

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1949 Session of
2009

INTRODUCED BY MCILVAINE SMITH, BRENNAN, HARRIS, D. COSTA,
MARSHALL, DePASQUALE, REED, DRUCKER, ROAE, HORNAMAN, ROCK,
KORTZ, SWANGER, MIRABITO, VULAKOVICH, SANTARSIERO AND
R. TAYLOR, AUGUST 26, 2009

REFERRED TO COMMITTEE ON STATE GOVERNMENT, AUGUST 26, 2009

AN ACT

1 Providing for banning certain payments to Commonwealth
2 employees.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the State Agency
7 Bonus Ban Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Agency." An executive agency, an independent agency, a
13 legislative agency or a judicial agency as defined by this
14 section.

15 "Bonus." Monetary or other compensation given to an employee
16 in addition to the employee's annual salary or other rate of
17 compensation.

1 "Compensation plan." A bona fide structure of compensation
2 for services rendered, including salaries and benefits, as
3 developed and administered by an agency as authorized by
4 statute, executive order, judicial order or developed as part of
5 personnel administration under agency policy or the resolution
6 of the executive board. A compensation plan may include a
7 reimbursement, stipend or similar payment to an agency employee
8 who incurs employment-related expenses.

9 "Executive agency." Any of the following:

10 (1) Any office, department, authority, board, multistate
11 agency or commission of the executive branch or a State-
12 affiliated entity. The term includes, but is not limited to:

13 (i) The Governor's Office.

14 (ii) The Office of Attorney General, the Department
15 of the Auditor General and the Treasury Department.

16 (iii) An organization established by the
17 Constitution of Pennsylvania, a statute or an executive
18 order which performs or is intended to perform an
19 essential governmental function.

20 (2) The term does not include an independent,
21 legislative or judicial agency.

22 "Independent agency." Any board, commission or other agency
23 of the Commonwealth that is not subject to the policy
24 supervision and control of the Governor. The term does not
25 include an executive, legislative or judicial agency.

26 "Judicial agency." A court of this Commonwealth or any other
27 entity or office of the unified judicial system.

28 "Legislative agency." Any office, department, authority,
29 committee or commission of the legislative branch whether now
30 existing or created after the effective date of this section.

1 The term includes all party caucuses of the Senate and of the
2 House of Representatives. The term does not include an
3 executive, independent or judicial agency.

4 Section 3. Bonuses.

5 (a) Prohibition.--Except as set forth in subsection (b), an
6 agency may not pay a bonus to an agency employee.

7 (b) Exceptions.--Subsection (a) does not apply to any of the
8 following:

9 (1) A payment under the terms of a compensation plan,
10 employment contract, collective bargaining agreement or
11 similar instrument that functions as the equivalent of an
12 employment contract or collective bargaining agreement,
13 including:

14 (i) A severance payment or settlement agreement.

15 (ii) A payment in addition to base pay, which
16 results from a general pay increase, service increment,
17 performance-based increase or cost-of-living adjustment.

18 (iii) Any overtime or premium payment made in
19 accordance with Federal or State law, shift differential
20 payment, standby or call-time payment, hazard payment or
21 extra-duty payment.

22 (iv) A payment made for unused annual vacation,
23 personal or sick leave or other earned but unused leave.

24 (2) A payment made under an arbitration award or as a
25 result of litigation or as required by law.

26 (c) Agreements.--A compensation plan, employment contract,
27 collective bargaining agreement or similar instrument that
28 functions as the equivalent of an employment contract or
29 collective bargaining agreement shall be in writing and shall be
30 open for public inspection.

1 Section 4. Penalties.

2 (a) Employees.--

3 (1) A bonus in violation of section 3 is void.

4 (2) An agency employee who is paid a bonus in violation
5 of section 3 after the effective date of this act shall
6 reimburse the agency that made the payment for the full
7 amount of the bonus at the direction of the agency.

8 (b) Employers.--An individual who intentionally authorizes
9 the payment of a bonus in violation of section 3 without a good
10 faith belief that the payment is excepted under section 3(b)
11 commits a misdemeanor of the third degree.

12 (c) Effect on compensation.--A bonus payment made in
13 violation of section 3 as determined by the agency that made the
14 payment or by a court of competent jurisdiction shall not be
15 deemed to be compensation. Nothing in this act shall be deemed
16 to affect the definition of compensation under 71 Pa.C.S. Pt.
17 XXV (relating to retirement for State employees and officers) or
18 24 Pa.C.S. Pt. IV (relating to retirement for school employees).

19 Section 10. Effective date.

20 This act shall take effect in 60 days.