

Forensics is ONLY for Private Investigators NOW!
or
Who needs Certifications?

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Disclaimer

- **This is NOT Animated!**
- **Everything I state is my opinion and is based on my research and experiences.**
- **I am not A lawyer!**
- **I am not YOUR lawyer!**
- **Talk to your own lawyer and do your own research.**
- **I am sure that some of you will get angry about this speech and the new laws, but I am not the bad guy.**
- **This is for your Entertainment!**

Why is this Speech Important to you?

- States are passing new laws and implementing them very quickly. These laws can go into effect immediately with no grandfathering of current non-licensed people nor giving them a path to get licensed by the deadlines.

- The PI Board in many states is lobbying similar wording and trying to get similar laws passed and shooting for a felony.

- Most computer forensic or computer security professional have no idea this is happening at all or believe that it applies to them.

For Example: Recent Events in Michigan

- Michigan passed the "Professional Investigator Licensure Act" on May 28th 2008.

- I makes it a felony to practice computer forensics without a license going into effect:

  "This act is ordered to take immediate effect."

- Penalty:

  (3) A person violating this section is guilty of a felony punishable by imprisonment for not more than 4 years or by a penal fine of not more than $5,000.00, or both.

OPINIONS ABOUT THESE LAWS

- Some people think regulation is needed.. It gets rid of the rift raft that hangs out a sign
- Some think that they would rather have the worst computer guy working on their case more than a current PI and generally believe the PI is not qualified.
- And others state that this is a field of science and not surveillance and computer science does not belong under the PI wing.
- But a lot more people just think it does not apply to them, such as Forensic Document Handwriting Experts.

Others think all PI's do is surveillance



Qualification & Certifications



All your Qualifications are **Trumped** by this Professional License



One paragraph summary Email

"I find is shocking and narrow minded for states to think that a computer forensic expert would have to have a license in order to testify but yet a Private Investigator can have no clue about computers and yet testify to that which is on the computer. "



Georgia: How I was Introduced to this Issue

- April 4th 2006 – I was on the stand testifying in a criminal trial in the state of Georgia.
- The Prosecution questioned me about my credentials in computer forensics and whether I was a licensed Private Investigator.
- The Prosecutor tried to have the Judge disqualify me as an expert because I was not a PI and cited a new law that was passed by the Georgia House and Senate to go into effect July 1st 2006.
- The Judge allowed my testimony because I was being qualified as a computer forensics expert and not a Private Investigator.

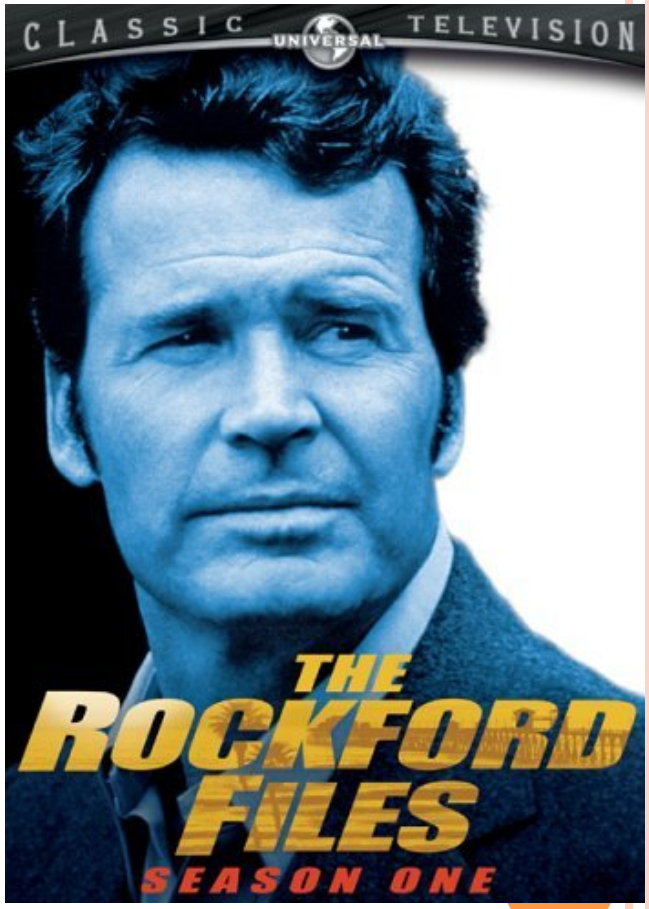
Georgia:
So I researched this new law

- After that occurred, even though I was accepted for computer forensics on the stand, I thought it would be a good idea to check on this new law. I would start with the definitions of forensics and computer forensics and see how they applied.



"Forensics" Defined

- **Forensics:**
  - The use of science and technology to investigate and establish facts in criminal or civil courts of law.
- **Computer Forensics:**
  - Computer forensics is a branch of forensic science pertaining to legal evidence found in computers and digital storage mediums.
- Is that what PI's do? I don't remember TV shows called Magnum CSI or Quincy PI but at least there was Rockford FILES!



GEORGIA:
SO I RESEARCHED THIS NEW LAW

- This new law was called HB1259 and it was submitted on February 6th, 2006 and passed both the house and the senate March 30th 2006.

Votes

Date	Time	Vote No	Yeas
03/13/06	11:17 AM	House Vote #808	158
03/30/06	03:31 PM	Senate Vote #1136	052
03/30/06	11:03 PM	Senate Vote #1202	049

Georgia: What did the Lawyers Say

- After researching it, I put the content in-front of a criminal attorney for an opinion on if this new law applied to me.
- The lawyers opinion was he did not want to have to be in the position of defending (not really, because they like defending things for lots of money) it because it seemed that it would apply and there is no case law to support it.
- Being accused of a misdemeanor was a lot different than being accused of a felony and who wants to be the first one to test that? Refer to Port Scanning!



Georgia Section 43-38-3, relating to definitions of Private Investigator

- (3) 'Private detective business' means the business of obtaining or furnishing, or accepting employment to obtain or to furnish, information with reference to:
- (A) Crimes or wrongs done or threatened against the United States of America or any state or territory thereof;
- (B) The background, identity, habits, conduct, business, employment, occupation, assets, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

Georgia Section 43-38-3, relating to definitions of Private Investigator

- (C) The location, disposition, or recovery of lost or stolen property;
- (D) The cause or responsibility for fires, libels, losses, accidents, damage, or injury to persons or property;
- (E) The securing of evidence in the course of the private detective business to be used before any court, board, officer, or investigating committee;

Georgia:
If you suck at Computer Forensics

At least you didn't waste your time, because your new license can be applied to new careers….

(F) In addition to the aforementioned services, 'private detective business' shall also mean providing, or accepting employment to provide, protection of persons from death or serious bodily harm."



GEORGIA: QUALIFICATIONS FOR A PI

- (7) The applicant for a private detective company license has had at least two years experience as an agent registered with a licensed detective agency
- or has had at least two years experience as a supervisor or administrator in in-house investigations (IT Investigations?)
- or has had at least two years experience as a peace officer as defined by subparagraph (A) of paragraph (8) of Code Section 35-8-2,
- or has a four-year degree in criminal justice or a related field from an accredited university or college;

Nevada: Similar Requirements

- has had at least two years experience as a supervisor or administrator in in-house investigations (IT Investigations?)

- .....Email about this subject
  What's interesting about Nevada's statute is that they require a license to conduct computer forensics, but they don't count computer forensics toward the required experience to be a private investigator. Seems they want to have it both ways.

Georgia:
Does not Apply to These People

- (1)An officer or employee of the United States of America …blah blah blah
- (2) A person engaged in the business of furnishing information in connection with credit or ..blah blah blah
- (3) An attorney at law or a bona fide legal assistant in performing his or her duties;
- (4) Admitted insurers, agents, and insurance brokers licensed by the ..blah blah blah
- (5) A peace officer employed on a full-time basis … blah blah blah.
- (6) A firm engaged in the business of independent insurance claims ..blah blah blah
- (7) The employees of a firm.. (6) of this subsection..

GEORGIA:
IT ALSO DOES NOT EXCLUDE:

- It turns out, the PI board forgot to exclude; corporations, other professional licenses like CPA's, etc and they all called the governors office to complain about this law.
- After finding this out, I found out the bill was on the Governors desk waiting to be signed; or he had the option to **veto** it!
- I made a googillion phone calls, emails etc to get the attention of everyone I could.

Georgia: Penalties For The Crime of Computer Forensics

- Any person who engages in the private detective business or private security business or offers, pretends, or holds himself or herself out as eligible to engage in the private detective business or private security business and who is not legally licensed or registered under this chapter shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than $500.00 nor more than $1,000.00 or by imprisonment for not less than two nor more than five years, or both. Each day or fraction of a day that he or she practices in violation of this chapter shall constitute a separate offense."

GEORGIA PRESIDENT OF THE BOARD OF PI'S SENT OUT THIS LETTER

Subject: HB1259 in danger of veto
Date: Mon, 17 Apr 2006

All,

Unfortunately, I have learned from the Governor's office over the weekend (yes, even over Easter weekend) that the Governor is almost certainly expected to veto HB1259 today because of "perceived unintended consequences" affecting CPA's. How this got started is anyone's guess, but they have inundated the Governor with more than 100 emails and phone calls stating their concerns: "if we examine a client's records or computers and gather information about which we testify in court, we could be arrested for a felony unless we are licensed PI's." Surely, with the ties that each of us have we can triple or quadruple that number of contacts to the Governor's office within an hour or two…….blah blah blah….

I have been advised that the ONLY hope we have at this point is to have an immediate and voluminous show of support for this legislation. Otherwise it will be vetoed.

VETOED!



GEORGIA:
SO WHY WAS HB1259 VETOED

- The existing definition of "private detective business," continued in this bill, in conjunction with the applicable exemptions in the law, fails to exclude from the private investigator licensing requirement many professions that collect information or may be called as expert witnesses in court proceedings. To expand the penalty from a misdemeanor to a felony without revision of the existing definitions in the law could result in unintended consequences; I therefore VETO HB1259. Governor of Georgia

GEORGIA: MISUNDERSTANDING WHAT THIS MEANS

We got the law vetoed that would have made these actions a felony, however, the PI's still believe that computer forensics meets the definition of private investigators and that we should be regulated.



At least we won't go to jail, but they think we still have to be a PI. There is no supporting case law. Who wants to be first? Refer to Port Scanning!

Georgia and Maybe Other States: Other Professions Affected

- Handwriting Analysis Experts: Certification
- Medical Testing Labs : Take Money, Third party, Uses Science to tell you if the person has a habit.
- Telecom Investigators
- Certified Fraud Examiners that are not CPAs
- Forensic Photographers
- DNA and Biological agents and technicians
- Repo men
- Many others either remain confused or take exception.

Georgia:
What We Did Over the next Year

- We (many leaders in our field in the state) built a committee to write our own law, got a House Representative to work with us.
- We created the Digital Forensics Working Group
- We worked on the law, wrote it, got his approval, submitted it to him.
- The Representative agreed to submit it on our behalf.
- Then Blam! The Rep submitted another bill from the PI Board instead of ours and kicked us to the curb.
- What the ????

GEORGIA:
EMAILS TO FIND OUT WHAT HAPPENED

-----Original Message-----

From: House GOP

Sent: Monday, February 26, 2007 9:46 PM

To: Scott Moulton

Subject: Re: FW: [Dfwg] Meeting on Forensic Issues

I spoke to Aubrey Villines, the lobbyist for the private detectives tonight and told him that I was interested in this issue and suggested that we have a meeting of all the parties if the bill makes it out of the House and into the Senate. He agreed.

GEORGIA:
EMAILS TO FIND OUT WHAT HAPPENED

From: Scott Moulton

Sent: Monday, February 26, 2007 9:53 PM

To: House GOP

Subject: RE: FW: [Dfwg] Meeting on Forensic Issues

You know, I am curious now that you mention it. Is Aubrey Villines related to John Villines, The president of the board of Private Detectives? That has to be too much of a coincidence. It seems that he is lobbying for a FAMILY Member to pass a law to help his business?? Does that seem Right?

GEORGIA:
EMAILS TO FIND OUT WHAT HAPPENED

-----Original Message-----

From: House GOP

Sent: Monday, February 26, 2007 9:57 PM

To: Scott Moulton

Subject: Re: FW: [Dfwg] Meeting on Forensic Issues

They are brothers.

GEORGIA:
NEW LAWS SUBMITTED 2007/2008

- In 2007, House Bill 504 was submitted.
- "(3) 'Private detective business' means providing or accepting employment to provide protection of individuals from death or serious bodily harm or the business of obtaining or furnishing, or accepting employment to obtain or to furnish, information, including but not limited to any type of digital or electronic information,

Georgia:
New Submission includes new Items

- The Applicant may have: Investigative experience as the board deems sufficient;

And Excluded:

- 8) A person whose professional practice is licensed or regulated by another agency or board of this state when such person's conduct falls within the scope of practice for such other profession. In the event the professional's conduct falls within the scope of activity regulated both by this chapter and elsewhere under state law, this chapter shall not regulate such professional's conduct."

Georgia: Letter from the Professional Licensing Board

Secretary of State
Professional Licensing Boards Division
237 Coliseum Drive
Macon, Georgia 31217-3858

Dear Mr. Kessler, April 2nd, 2007

blah…blah…blah…

"The Board does require computer forensic firms and technicians to be licensed to perform their services to the public, as the Board is of the position that these services meet the definition in OCGA $ 43-38-3 (3).”…

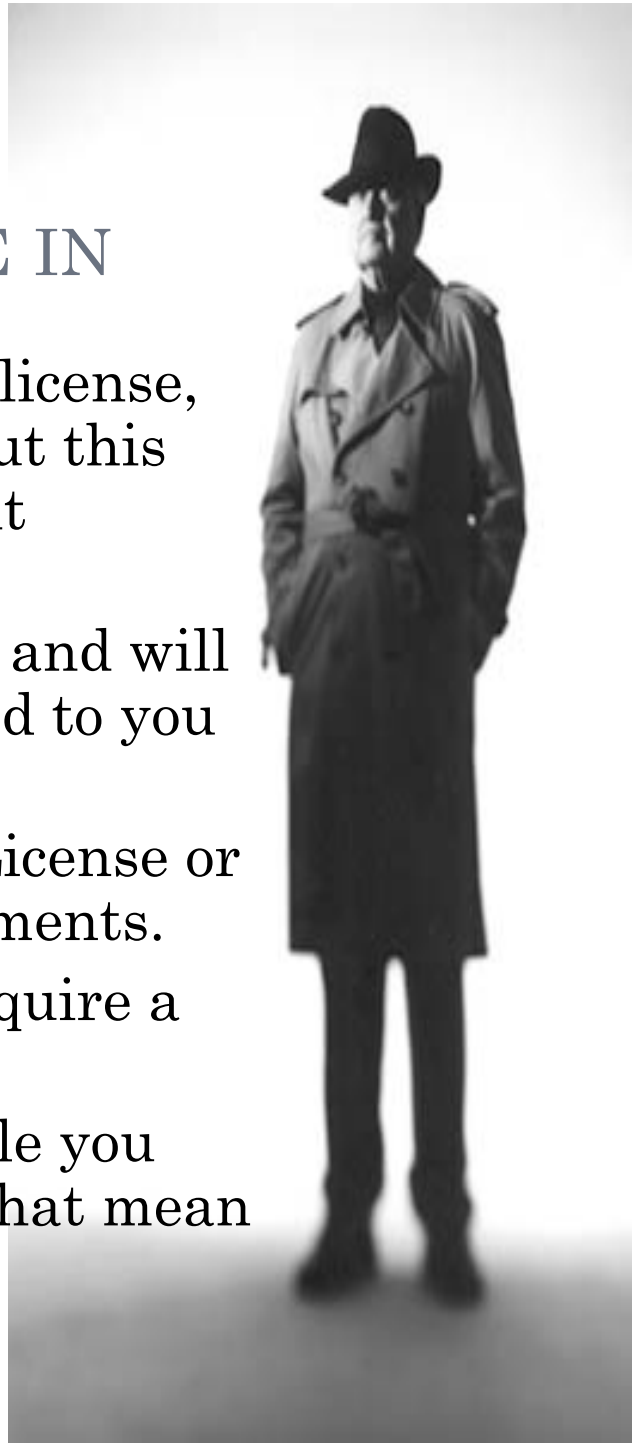
Sincerely,

Steve Lindsey
Executive Director
Businesses & Occupations Section
Professional Licensing Boards Division

http://www.investigation.com/surveymap/surveymap.html

Various States: The States and the mess we are in

- North Carolina states you do have to have a license, but there is a lot of activity in that state about this right now and people fighting against current proposed laws.
- South Carolina says it does require a license and will hunt you down even if the evidence is shipped to you to work on in your own state.
- Alabama, Alaska Missouri, has no state PI License or board but some cities have licensing requirements.
- South Dakota has no PI License, but does require a business license.
- Washington State says if you interview people you have stepped into the world of the PI. Does that mean to ask questions of the parties?



Texas Law:
Email from Andrew Rosen

Texas passed house bill 2833, requiring computer forensic examiners to become licensed Private Investigators. The test had nothing to do with evidence, ethics, computers, chain of custody or really anything that I am involved in. The test had more to do with guard dogs and administrative regulations.

....

Andrew Rosen

Creator of SMART Forensics

www.ASRData.com



Texas Law: from Kessler's notebook

There is not an exemption for computer forensics in Chapter 1702 like there is for accounting, so 1702.104 takes precedence. If a computer forensics company contracts to provide a service for a company, it may provide services limited to information from said company, and that company only, without a security license. For example, if a company mainframe's security was breached, a forensic investigator could legally determine where in that system the security lapse happened (without a license from the Private Security Bureau). However, if the forensic analyst were to follow the digital trail outside of the company it was contracted to in order to find the nature, location, or identity of the intruder, they must be licensed as a Private Investigator.



DELAWARE: THE STATE OF CONFUSION

- (10) "Investigator" or "agency" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:
- (f.) "Investigator" or "agency" shall not include any person employed as a computer forensic specialist.

- But in a letter to Mr. Kessler, Delaware states that you have to have a license. State of confusion.

Michigan:
House Bill No. 5274 Passed as Law

- (b) "Computer forensics" means the collection, investigation, analysis, and scientific examination of data held on, or retrieved from, computers, computer networks, computer storage media, electronic devices, electronic storage media, or electronic networks, or any combination thereof.
- (*viii) Computer forensics to be used as evidence before a court, board, officer, or investigating committee.*

MICHIGAN:
ISSUE A PROFESSIONAL INVESTIGATOR IF SATISFIED:

- (a) Is a citizen of the United States.
- (b) Is not less than 25 years of age.
- (c) Has a high school education or its equivalent.
- (d) Has not been convicted of a felony, or a misdemeanor involving any of the following:
  - (i) Dishonesty or fraud.
  - (ii) Unauthorized divulging or selling of information or evidence.
  - (v) Two or more alcohol related offenses.
- (g) Has posted with the department a bond or insurance policy provided for in this act.

MICHIGAN: FOR A PERIOD OF NOT LESS THAN 3 YEARS …. FOLLOWING ON A FULL-TIME BASIS:

- (i) Lawfully engaged in the professional investigation business, blah blah
- …
- (iii) An investigator, detective, special agent, intelligence specialist, blah blah blah
- (iv) A graduate of an accredited institution of higher education with a baccalaureate or postgraduate degree in the field of police administration, security management, investigation, law, criminal justice, or computer forensics or other computer forensic industry certificated study that is acceptable to the department.

Michigan: Requirements: A Friends Email

I called last week to Dept of Labor in Michigan that oversees the PI law. I inquired on the acceptable computer forensic industry certificated study and was given a "we aren't really sure yet" response. I then asked what the application process was and also received a "we aren't really sure yet" as we have not decided what will qualify. Fortunately for me this isn't a primary source of income, however what if it was?

Regards,

Your Friend….

California: Good News Letter

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENCY ARNOLD SCHWARZENEGGER, Governor

BUREAU OF SECURITY AND INVESTIGATIVE SERVICES
2420 Del Paso Road, Suite 270
Sacramento, CA 95834
(916) 575-7000
www.dca.ca.gov/bsis

October 2, 2006

"The relatively limited activities in which computer forensic examiners engage fall short of the breadth of activities that may be viewed as comprising a competent investigation that could be commissioned from a licensed private investigator."

Therefore, unless a computer forensic examination is expanded to include other investigation activities that may be viewed as comprising a competent investigation, as detailed in Business and Professions Code §7521, a private investigator license is not required to perform computer forensic examinations in California.

Sincerely,

George H. Paddeck, CIA, CFS
Enforcement Manager

On to the next step in becoming a Private Investigator: The Test

Georgia:
Test Study Material Email

You are correct, there is no official study guide or study materials available for the private detective exam administered by the Georgia Secretary of State's office. The state requires the test but the Secretary of State's office specifically does not provide any guidance as to where the questions come from, nor any reasoning as to how or why they are chosen. The Secretary of State's administrative staff actually tell you that they will not provide any indication or information that might help people prepare for the exam. …blah blah blah

Good luck with your test preparations and on your test.

Best regards,
Vice President of the PI Association GAPPI

Georgia:
So I sent an email to another senator about how great they are regulating

GOP Senator's Reply:

> This is ridiculous. Do you mind if I share this email with the Secretary of State?

Ummm. Don't they give the test? Don't they know?



GEORGIA: THE TEST QUESTIONS

- Someone who holds a permit from the board to carry an exposed weapon may carry a:
  - A. weapon up to .45 caliber capable of holding not more than seven shots.
  - B. revolver or semi-automatic hand gun of no greater than .32 caliber with a 2" to 6" barrel length that can hold not more than six shots.
  - C. .38 semi-automatic hand gun with a clip of not more than six shots.
  - D. .38 special revolver, six shots or less, with a 2" to 6" barrel length.

Georgia: The Test Questions

- Of the four questions below, which one is most leading?
  - A. "Then what did you do?"
  - B. "After the suspect ran down the hall, did you follow her?"
  - C. "When did you first notice that the door had been forced?"
  - D. "Where did you find the tire iron?"



How many times does the word "computer"even appear in the test?



0 <<< Big Fat Zero

Georgia: The Test Subject Area

Approximate Percentage of Questions

- Legal Information 17%
- Observation/Surveillance 15%
- Gun Safety and Handling 15%
- Obtaining and Preserving Evidence 21%
- Interviewing/Interrogations 21%
- Client Relationships/Administration 11%

So I googled all these categories…



Combining all those categories



Cost to be a PI for Required things

- Company Business License = $50
- Company PI License = $300 a year
- Employee Licenses Exam Fee = $175
- Employee License Fee = $45 a year
- Drive to Macon to take the test = $50
- Fingerprint cards = $10 + 2 hrs
- E & O Insurance = $1000 a year
- 80 Hours of Certified Training = $450 + 80 hrs
- Two years working under a PI = Priceless
- Total for first year = **$2000**
- Each Year After = $1350
- Continuing Education Requirements = $200

The Real Question

After several thousands of dollar$$ in extra cost to get the PI license so you can do computer forensics legally, will you pay more for a certification if it is not required? Can you even afford it?

So how valuable are certifications now?



THINGS YOU CAN DO

Computer forensics needs its own special license. You can't go from state to state to work without a license in each state. A national license would be nice, with standards accepted by each state. Someone has to create this and fight the good fight.

Find out when the state sessions are in and when they submit new laws, hen pay very close attention to your states legislation pages for new laws and changes when they are submitted.

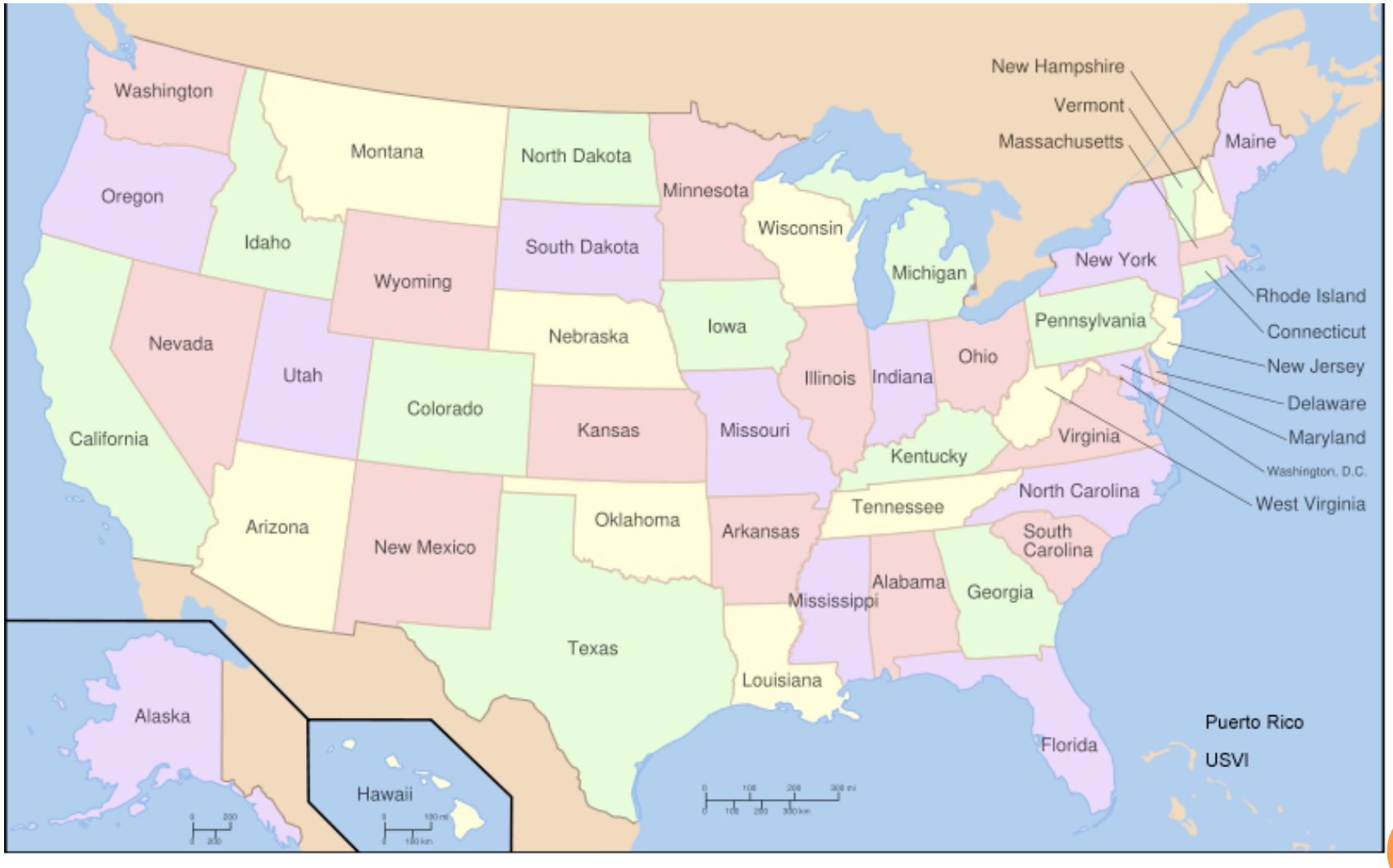
Don't keep waiting for someone else to do it. You are someone! If you don't like what is happening then you need to get involved and change the world!



Reference

- HB1259 - http://www.legis.state.ga.us/legis/2005_06/fulltext/hb1259.htm
- Vetoed law: http://www.gov.state.ga.us/press/2006/press1149.shtml
- http://blogs.ittoolbox.com/security/investigator/archives/vetoed-hb-1259-9208
- All States licensing: http://www.oregonpi.com/licensing.htm
- Kessler Notebook: http://www.thekesslernotebook.com/
- Delaware: http://delcode.delaware.gov/title24/c013/index.shtml

The Kessler Notebook



http://www.investigation.com/surveymap/surveymap.html



END

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