

## **Concise Explanatory Statement**

**Nebraska Board of Public Accountancy- Rules and Regulations/ Title 288,  
Chapter 6- Certified Public Accountant Examination  
Chapter 7- Permits, Annual Fees, InActive List**

### **Concise Explanatory Statement**

The Nebraska Board of Public Accountancy is amending existing regulations to the above referenced regulations as provided by law, and hereby submits this concise explanatory statement to accompany the regulations and describe its reasons and the changes made during the rulemaking process.

Reasons for rulemaking process and changes made:

On August 5, 2005 the Nebraska Supreme Court filed No. S-04-510 in the case of John A. Troshynski v. Nebraska State Board of Public Accountancy (Board). The case centered on the Board's ability to not issue a Board issued Certificate to a person who had successfully completed the Certified Public Accountant Examination but possessed a prior felony conviction for drug distribution and possession.

### **Background**

At the conclusion of a hearing in 2003, the Board refused to issue the Certificate although the candidate (Mr. Troshynski) had passed the Uniform CPA examination. The Board concluded by law it had the right to pass upon the fitness of the applicant based upon the prior reported felony.

The case was appealed to the Lancaster County District Court where the court found the defendant had met the criteria in the law for issuance of a Certificate and based on information provided at the hearing would likely achieve a high degree of moral and ethical integrity in the future. The court reversed the Board's decision and remanded the matter with instructions for the Board to issue the Certificate.

The Board then appealed the decision of the District Court on recommendation of the Nebraska Attorney General's Office. The case was later taken by the Nebraska Supreme Court for decision.

Within the Nebraska Supreme Court's decision the "Conclusion" reads:

*"..The Board had not exercised its rulemaking authority to establish character and fitness standards and procedures applicable to persons applying for initial certification as a certified public accountant. In the absence of any such standards and procedures, the denial of Troshynski's application after he successfully passed the written examination and demonstrated that he met the residency requirements set forth in S-114 denied him due process of law. Accordingly, we affirm the judgment of the district court"*

The offered amendments to Chapter 6 and Chapter 7 of the Board's regulations establishes character and fitness standards for those applying for a Board issued Certificate or issuance of an initial Board issued Permit as proposed by the Supreme Court's conclusions.

On July 19<sup>th</sup>, 2006 the Board approved the Legislative Committee's recommendations to amend Chapter 6 & 7, Title 288, Rules to establish character and fitness standards for those applying for a Board Certificate and initial Permit to Practice.

**The Nebraska State Board of Public Accountancy will hold a public hearing on September 22<sup>nd</sup>, 2006 at the Board offices, 140 N. 8<sup>th</sup> Street-Suite 290, Lincoln, Nebraska, to receive public comment relative to proposed changes within Board Rules & Regulations Title 288/ Chapter 6- Certified Public Accountant Examination/ Chapter 7- Permits, Annual Fees, InActive List.**

**Information on the proposed amendments as required by law (LB 373):**

**Description of the proposed rule or regulation and the entities it will impact:**

The proposed rule amendments will create character and fitness standards for those persons applying to sit for the Certified Public Accountant (CPA) Examination and for those applying for initial issuance of a Board issued Certificate and Permit to Practice Public Accountancy. The Board will apply these standards to applicants.

The proposed amendments will impact those persons applying to sit for the Uniform CPA examination in Nebraska and those applying for a Board issued Certificate and an initial permit to practice public accountancy in Nebraska through reciprocity from another state. Those persons will be required to meet the listed character and fitness standards as outlined. They would have the ability to have a hearing before the Board if they are denied the ability to sit for the examination or denied a permit. Members of the public could also be impacted by giving the Board clear authority to apply the character and fitness standards as outlined and denying those not meeting the standards from being able to eventually hold out to the public as a CPA.

**An explanation of the necessity of the proposed rule and regulation, including the identification of the authorizing statute or legislative bill:**

On August 5, 2005 the Nebraska Supreme Court filed No. S-04-510 in the case of John A. Troshynski v. Nebraska State Board of Public Accountancy (Board). The case centered on the Board's ability to not issue a Board issued Certificate to a person who had successfully completed the Certified Public Accountant Examination but possessed a prior felony conviction for drug distribution and possession.

## **Background**

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The offered amendments to Chapter 6 and Chapter 7 of the Board's regulations establishes character and fitness standards for those applying for a Board issued Certificate or issuance of an initial Board issued Permit as proposed by the Supreme Court's conclusions.

Authorizing Statutes within the Nebraska Public Accountancy Act (PAA) include:

PAA 1-105.01: Nebraska State Board of Public Accountancy; purpose. It is the purpose of the Nebraska State Board of Public Accountancy to protect the welfare of the citizens of the state by assuring the competency of persons regulated under the Public Accountancy Act..

PAA 1-112: The board may adopt and promulgate rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy and to govern the administration and enforcement of the Public Accountancy Act. The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedures Act.

**A statement that the proposed rule or regulation is consistent with legislative intent:**

The intent of PAA 1-112 clearly indicates the Board may promulgate rules and regulations that establish a high standard of integrity within the profession of public accountancy. The proposed character and fitness standards assists in establishing this integrity by giving the Board clear authority to not allow those that do not meet the standards to sit for the CPA examination or be issued an initial permit to practice public accountancy.

Under PAA 105.01 it is the main purpose of the proposed regulations to clearly authorize the Board to protect members of the public by applying the proposed character and fitness standards to those persons wanting to become CPA' in Nebraska.

**A statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded:**

The Board's proposed amendments within Chapters 6-7/ Title 288 are not the result of a state mandate.

**A statement indicating whether the proposed rule or regulation is the result of a federal mandate on state government or on a local government subdivision and if the mandate is funded:**

The Board's proposed amendments within Chapters 6-7/ Title 288 are not the result of a federal mandate.

**A description, including an estimated qualification, of the fiscal impact on state agencies, political subdivisions, and regulated persons:**

See attached Fiscal Impact Statement. There will be no fiscal impact on regulated persons.

**A statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing and a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation:**

See attached published Notice of Rulemaking Comment Period and Policy Making Hearing.

The Board worked closely with Nebraska Society of CPA's representatives in the research, development, and draft of the proposed rules.

August 8, 2006

Governor Dave Heineman  
P.O. Box 94848  
State Capitol  
Lincoln, NE 68509

***Re: Proposed Amendments to Title 288/ Revised and Substituted Rules***

Dear Governor Heineman:

Please find attached information relative to proposed amendments to the State Board of Public Accountancy's (Board) rules and regulations within Title 288. The Board, as recommended in an order issued by the Nebraska Supreme Court, has determined that amendments to Chapter 6- Certified Public Accountancy Examination and Chapter 7- Permits, Annual Fees, InActive List are needed to establish character and fitness standards to sit for the CPA examination and for issuance of a certificate and an initial permit to practice for reciprocity candidates from other jurisdictions. The goal is to protect Nebraska citizens from persons that do not meet the proposed standards who aspire to become CPA's.

The Board has provided these proposed rules to the Nebraska Society of CPA's for input including publishing the proposed rules in their newsletter.

The Board has scheduled a public hearing to receive comment on the proposed rules on September 22<sup>nd</sup>, 2006.

Please find attached information to assist you in the understanding and intent of the proposed amendments. If at anytime you have any questions, do not hesitate to contact me at #1-3595 or [nbpa01@nol.org](mailto:nbpa01@nol.org).

Sincerely,

Dan Sweetwood  
Executive Director

August 8, 2006

Senator L. Patrick Engel, Chairperson  
Executive Board/ Nebraska Legislature  
P.O. Box 94604  
Lincoln, NE 68509-4604

***Re: Proposed Amendments to Title 288/ Revised and Substituted Rules***

Dear Senator Engel:

Please find attached information relative to proposed amendments to the State Board of Public Accountancy's (Board) rules and regulations within Title 288. The Board, as recommended in an order issued by the Nebraska Supreme Court, has determined that amendments to Chapter 6- Certified Public Accountancy Examination and Chapter 7- Permits, Annual Fees, InActive List are needed to establish character and fitness standards to sit for the CPA examination and for issuance of a certificate and an initial permit to practice for reciprocity candidates from other jurisdictions. The goal is to protect Nebraska citizens from persons that do not meet the proposed standards who aspire to become CPA's.

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Sincerely,

Dan Sweetwood  
Executive Director

# STATE OF NEBRASKA

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## BOARD OF PUBLIC ACCOUNTANCY

P.O. Box 94725, Lincoln, NE 68509  
140 N. 8<sup>th</sup> St., #290, Lincoln, NE 68508  
(402) 471-3595 or (800) 564-6111  
FAX (402) 471-4484 E-mail: [nbpa01@nol.org](mailto:nbpa01@nol.org)  
Home Page: [www.nbpa.ne.gov](http://www.nbpa.ne.gov)

August 8, 2006

The Lincoln Journal/Star  
ATTN: Legal Advertising  
926 "P" Street  
Lincoln, NE 68508

Please publish the following notice one time under the classification, "**SPECIAL NOTICES, LEGALS**" one time prior to August 20, 2006. Please contact the Board office with the date of publication, 471-3595.

"Legal Notice; Notice of Policy-Making Hearing; Board of Public Accountancy: Notice is hereby given that the Nebraska Board of Public Accountancy will hold a policy-making hearing on **Friday, September 22<sup>nd</sup>, 2006 at 8:30 a.m. at the Board Office, The Apothecary Building, 140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska.** The purpose of this hearing is to receive public testimony from 8:30 am to 9:30 am on amendments to rules promulgated by the Board of Public Accountancy relating to the establishment of character and fitness standards for those sitting for the CPA examination and for those applicants for initial issuance of a permit to practice public accountancy from other jurisdictions. The subject matter and purpose of the rule making action is:

*Based upon an Order and conclusions issued by the Nebraska Supreme Court, the Board has established character and fitness standards within Chapter 6-Certified Public Accountant Examination and Chapter 7- Permits, Annual Fees, InActive List/ Title 288. The standards will apply to those applicants:*

- *Sitting for the first time for the Uniform CPA Examination..*
- *For issuance of a certificate and initial permit to practice public accountancy within Nebraska through reciprocity from another jurisdiction.*

The rule-making hearing is being conducted by virtue of the provisions of Nebraska Revised Statutes, Section 84-907, R.R.S. which provisions require that copies of the proposed rule or rule change are available for public examination at the office of the

Board of Public Accountancy, 290 The Apothecary Building, 140 N. 8<sup>th</sup> Street, Lincoln, Nebraska 68508, (402) 471-3595, and at the office of the Secretary of State, Capitol Building, Lincoln, Nebraska. A complete statement on the fiscal impact of the proposed rules may be examined at the office of the Board of Public Accountancy at The Apothecary Building, Suite 290, 140 N. 8<sup>th</sup> Street, Lincoln, Nebraska.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments prior to the hearing, which comments will be made a part of the hearing record at the time of the hearing. Anyone needing reasonable accommodations to review the drafts or participate in this process, please contact the Board office.”

Please remit the billing to the Nebraska Board of Public Accountancy (63-84-00) and let me know if you have any questions.

Sincerely,

Dan Sweetwood  
Executive Director

# STATE OF NEBRASKA

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## BOARD OF PUBLIC ACCOUNTANCY

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Home Page: [www.nbpa.ne.gov](http://www.nbpa.ne.gov)

## NOTICE OF RULEMAKING COMMENT PERIOD AND POLICY-MAKING HEARING

August 8, 2006

Notice is hereby given that the Nebraska Board of Public Accountancy will hold a policy-making hearing on **Friday, September 22<sup>nd</sup>, 2006 at 8:30am at the Board's office at 140 N. 8<sup>th</sup> Street, Lincoln, Nebraska.** The purpose of this hearing is to receive public testimony from 8:30am to 9:30am on amendments to rules promulgated by the Board of Public Accountancy relating to establishing character and fitness standards..

### **Purpose of Regulations:**

*Based upon an Order and conclusions issued by the Nebraska Supreme Court, the Board has established character and fitness standards within Chapter 6-Certified Public Accountant Examination and Chapter 7- Permits, Annual Fees, InActive List/ Title 288. The standards will apply to those applicants:*

- *Sitting for the first time for the Uniform CPA Examination..*
- *For issuance of a certificate and initial permit to practice public accountancy within Nebraska through reciprocity from another jurisdiction.*

The rule-making hearing is being conducted by virtue of the provisions of Nebraska Revised Statutes, Section 84-907, R.R.S. which provisions require that copies of the proposed rule or rule change are available for public examination at the office of the Board of Public Accountancy, 290 The Apothecary Building, 140 N. 8<sup>th</sup> Street, Lincoln, Nebraska 68508, (402) 471-3595, and at the office of the Secretary of State, Capitol Building, Lincoln, Nebraska. A complete statement on the fiscal impact may also be examined at the office of the Board of Public Accountancy at 290 The Apothecary Building, 140 N. 8<sup>th</sup> Street, Lincoln, Nebraska.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments prior to the hearing, which comments will be made a part of the hearing record at the time of the hearing.

## **Fiscal Impact Statement**

**Agency: Nebraska Board of Public Accountancy**  
**Prepared By: Dan Sweetwood, Executive Director**  
**Date Prepared: August 8, 2006**  
**Telephone Number: (402) 471-3595**

### **Background**

The Nebraska Board of Public Accountancy is holding a rule making hearing on Friday, September 22nd Thursday, March 16, 2006 to possibly amend Rules and Regulations, Title 288, Chapter 11- Public Accounting Partnerships and Professional Corporations.

### **Type of Fiscal Impact:**

NO FISCAL IMPACT.

### **Description of Impact:**

There will be no fiscal impact based on the proposed changes to the rules. There could be a small increase of registered Certified Public Accounting firms due to the proposed rules.