

In subsection (b)(2) of this section, the former phrases "in any claim against such person" are deleted as surplusage.

The Labor and Employment Article Review Committee notes, for consideration by the General Assembly, that, in subsection (a) of this section, the reference to a "governmental unit" is added to allow the Superintendent to settle a case in which a governmental unit may be liable. Courts have held consistently that, absent an express statement, "person" will not be construed to include the State or any subdivision or unit of the State. See, e.g., Unnamed Physician v. Commission on Medical Discipline, 285 Md. 1 (1979), cert. denied, 444 U.S. 868 (1979). Therefore, the use of the word "person" in former Art. 101, § 84 might be read to limit settlement to claims against private entities. However, the application of the general rule is qualified. See, e.g., 67 Op. Att'y Gen. 380 (1982). The Court of Appeals has stated that the general exclusion of the sovereign "from the purview of a statute in terms applicable to a person or corporation 'finds its basis in no small part in the doctrine of governmental immunity.' " Mayor and City Council of Baltimore v. Baltimore Gas and Elec. Co., 232 Md. 123, 136 (1963), citing United States v. Coumantaros, 165 F. Supp. 695 (D. Md. 1958). If no impairment of sovereign power results, the general exclusionary rule does not apply. 232 Md. at 136. An action against the State would have to be in accordance with the Maryland Torts Claims Act. See Title 12, Subtitle 1 of the State Government Article. Similarly, an action against a local government would be in accordance with Title 5, Subtitle 4 of the Courts Article. Since an action and, therefore, any settlement is limited by one of the referenced statutes, the Committee felt that, despite the general rule, this addition does not impair the sovereign power, and the limited application of "person" should not apply.

As to the term "unit", see the General Revisor's Note to this article.

Defined terms: "Fund" § 10-101

"Governmental unit" § 1-101 "Person" § 1-101

10-139. RESERVED.

10-140. RESERVED.

PART VI. PROHIBITED ACT; PENALTY.

10-141. MISREPRESENTATION OF PAYROLL.

(A) PROHIBITION.

AN EMPLOYER MAY NOT WITH FRAUDULENT INTENT MISREPRESENT TO THE BOARD THE WAGES ON WHICH A PREMIUM UNDER THIS SUBTITLE IS BASED.

(B) PENALTY.