine community
37 college, college or university after December 31, 2007. The financial aid package
38 may include private loans or less than the full amount of loans under federal
39 programs, depending on the practices of the accredited Maine or non-Maine
40 community college, college or university. Loans are includable in the financial aid
41 package only if entered into prior to July 1, 2023.

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

3 D. "Part time" employment means employment with a normal workweek of between
4 16 and 32 hours.

5 D-1. "Principal cap" means:

6 (1) For individuals graduating from an accredited Maine community college,
7 college or university before January 1, 2015, the amount calculated by the State
8 Tax Assessor under Title 20-A, section 12542, former subsection 2-A; and

9 (2) For individuals graduating from an accredited Maine community college,
10 college or university on or after January 1, 2015, the average in-state tuition and
11 mandatory fees for attendance at the University of Maine System for the
12 academic year ending during the calendar year prior to the year of graduation,
13 multiplied by 2 in the case of an associate degree and multiplied by 4 in the case
14 of a bachelor's degree.

15 E. "Qualified employee" means an employee who is employed at least part time and
16 who is ~~eligible for the credit provided in this section~~ a qualified individual or who
17 would be ~~eligible for the credit in this section by meeting all the criteria established~~
18 ~~under Title 20-A, section 12542~~ a qualified individual except that the employee's
19 associate or bachelor's degree was awarded by an accredited non-Maine community
20 college, college or university.

21 G. ~~"Opportunity program participant~~ Qualified individual" means an individual,
22 including the spouse filing a joint return with the individual under section 5221, who
23 ~~obtains the specified degree and complies with the requirements under Title 20-A,~~
24 ~~section 12542~~ is eligible for the credit provided in this section. An individual is
25 eligible for the credit if the individual:

26 (1) Attended, and obtained an associate or a bachelor's degree from, an
27 accredited Maine community college, college or university after December 31,
28 2007. The individual need not obtain the degree from the institution in which
29 that individual originally enrolled, as long as all course work toward the degree is
30 performed at an accredited Maine community college, college or university,
31 except that an individual who transfers to an accredited Maine community
32 college, college or university after December 31, 2012 from outside the State and
33 earned no more than 30 credit hours of course work toward the degree at an
34 accredited non-Maine community college, college or university after December
35 31, 2007 and prior to the transfer is eligible for the credit if all other eligibility
36 criteria are met. Program eligibility for such an individual must be determined as
37 if the commencement of course work at the relevant accredited Maine
38 community college, college or university was the commencement of course work
39 for the degree program as a whole;

40 (2) Was a Maine resident while in attendance at the accredited Maine
41 community college, college or university. For purposes of this subparagraph,
42 "Maine resident" has the same meaning as in Title 20-A, section 12541,
43 subsection 5;

1 (3) Lived in Maine while pursuing the degree, excepting periods when it was
2 reasonably necessary for the individual to live elsewhere as part of the relevant
3 institution's academic programs or while pursuing course work at an accredited
4 non-Maine community college, college or university as provided in subparagraph
5 (1);

6 (4) During the taxable year, was a resident individual; and

7 (5) During the taxable year, worked at least part time in this State for an
8 employer, worked at least part time in this State as a self-employed individual or
9 was deployed for military service in the United States Armed Forces, including
10 the National Guard and the Reserves of the United States Armed Forces. As used
11 in this subparagraph, "deployed for military service" has the same meaning as in
12 Title 26, section 814, subsection 1, paragraph A.

13 H. "Resident individual" means someone:

14 (1) Who is domiciled in this State; or

15 (2) Who is not domiciled in this State, but maintains a permanent place of abode
16 in this State and spends in the aggregate more than 183 days of the taxable year
17 in this State, unless the individual is a member of the Armed Forces of the United
18 States.

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

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

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

34 A. A taxpayer entitled to the credit for any taxable year may carry over and apply to
35 the tax liability for any one or more of the next succeeding 10 years the portion, as
36 reduced from year to year, of any unused credits.

37 B. ~~More than one~~ A taxpayer may claim a credit ~~based on loan payments actually~~
38 ~~made to a relevant lender or lenders to benefit a single opportunity program~~
39 ~~participant, but no 2 taxpayers may claim the credit based on the same payment under~~
40 this section only with respect to loans that are part of the qualified individual's
41 financial aid package and only with respect to loan payment amounts paid by the
42 taxpayer during that part of the taxable year that the qualified individual worked in
43 this State. Payment of loan amounts in excess of the amounts due during the taxable

1 year do not qualify for the credit. Refinanced loans that are part of the qualified
2 individual's financial aid package are eligible for the credit under this section if the
3 refinanced loans remain separate from other debt, including debt incurred in an
4 educational program other than the degree program for which a credit is claimed
5 under this section. Forbearance or deferment of loan payments does not affect
6 eligibility for the credit under this section. An individual working in this State for
7 any part of a month during the Maine residency period of the taxable year is
8 considered to have worked in this State for the entire month. An individual who
9 worked outside this State for an entire month during the Maine residency period is
10 considered to have worked in this State during that month, except that in no case may
11 this exception exceed 3 months during the Maine residency period of the taxable
12 year.

13 C. Except as provided in ~~paragraph D~~ subsection 3, the credit under this section may
14 not reduce the tax otherwise due under this Part to less than zero. ~~The credit allowed~~
15 ~~to an employer of a qualified employee may not reduce the tax otherwise due under~~
16 ~~this Part to less than zero.~~

17 ~~D. Notwithstanding paragraph C, the credit allowed to an opportunity program~~
18 ~~participant is refundable if the opportunity program participant obtains an associate~~
19 ~~degree or bachelor's degree in science, technology, engineering or mathematics.~~

20 **3. Calculation of the credit; qualified individuals.** The Subject to subsection 2
21 and except as provided in this subsection, the credit in this section with respect to a
22 qualified individual is equal to the amount determined on the basis of the amount under
23 paragraph A or paragraph B, whichever is less, multiplied by the proration factor. For
24 purposes of this subsection, the proration factor is the amount derived by dividing the
25 total number of academic credit hours earned for a bachelor's or associate degree after
26 December 31, 2007 by the total number of academic credit hours earned for the
27 bachelor's or associate degree.:

28 A. ~~If the~~ The benchmark loan payment is less than the actual monthly amount, then
29 ~~the credit claimed may not exceed the product of the benchmark loan payment and~~
30 multiplied by the number of months during the taxable year in which the taxpayer
31 made loan payments; ~~or~~

32 B. ~~If the opportunity program participant's actual~~ The monthly loan payment amount
33 ~~is less than the benchmark loan payment, the credit must be based on the actual~~
34 multiplied by the number of months during the taxable year in which the taxpayer
35 made loan payments made during the taxable year.

36 The credit under this subsection for an individual who transferred to an accredited Maine
37 community college, college or university from an accredited non-Maine community
38 college, college or university after December 31, 2012 and who earned no more than 30
39 credit hours of course work toward the degree at an accredited non-Maine community
40 college, college or university is equal to 50% of the amount otherwise determined under
41 this section in the case of an associate degree and equal to 75% of the amount otherwise
42 determined under this section in the case of a bachelor's degree.

43 Notwithstanding subsection 2, paragraph C, the credit under this subsection is refundable
44 to the extent the credit is based on loans included in the financial aid package acquired to

1 obtain a bachelor's degree or associate degree in science, technology, engineering or
2 mathematics or, with regard to an individual obtaining an associate degree in any field on
3 or after January 1, 2015, to obtain an associate degree from an accredited Maine
4 community college, college or university.

5 For purposes of this subsection, the proration factor is the amount derived by dividing the
6 total number of academic credit hours earned for a bachelor's or associate degree after
7 December 31, 2007 by the total number of academic credit hours earned for the
8 bachelor's or associate degree.

9 ~~**4. Conditions for an opportunity program participant claiming the credit.** An~~
10 ~~opportunity program participant may claim the credit only if the participant is a resident~~
11 ~~individual. The participant may claim the credit based only on regular payments made~~
12 ~~during months in which the individual was working for an employer located in this State~~
13 ~~or was deployed for military service in the United States Armed Forces, including the~~
14 ~~National Guard and the Reserves of the United States Armed Forces. As used in this~~
15 ~~subsection, "deployed for military service" has the same meaning as in Title 26, section~~
16 ~~814, subsection 1, paragraph A. A married couple filing jointly under Title 36, section~~
17 ~~5221 may claim the credit only to the extent that the spouse on whose behalf the credit is~~
18 ~~claimed meets these requirements.~~

19 **5. Calculation of the credit; employers.** A Subject to subsection 2, a taxpayer
20 constituting an employer making loan payments during the taxable year on loans included
21 in a qualified employee's financial aid package may claim the a credit under this section
22 under the following circumstances equal to the benchmark loan payment or the actual
23 monthly loan payment made by the employer on the loans, whichever is less, multiplied
24 by the number of months during the taxable year the employer made loan payments on
25 behalf of the qualified employee during the term of employment. The credit under this
26 subsection may not be claimed with respect to months of the taxable year during which
27 the employee was not a qualified employee. The employer may undertake to make
28 partial or full loan payments directly to the relevant lender or lenders on behalf of a
29 qualified employee, having taken reasonable steps to ascertain that the employee is in fact
30 a qualified employee, and may claim a credit based on amounts that came due and were
31 paid by the employer during the term of employment. To receive the credit, the employer
32 must retain for 5 years any proof of eligibility that the employee or independent
33 contractor provides.

34 ~~The employer may claim a credit for the amount that the qualified employee could have~~
35 ~~claimed during any months when the qualified employee was employed, had the qualified~~
36 ~~employee made the partial or full loan payments instead, under conditions where the~~
37 ~~qualified employee had sufficient income to claim the full credit for the taxable year. If~~
38 ~~the qualified employee is employed only on a part-time basis during the taxable year, the~~
39 ~~employer may claim a credit only up with respect to that employee is limited to half of~~
40 ~~the total that the qualified employee could have claimed had the qualified employee made~~
41 ~~all payments and earned sufficient income to claim the full credit for the taxable year, but~~
42 ~~the amount the employer claims must still be based on amounts actually paid. An~~
43 ~~employer is not disqualified under this section if the qualified employee is not eligible to~~
44 ~~claim the credit solely because the employee's associate degree or bachelor's degree was~~

1 ~~awarded by an accredited non-Maine community college, college or university~~ 50% of
2 the credit otherwise determined under this subsection.

3 **SUMMARY**

4 This bill consolidates under the tax laws the provisions of statute that govern the
5 determination of the income tax credit for educational opportunity. Currently, the
6 relevant provisions are contained in the Maine Revised Statutes, Title 20-A and Title 36.
7 By consolidating the provisions, the bill clarifies eligibility for the credit and, without
8 changing the amount of the credit, the method by which the credit is calculated. In an
9 effort to further reduce the administrative burden of the credit, the bill also extends the
10 refundable portion of the credit available to individuals to all associate degrees, whether
11 degrees in science, technology, engineering or mathematics or not, obtained from
12 accredited Maine community colleges, colleges or universities for tax years beginning,
13 and individuals graduating, on or after January 1, 2015. The bill also requires that an
14 individual work in Maine after graduation in order to qualify for the credit, except that an
15 individual may work outside Maine for up to 3 months and still qualify. This is a change
16 from current law, which allows a qualifying individual to work outside Maine the entire
17 year, as long as the individual is working for an employer located in Maine. The bill also
18 removes the requirement that an individual work for an employer located in Maine. In
19 addition, the bill clarifies that self-employed individuals who are not employers may
20 participate in the program.