



By **Beth A. Mohr**,
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CFEs, examine this: Are you required to be licensed as a private investigator?

Do U.S. CFEs need to be licensed as private investigators (PIs)? The answer isn't particularly straightforward. It depends on the jurisdiction in which CFEs practice and the types of work performed. That could include conducting fraud investigations, internal investigations for their employers, expert witness testimonies, litigation support services or independent white-collar crime investigations. CFEs that practice in more than one jurisdiction may be required to be licensed in some areas where they work but not others.

Fraud Magazine has covered this issue before (“Independent CFEs Need to Check Their Jurisdictions on PI Licensure Laws,” by James S. Peet, Ph.D., CFE, January/February 2012), but we need an update.

Many CFEs who work for private employers — conducting investigations solely on behalf of their employer — assume that only independent CFEs in private practice need to be licensed. That's true in most states, but eight states that require PI licensure provide no such exception for employees conducting internal investigations on behalf of their employers.

The 2013 *Fraud Examiners Manual* states, “Fraud examination is a methodology for resolving fraud allegations from inception to disposition. More specifically, fraud examination involves obtaining evidence and taking statements, writing reports, testifying to

findings and assisting in the detection and prevention of fraud.” This definition includes many elements that are traditionally associated with investigations, including those specifically included in various state statutes that require investigators to be licensed.

Each U.S. state, plus the District of Columbia, has a different set of regulations that govern what defines an investigator or private detective. A few states have no PI regulations at all, but some municipalities within those states have their own regulations that must be observed if an investigation is to be conducted within city limits. Likewise, each Canadian province has PI licensure requirements, Australia requires PIs to be licensed at the state or territory level, but England and Wales discontinued all U.K. PI license requirements.

Some jurisdictions that previously had no licensing requirements have recently passed bills that will require registration and licensing, and others have bills pending that could change current regulations. States earn fees from licensing PIs, and the regulations also give states the power to discipline and limit what non-sworn law enforcement personnel can do while conducting an investigation.

Chart on Fraud-Magazine.com

The detailed chart at Fraud-Magazine.com (available July 1) accompanying this column will assist you in researching licensure requirements in various



U.S. states and the District of Columbia. The statutes can change at any time. Even though a license isn't required now, it doesn't necessarily mean that the jurisdiction won't require it in the near future. The trend is moving towards required licensing, and states with no such requirements are the exception rather than the rule.

CFEs will need to research unique requirements in each of the jurisdictions in which they practice to determine if they're required to obtain PI licenses. It may be possible to request opinions from the states' attorneys general offices for particular situations. The chart, which will assist you in conducting your own research, is based on a plain reading of the law and doesn't provide any legal opinions on specific license requirements in any individual case. You should consult local legal

counsel to determine the applicability of laws in your jurisdiction.

Definitions of an 'investigator'

Although each jurisdiction is different, typical examples of statutory definitions of an investigator that would require licensure include a person investigating:

- The identity, habits, conduct, movements, whereabouts, transactions, reputation or character of any person or organization.
- The credibility, honesty or integrity of witnesses or other persons.
- The location, disposition or recovery of lost or stolen property, missing persons, owners or heirs of property or heirs to estates.
- The origin of and responsibility for libels, losses, accidents, fires, or damages or injuries to persons or property.
- The conduct, honesty, efficiency, loyalty or activities of employees, persons seeking employment, agents, or contractors and subcontractors.
- The identity or location of persons suspected of crime or wrongdoing.
- Evidence (or obtaining of evidence) to be used before any committee, board of award or arbitration, administrative or licensing body or officer, or in preparation for trial of any civil or criminal case.

Staring at a felony?

Anyone may file a complaint in most states that require licensure of private investigators against an individual or firm conducting an investigation without a license. Penalties for practicing without a license vary, but in a few states the crime is a felony. In one recent case, a CPA providing forensic accounting services was charged with a felony for conducting an unlicensed investigation

in Virginia. Virginia state law mandates that a forensic accountant licensed as a CPA in another state must obtain a PI license to do work in Virginia, regardless of whether their home state exempts them from such a requirement ("Private-investigator licensing emerges as potential threat to CPAs," by Jeff Drew,

Don't wait to be embarrassed on the stand or find yourself charged with a crime. Proactively investigate the necessity of licensure in the jurisdictions in which you practice.

Journal of Accountancy, March 5, 2013, <http://tinyurl.com/cmffkyq>).

If you're going to testify as an expert witness or fact witness, be sure that you're either properly licensed within that jurisdiction or specifically exempted from licensure requirements. Otherwise, opposing counsel can accuse you of violating the law during cross-examination, or the judge may choose to disallow your testimony entirely. Either way, your case and professional reputation could be severely damaged.

Requirements for obtaining a PI license vary by jurisdiction, but most require two to three years of verifiable experience conducting investigations. Some states require applicants to take a written test, others have CPE or training requirements and a few states virtually require prior law enforcement experience. Most jurisdictions require that the private investigator or his or her firm be bonded; the amount of required bond varies by jurisdiction and ranges from \$2,500 to \$100,000. A few states allow malpractice liability insurance in lieu of a bond.

Exemptions and exclusions

Jurisdictions have differing exemptions and exclusions from their PI licensing requirements, and some offer no exemptions at all from licensure requirements. Examples of exceptions

from PI licensure in various jurisdictions include attorneys, CPAs, government officials, individuals conducting genealogical research, computer forensics experts, insurance adjusters, expert witnesses and reporters. Most states exclude someone performing an investigation on behalf of his or her

employer, such as an internal auditor or company detective. However, some states provide no such exceptions, which means that CFEs conducting fraud investigations for their employers may require licenses.

Some states specifically exempt a person conducting computer forensic examinations, while other states specifically include them in the definition of an investigator requiring a PI license.

Each firm and CFE is responsible to ensure they're in compliance with the law, so you need to consult your legal counsel. Don't wait to be embarrassed on the stand or find yourself charged with a crime. Proactively investigate the necessity of licensure in the jurisdictions in which you practice. Obviously, if you're required to have a license, get licensed.

It goes without saying (but I'll say it anyway) that CFEs and CPAs who hold themselves out as conducting "forensic investigations" should be properly licensed if their jurisdictions require it. Other key words that would likely trigger licensure requirement, depending on the jurisdiction, include: conducting document analysis; white-collar crime, fraud or embezzlement investigations; forensic accounting; litigation support services; computer forensic examination or specific tasks

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Training Events

Register at ACFE.com/Training



Upcoming Conferences



2013 ACFE Canadian Fraud Conference

September 8-11 • Montreal, QB



2013 ACFE Asia-Pacific Fraud Conference

November 20-22 • Singapore

activities. Part 2 in this series discusses a successful plan for successful fundraising, which comes from my life experiences dealing with fraud and abuse in all types of student fundraising activities in my state. We will also discuss “gross profits testing” — the most common internal control weakness associated with retail sales events. There’s much more to come. Get ready. ■ **FM**

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(such as conducting employee interviews); and offering court testimony and preparing written reports that may be used in criminal or civil court or offering referrals for prosecution.

Do yourself a favor

Dr. Joseph T. Wells, CFE, CPA, founder and Chairman of the ACFE, expressed his opinion succinctly in the January/February 2012 article. “If there is any chance at all that a state licensing board could view you as holding out as an investigator, do yourself a favor and get licensed. Many of these state boards are self-funding and actively look for anyone that can be construed to be unlicensed because it adds to their coffers. Moreover, if courts or opposing counsel can brand you as an unlicensed investigator, your case will likely suffer severe damage.” ■ **FM**

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Upcoming Courses

Advanced Fraud Examination Techniques
September 16-18 • Austin, TX

+ **Auditing for Internal Fraud**
September 5-6 • San Francisco, CA

+ **NEW! Bribery and Corruption**
August 8-9 • Washington, D.C.

+ **Building Your Fraud Examination Practice**
December 11 • Las Vegas, NV

CFE Exam Review Course
See pg. 29 for course dates

Conducting Internal Investigations
October 21-22 • Nashville, TN

Contract and Procurement Fraud
December 16-17 • San Diego, CA

+ **NEW! Controlling the Risk of Asset Misappropriation**
December 12-13 • Las Vegas, NV

+ **NEW! Detecting Fraud Through Vendor Audits**
August 7 • Washington, D.C.

+ **NEW! Effective Report Writing for Fraud Examiners**
July 22 • Philadelphia, PA

+ **Financial Institution Fraud**
November 5-6 • Tampa, FL

+ **Financial Statement Fraud**
July 23-24 • Philadelphia, PA

+ **Fraud Prevention**
September 16 • New York, NY

+ **Fraud-Related Compliance**
October 28 • Seattle, WA

Fraud Risk Management
August 5-6 • Miami, FL
October 17-18 • Chicago, IL

Health Care Fraud
September 5-6 • Cleveland, OH

Introduction to Digital Forensics
August 5-6 • Boston, MA

+ **Investigating Conflicts of Interest**
September 4 • San Francisco, CA

+ **Investigating on the Internet**
July 25-26 • Edmonton, AB
October 29-30 • Seattle, WA

+ **Legal Elements of a Fraud Examination**
November 4 • Tampa, FL

+ **Money Laundering Schemes**
November 7-8 • Houston, TX

Principles of Fraud Examination
December 9-12 • Austin, TX

+ **Using Data Analytics to Detect Fraud**
November 6 • Houston, TX

+ **NEW! Uncovering Fraud with Financial and Ratio Analysis**
September 17-18 • New York, NY