

**31A-40-205 Financial capability.**

- (1) Except as provided in Subsection (2) or (4), as of the day a person applies for licensure or renewal of a license and at all times while licensed, a professional employer organization or collectively a professional employer organization group shall:
  - (a) have at least \$100,000 in working capital as determined by generally accepted accounting principles; or
  - (b) provide to the commissioner one of the following in an amount equal to or greater than an amount calculated by subtracting the amount of working capital of the professional employer organization or professional employer organization group from \$100,000:
    - (i) a bond;
    - (ii) an irrevocable letter of credit;
    - (iii) one or more credits or securities as determined by the market value of the credits or securities; or
    - (iv) a combination of Subsections (1)(b)(i) through (iii).
- (2)
  - (a) Except as provided in Subsection (2)(c), the license of a professional employer organization or professional employer organization group terminates 180 days from the day on which the commissioner finds that the professional employer organization has less than \$100,000 in working capital, unless the professional employer organization or professional employer organization group eliminates the deficiency within 180 days of the day on which the commissioner makes the finding.
  - (b) During the 180-day period described in Subsection (2)(a), the professional employer organization or professional employer organization group shall submit quarterly to the commissioner:
    - (i) a quarterly financial statement; and
    - (ii) an attestation that:
      - (A) is signed by:
        - (I) the chief executive officer or a controlling person of the professional employer organization; or
        - (II) for a professional employer organization group, the chief executive officer or chief financial officer of each member of the professional employer organization group; and
      - (B) states that all of the following are paid for a covered employee when due by the professional employer organization or each member of the professional employer organization group:
        - (I) compensation;
        - (II) a benefit;
        - (III) a payroll-related tax;
        - (IV) an unemployment insurance contribution;
        - (V) withholding of compensation for a covered employee;
        - (VI) workers' compensation premium; or
        - (VII) another assessment paid by a professional employer organization to or on behalf of a covered employee under a professional employer agreement.
  - (c) The license of a professional employer organization or professional employer organization group terminates on the day on which the commissioner finds that the professional employer organization:
    - (i) has negative working capital; and
    - (ii)
      - (A) is incapable of continued operations; or

(B) poses an immediate threat to the public welfare.

(3) A bond, letter of credit, or security described in Subsection (1) shall:

(a) be held as designated by the commissioner; and

(b) secure payment by the professional employer organization or the professional employer organization group of the following payments or other entitlements due to or with respect to a covered employee, if the professional employer organization or each member of the professional employer organization group does not make a payment when due:

(i) compensation of a covered employee;

(ii) a benefit for a covered employee;

(iii) payroll-related taxes;

(iv) unemployment insurance contributions; and

(v) workers' compensation premiums.

(4) A professional employer organization is exempt from this section if the professional employer organization is licensed:

(a) through an assurance organization in accordance with Section 31A-40-303; or

(b) under this chapter with a small operation license in accordance with Section 31A-40-304.

Enacted by Chapter 318, 2008 General Session