

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6423

Chapter 250, Laws of 1996

54th Legislature
1996 Regular Session

WASHINGTON ELECTRONIC AUTHENTICATION ACT

EFFECTIVE DATE: 1/1/98

Passed by the Senate March 2, 1996
YEAS 43 NAYS 1

JOEL PRITCHARD

President of the Senate

Passed by the House February 28, 1996
YEAS 94 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 29, 1996

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6423** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

March 29, 1996 - 4:14 p.m.

MIKE LOWRY

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6423

AS AMENDED BY THE HOUSE

Passed Legislature - 1996 Regular Session

State of Washington 54th Legislature 1996 Regular Session

By Senators Sutherland, Finkbeiner and Sheldon; by request of Secretary of State

Read first time 01/15/96. Referred to Committee on Energy, Telecommunications & Utilities.

1 AN ACT Relating to electronic signatures; adding a new chapter to
2 Title 19 RCW; prescribing penalties; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **PART I. SHORT TITLE, INTERPRETATION, AND DEFINITIONS**

5 NEW SECTION. **Sec. 101.** SHORT TITLE. This chapter shall be known
6 and may be cited as the Washington electronic authentication act.

7 NEW SECTION. **Sec. 102.** PURPOSES AND CONSTRUCTION. This chapter
8 shall be construed consistently with what is commercially reasonable
9 under the circumstances and to effectuate the following purposes:

10 (1) To facilitate commerce by means of reliable electronic
11 messages;

12 (2) To minimize the incidence of forged digital signatures and
13 fraud in electronic commerce;

14 (3) To implement legally the general import of relevant standards,
15 such as X.509 of the international telecommunication union, formerly

1 known as the international telegraph and telephone consultative
2 committee; and

3 (4) To establish, in coordination with multiple states, uniform
4 rules regarding the authentication and reliability of electronic
5 messages.

6 NEW SECTION. **Sec. 103.** DEFINITIONS. Unless the context clearly
7 requires otherwise, the definitions in this section apply throughout
8 this chapter:

9 (1) "Accept a certificate" means either:

10 (a) To manifest approval of a certificate, while knowing or having
11 notice of its contents; or

12 (b) To apply to a licensed certification authority for a
13 certificate, without cancelling or revoking the application by
14 delivering notice of the cancellation or revocation to the
15 certification authority and obtaining a signed, written receipt from
16 the certification authority, if the certification authority
17 subsequently issues a certificate based on the application.

18 (2) "Asymmetric cryptosystem" means an algorithm or series of
19 algorithms that provide a secure key pair.

20 (3) "Certificate" means a computer-based record that:

21 (a) Identifies the certification authority issuing it;

22 (b) Names or identifies its subscriber;

23 (c) Contains the subscriber's public key; and

24 (d) Is digitally signed by the certification authority issuing it.

25 (4) "Certification authority" means a person who issues a
26 certificate.

27 (5) "Certification authority disclosure record" means an on-line,
28 publicly accessible record that concerns a licensed certification
29 authority and is kept by the secretary. A certification authority
30 disclosure record has the contents specified by rule by the secretary
31 under section 104 of this act.

32 (6) "Certification practice statement" means a declaration of the
33 practices that a certification authority employs in issuing
34 certificates generally, or employed in issuing a material certificate.

35 (7) "Certify" means to declare with reference to a certificate,
36 with ample opportunity to reflect, and with a duty to apprise oneself
37 of all material facts.

1 (8) "Confirm" means to ascertain through appropriate inquiry and
2 investigation.

3 (9) "Correspond," with reference to keys, means to belong to the
4 same key pair.

5 (10) "Digital signature" means a transformation of a message using
6 an asymmetric cryptosystem such that a person having the initial
7 message and the signer's public key can accurately determine:
8 (a) Whether the transformation was created using the private key
9 that corresponds to the signer's public key; and
10 (b) Whether the initial message has been altered since the
11 transformation was made.

12 (11) "Financial institution" means a national or state-chartered
13 commercial bank or trust company, savings bank, savings association, or
14 credit union authorized to do business in the state of Washington and
15 the deposits of which are federally insured.

16 (12) "Forge a digital signature" means either:
17 (a) To create a digital signature without the authorization of the
18 rightful holder of the private key; or
19 (b) To create a digital signature verifiable by a certificate
20 listing as subscriber a person who either:
21 (i) Does not exist; or
22 (ii) Does not hold the private key corresponding to the public key
23 listed in the certificate.

24 (13) "Hold a private key" means to be authorized to utilize a
25 private key.

26 (14) "Incorporate by reference" means to make one message a part of
27 another message by identifying the message to be incorporated and
28 expressing the intention that it be incorporated.

29 (15) "Issue a certificate" means the acts of a certification
30 authority in creating a certificate and notifying the subscriber listed
31 in the certificate of the contents of the certificate.

32 (16) "Key pair" means a private key and its corresponding public
33 key in an asymmetric cryptosystem, keys which have the property that
34 the public key can verify a digital signature that the private key
35 creates.

36 (17) "Licensed certification authority" means a certification
37 authority to whom a license has been issued by the secretary and whose
38 license is in effect.

39 (18) "Message" means a digital representation of information.

1 (19) "Notify" means to communicate a fact to another person in a
2 manner reasonably likely under the circumstances to impart knowledge of
3 the information to the other person.

4 (20) "Operative personnel" means one or more natural persons acting
5 as a certification authority or its agent, or in the employment of, or
6 under contract with, a certification authority, and who have:

7 (a) Managerial or policymaking responsibilities for the
8 certification authority; or

9 (b) Duties directly involving the issuance of certificates,
10 creation of private keys, or administration of a certification
11 authority's computing facilities.

12 (21) "Person" means a human being or an organization capable of
13 signing a document, either legally or as a matter of fact.

14 (22) "Private key" means the key of a key pair used to create a
15 digital signature.

16 (23) "Public key" means the key of a key pair used to verify a
17 digital signature.

18 (24) "Publish" means to record or file in a repository.

19 (25) "Qualified right to payment" means an award of damages against
20 a licensed certification authority by a court having jurisdiction over
21 the certification authority in a civil action for violation of this
22 chapter.

23 (26) "Recipient" means a person who receives or has a digital
24 signature and is in a position to rely on it.

25 (27) "Recognized repository" means a repository recognized by the
26 secretary under section 501 of this act.

27 (28) "Recommended reliance limit" means the monetary amount
28 recommended for reliance on a certificate under section 309(1) of this
29 act.

30 (29) "Repository" means a system for storing and retrieving
31 certificates and other information relevant to digital signatures.

32 (30) "Revoke a certificate" means to make a certificate ineffective
33 permanently from a specified time forward. Revocation is effected by
34 notation or inclusion in a set of revoked certificates, and does not
35 imply that a revoked certificate is destroyed or made illegible.

36 (31) "Rightfully hold a private key" means the authority to utilize
37 a private key:

38 (a) That the holder or the holder's agents have not disclosed to a
39 person in violation of section 305(1) of this act; and

1 (b) That the holder has not obtained through theft, deceit,
2 eavesdropping, or other unlawful means.

3 (32) "Secretary" means the secretary of state.

4 (33) "Subscriber" means a person who:

5 (a) Is the subject listed in a certificate;

6 (b) Accepts the certificate; and

7 (c) Holds a private key that corresponds to a public key listed in
8 that certificate.

9 (34) "Suitable guaranty" means either a surety bond executed by a
10 surety authorized by the insurance commissioner to do business in this
11 state, or an irrevocable letter of credit issued by a financial
12 institution authorized to do business in this state, which, in either
13 event, satisfies all of the following requirements:

14 (a) It is issued payable to the secretary for the benefit of
15 persons holding qualified rights of payment against the licensed
16 certification authority named as the principal of the bond or customer
17 of the letter of credit;

18 (b) It is in an amount specified by rule by the secretary under
19 section 104 of this act;

20 (c) It states that it is issued for filing under this chapter;

21 (d) It specifies a term of effectiveness extending at least as long
22 as the term of the license to be issued to the certification authority;
23 and

24 (e) It is in a form prescribed or approved by rule by the
25 secretary.

26 A suitable guaranty may also provide that the total annual
27 liability on the guaranty to all persons making claims based on it may
28 not exceed the face amount of the guaranty.

29 (35) "Suspend a certificate" means to make a certificate
30 ineffective temporarily for a specified time forward.

31 (36) "Time stamp" means either:

32 (a) To append or attach to a message, digital signature, or
33 certificate a digitally signed notation indicating at least the date,
34 time, and identity of the person appending or attaching the notation;
35 or

36 (b) The notation thus appended or attached.

37 (37) "Transactional certificate" means a valid certificate
38 incorporating by reference one or more digital signatures.

1 (38) "Trustworthy system" means computer hardware and software
2 that:

3 (a) Are reasonably secure from intrusion and misuse;

4 (b) Provide a reasonable level of availability, reliability, and
5 correct operation; and

6 (c) Are reasonably suited to performing their intended functions.

7 (39) "Valid certificate" means a certificate that:

8 (a) A licensed certification authority has issued;

9 (b) The subscriber listed in it has accepted;

10 (c) Has not been revoked or suspended; and

11 (d) Has not expired.

12 However, a transactional certificate is a valid certificate only in
13 relation to the digital signature incorporated in it by reference.

14 (40) "Verify a digital signature" means, in relation to a given
15 digital signature, message, and public key, to determine accurately
16 that:

17 (a) The digital signature was created by the private key
18 corresponding to the public key; and

19 (b) The message has not been altered since its digital signature
20 was created.

21 NEW SECTION. **Sec. 104.** ROLE OF THE SECRETARY. (1) If six months
22 elapse during which time no certification authority is licensed in this
23 state, then the secretary shall be a certification authority, and may
24 issue, suspend, and revoke certificates in the manner prescribed for
25 licensed certification authorities. Except for licensing requirements,
26 this chapter applies to the secretary with respect to certificates he
27 or she issues. The secretary must discontinue acting as a
28 certification authority if another certification authority is licensed,
29 in a manner allowing reasonable transition to private enterprise.

30 (2) The secretary must maintain a publicly accessible data base
31 containing a certification authority disclosure record for each
32 licensed certification authority. The secretary must publish the
33 contents of the data base in at least one recognized repository.

34 (3) The secretary must adopt rules consistent with this chapter and
35 in furtherance of its purposes:

36 (a) To govern licensed certification authorities, their practice,
37 and the termination of a certification authority's practice;

1 (b) To determine an amount reasonably appropriate for a suitable
2 guaranty, in light of the burden a suitable guaranty places upon
3 licensed certification authorities and the assurance of quality and
4 financial responsibility it provides to persons who rely on
5 certificates issued by licensed certification authorities;

6 (c) To specify reasonable requirements for the form of certificates
7 issued by licensed certification authorities, in accordance with
8 generally accepted standards for digital signature certificates;

9 (d) To specify reasonable requirements for recordkeeping by
10 licensed certification authorities;

11 (e) To specify reasonable requirements for the content, form, and
12 sources of information in certification authority disclosure records,
13 the updating and timeliness of the information, and other practices and
14 policies relating to certification authority disclosure records;

15 (f) To specify the form of certification practice statements; and

16 (g) Otherwise to give effect to and implement this chapter.

17 NEW SECTION. **Sec. 105.** FEES OF THE SECRETARY. The secretary may
18 adopt rules establishing reasonable fees for all services rendered
19 under this chapter, in amounts sufficient to compensate for the costs
20 of all services under this chapter. All fees recovered by the
21 secretary must be deposited in the state general fund.

22 **PART II. LICENSING AND REGULATION OF CERTIFICATE AUTHORITIES**

23 NEW SECTION. **Sec. 201.** LICENSURE AND QUALIFICATIONS OF
24 CERTIFICATION AUTHORITIES. (1) To obtain or retain a license, a
25 certification authority must:

26 (a) Be the subscriber of a certificate published in a recognized
27 repository;

28 (b) Employ as operative personnel only persons who have not been
29 convicted within the past fifteen years of a felony or a crime
30 involving fraud, false statement, or deception;

31 (c) Employ as operative personnel only persons who have
32 demonstrated knowledge and proficiency in following the requirements of
33 this chapter;

34 (d) File with the secretary a suitable guaranty, unless the
35 certification authority is a department, office, or official of a
36 state, city, or county governmental entity, provided that:

1 (i) Each of the public entities in (d) of this subsection act
2 through designated officials authorized by rule or ordinance to perform
3 certification authority functions; or

4 (ii) This state or one of the public entities in (d) of this
5 subsection is the subscriber of all certificates issued by the
6 certification authority;

7 (e) Have the right to use a trustworthy system, including a secure
8 means for limiting access to its private key;

9 (f) Present proof to the secretary of having working capital
10 reasonably sufficient, according to rules adopted by the secretary, to
11 enable the applicant to conduct business as a certification authority;

12 (g) Maintain an office in this state or have established a
13 registered agent for service of process in this state; and

14 (h) Comply with all further licensing requirements established by
15 rule by the secretary.

16 (2) The secretary must issue a license to a certification authority
17 that:

18 (a) Is qualified under subsection (1) of this section;

19 (b) Applies in writing to the secretary for a license; and

20 (c) Pays a filing fee adopted by rule by the secretary.

21 (3) The secretary may by rule classify licenses according to
22 specified limitations, such as a maximum number of outstanding
23 certificates, cumulative maximum of recommended reliance limits in
24 certificates issued by the certification authority, or issuance only
25 within a single firm or organization, and the secretary may issue
26 licenses restricted according to the limits of each classification. A
27 certification authority acts as an unlicensed certification authority
28 in issuing a certificate exceeding the restrictions of the
29 certification authority's license.

30 (4) The secretary may revoke or suspend a certification authority's
31 license, in accordance with the administrative procedure act, chapter
32 34.05 RCW, for failure to comply with this chapter or for failure to
33 remain qualified under subsection (1) of this section.

34 (5) The secretary may recognize by rule the licensing or
35 authorization of certification authorities by other governmental
36 entities, provided that those licensing or authorization requirements
37 are substantially similar to those of this state. If licensing by
38 another government is so recognized:

1 (a) Sections 401 through 406 of this act apply to certificates
2 issued by the certification authorities licensed or authorized by that
3 government in the same manner as it applies to licensed certification
4 authorities of this state; and

5 (b) The liability limits of section 309 of this act apply to the
6 certification authorities licensed or authorized by that government in
7 the same manner as they apply to licensed certification authorities of
8 this state.

9 (6) Unless the parties provide otherwise by contract between
10 themselves, the licensing requirements in this section do not affect
11 the effectiveness, enforceability, or validity of any digital
12 signature, except that sections 401 through 406 of this act do not
13 apply in relation to a digital signature that cannot be verified by a
14 certificate issued by an unlicensed certification authority.

15 (7) A certification authority that has not obtained a license is
16 not subject to the provisions of this chapter.

17 NEW SECTION. **Sec. 202.** PERFORMANCE AUDITS. (1) A certified
18 public accountant having expertise in computer security or an
19 accredited computer security professional must audit the operations of
20 each licensed certification authority at least once each year to
21 evaluate compliance with this chapter. The secretary may by rule
22 specify the qualifications of auditors.

23 (2) Based on information gathered in the audit, the auditor must
24 categorize the licensed certification authority's compliance as one of
25 the following:

26 (a) Full compliance. The certification authority appears to
27 conform to all applicable statutory and regulatory requirements.

28 (b) Substantial compliance. The certification authority appears
29 generally to conform to applicable statutory and regulatory
30 requirements. However, one or more instances of noncompliance or of
31 inability to demonstrate compliance were found in an audited sample,
32 but were likely to be inconsequential.

33 (c) Partial compliance. The certification authority appears to
34 comply with some statutory and regulatory requirements, but was found
35 not to have complied or not to be able to demonstrate compliance with
36 one or more important safeguards.

37 (d) Noncompliance. The certification authority complies with few
38 or none of the statutory and regulatory requirements, fails to keep

1 adequate records to demonstrate compliance with more than a few
2 requirements, or refused to submit to an audit.

3 The secretary must publish in the certification authority
4 disclosure record it maintains for the certification authority the date
5 of the audit and the resulting categorization of the certification
6 authority.

7 (3) The secretary may exempt a licensed certification authority
8 from the requirements of subsection (1) of this section, if:

9 (a) The certification authority to be exempted requests exemption
10 in writing;

11 (b) The most recent performance audit, if any, of the certification
12 authority resulted in a finding of full or substantial compliance; and

13 (c) The certification authority declares under oath, affirmation,
14 or penalty of perjury that one or more of the following is true with
15 respect to the certification authority:

16 (i) The certification authority has issued fewer than six
17 certificates during the past year and the recommended reliance limits
18 of all of the certificates do not exceed ten thousand dollars;

19 (ii) The aggregate lifetime of all certificates issued by the
20 certification authority during the past year is less than thirty days
21 and the recommended reliance limits of all of the certificates do not
22 exceed ten thousand dollars; or

23 (iii) The recommended reliance limits of all certificates
24 outstanding and issued by the certification authority total less than
25 one thousand dollars.

26 (4) If the certification authority's declaration under subsection
27 (3) of this section falsely states a material fact, the certification
28 authority has failed to comply with the performance audit requirements
29 of this section.

30 (5) If a licensed certification authority is exempt under
31 subsection (3) of this section, the secretary must publish in the
32 certification authority disclosure record it maintains for the
33 certification authority that the certification authority is exempt from
34 the performance audit requirement.

35 NEW SECTION. **Sec. 203.** ENFORCEMENT OF REQUIREMENTS FOR LICENSED
36 CERTIFICATION AUTHORITIES. (1) The secretary may investigate the
37 activities of a licensed certification authority material to its
38 compliance with this chapter and issue orders to a certification

1 authority to further its investigation and secure compliance with this
2 chapter.

3 (2) The secretary may suspend or revoke the license of a
4 certification authority for its failure to comply with an order of the
5 secretary.

6 (3) The secretary may by order impose and collect a civil monetary
7 penalty for a violation of this chapter in an amount not to exceed five
8 thousand dollars per incident, or ninety percent of the recommended
9 reliance limit of a material certificate, whichever is less. In case
10 of a violation continuing for more than one day, each day is considered
11 a separate incident.

12 (4) The secretary may order a certification authority, which it has
13 found to be in violation of this chapter, to pay the costs incurred by
14 the secretary in prosecuting and adjudicating proceedings relative to
15 the order, and enforcing it.

16 (5) The secretary must exercise authority under this section in
17 accordance with the administrative procedure act, chapter 34.05 RCW,
18 and a licensed certification authority may obtain judicial review of
19 the secretary's actions as prescribed by chapter 34.05 RCW. The
20 secretary may also seek injunctive relief to compel compliance with an
21 order.

22 NEW SECTION. **Sec. 204.** DANGEROUS ACTIVITIES BY A CERTIFICATION
23 AUTHORITY PROHIBITED. (1) No certification authority, whether licensed
24 or not, may conduct its business in a manner that creates an
25 unreasonable risk of loss to subscribers of the certification
26 authority, to persons relying on certificates issued by the
27 certification authority, or to a repository.

28 (2) The secretary may publish in the repository it provides, or
29 elsewhere, brief statements advising subscribers, persons relying on
30 digital signatures, or other repositories about activities of a
31 certification authority, whether licensed or not, that create a risk
32 prohibited by subsection (1) of this section. The certification
33 authority named in a statement as creating or causing such a risk may
34 protest the publication of the statement by filing a written defense of
35 ten thousand bytes or less. Upon receipt of such a protest, the
36 secretary must publish the protest along with the secretary's
37 statement, and must promptly give the protesting certification
38 authority notice and an opportunity to be heard. Following the

1 hearing, the secretary must rescind the advisory statement if its
2 publication was unwarranted under this section, cancel it if its
3 publication is no longer warranted, continue or amend it if it remains
4 warranted, or take further legal action to eliminate or reduce a risk
5 prohibited by subsection (1) of this section. The secretary must
6 publish its decision in the repository it provides.

7 (3) In the manner provided by the administrative procedure act,
8 chapter 34.05 RCW, the secretary may issue orders and obtain
9 injunctions or other civil relief to prevent or restrain a
10 certification authority from violating this section, regardless of
11 whether the certification authority is licensed. This section does not
12 create a right of action in a person other than the secretary.

13 **PART III. DUTIES OF CERTIFICATION AUTHORITIES AND SUBSCRIBERS**

14 NEW SECTION. **Sec. 301.** GENERAL REQUIREMENTS FOR CERTIFICATION
15 AUTHORITIES. (1) A licensed certification authority or subscriber may
16 use only a trustworthy system:

- 17 (a) To issue, suspend, or revoke a certificate;
18 (b) To publish or give notice of the issuance, suspension, or
19 revocation of a certificate; or
20 (c) To create a private key.

21 (2) A licensed certification authority must disclose any material
22 certification practice statement, and any fact material to either the
23 reliability of a certificate that it has issued or its ability to
24 perform its services. A certification authority may require a signed,
25 written, and reasonably specific inquiry from an identified person, and
26 payment of reasonable compensation, as conditions precedent to
27 effecting a disclosure required in this subsection.

28 NEW SECTION. **Sec. 302.** ISSUANCE OF A CERTIFICATE. (1) A licensed
29 certification authority may issue a certificate to a subscriber only
30 after all of the following conditions are satisfied:

- 31 (a) The certification authority has received a request for issuance
32 signed by the prospective subscriber; and
33 (b) The certification authority has confirmed that:
34 (i) The prospective subscriber is the person to be listed in the
35 certificate to be issued;

1 (ii) If the prospective subscriber is acting through one or more
2 agents, the subscriber duly authorized the agent or agents to have
3 custody of the subscriber's private key and to request issuance of a
4 certificate listing the corresponding public key;

5 (iii) The information in the certificate to be issued is accurate;

6 (iv) The prospective subscriber rightfully holds the private key
7 corresponding to the public key to be listed in the certificate;

8 (v) The prospective subscriber holds a private key capable of
9 creating a digital signature; and

10 (vi) The public key to be listed in the certificate can be used to
11 verify a digital signature affixed by the private key held by the
12 prospective subscriber.

13 The requirements of this subsection may not be waived or disclaimed
14 by either the licensed certification authority, the subscriber, or
15 both.

16 (2) If the subscriber accepts the issued certificate, the
17 certification authority must publish a signed copy of the certificate
18 in a recognized repository, as the certification authority and the
19 subscriber named in the certificate may agree, unless a contract
20 between the certification authority and the subscriber provides
21 otherwise. If the subscriber does not accept the certificate, a
22 licensed certification authority must not publish it, or must cancel
23 its publication if the certificate has already been published.

24 (3) Nothing in this section precludes a licensed certification
25 authority from conforming to standards, certification practice
26 statements, security plans, or contractual requirements more rigorous
27 than, but nevertheless consistent with, this chapter.

28 (4) After issuing a certificate, a licensed certification authority
29 must revoke it immediately upon confirming that it was not issued as
30 required by this section. A licensed certification authority may also
31 suspend a certificate that it has issued for a reasonable period not
32 exceeding forty-eight hours as needed for an investigation to confirm
33 grounds for revocation under this subsection. The certification
34 authority must give notice to the subscriber as soon as practicable
35 after a decision to revoke or suspend under this subsection.

36 (5) The secretary may order the licensed certification authority to
37 suspend or revoke a certificate that the certification authority
38 issued, if, after giving any required notice and opportunity for the
39 certification authority and subscriber to be heard in accordance with

1 the administrative procedure act, chapter 34.05 RCW, the secretary
2 determines that:

3 (a) The certificate was issued without substantial compliance with
4 this section; and

5 (b) The noncompliance poses a significant risk to persons
6 reasonably relying on the certificate.

7 Upon determining that an emergency requires an immediate remedy,
8 and in accordance with the administrative procedure act, chapter 34.05
9 RCW, the secretary may issue an order suspending a certificate for a
10 period not to exceed forty-eight hours.

11 NEW SECTION. **Sec. 303.** WARRANTIES AND OBLIGATIONS OF
12 CERTIFICATION AUTHORITY UPON ISSUANCE OF A CERTIFICATE. (1) By issuing
13 a certificate, a licensed certification authority warrants to the
14 subscriber named in the certificate that:

15 (a) The certificate contains no information known to the
16 certification authority to be false;

17 (b) The certificate satisfies all material requirements of this
18 chapter; and

19 (c) The certification authority has not exceeded any limits of its
20 license in issuing the certificate.

21 The certification authority may not disclaim or limit the
22 warranties of this subsection.

23 (2) Unless the subscriber and certification authority otherwise
24 agree, a certification authority, by issuing a certificate, promises to
25 the subscriber:

26 (a) To act promptly to suspend or revoke a certificate in
27 accordance with section 306 or 307 of this act; and

28 (b) To notify the subscriber within a reasonable time of any facts
29 known to the certification authority that significantly affect the
30 validity or reliability of the certificate once it is issued.

31 (3) By issuing a certificate, a licensed certification authority
32 certifies to all who reasonably rely on the information contained in
33 the certificate that:

34 (a) The information in the certificate and listed as confirmed by
35 the certification authority is accurate;

36 (b) All information foreseeably material to the reliability of the
37 certificate is stated or incorporated by reference within the
38 certificate;

1 (c) The subscriber has accepted the certificate; and
2 (d) The licensed certification authority has complied with all
3 applicable laws of this state governing issuance of the certificate.
4 (4) By publishing a certificate, a licensed certification authority
5 certifies to the repository in which the certificate is published and
6 to all who reasonably rely on the information contained in the
7 certificate that the certification authority has issued the certificate
8 to the subscriber.

9 NEW SECTION. Sec. 304. REPRESENTATIONS AND DUTIES UPON ACCEPTANCE
10 OF A CERTIFICATE. (1) By accepting a certificate issued by a licensed
11 certification authority, the subscriber listed in the certificate
12 certifies to all who reasonably rely on the information contained in
13 the certificate that:

14 (a) The subscriber rightfully holds the private key corresponding
15 to the public key listed in the certificate;

16 (b) All representations made by the subscriber to the certification
17 authority and material to the information listed in the certificate are
18 true; and

19 (c) All material representations made by the subscriber to a
20 certification authority or made in the certificate and not confirmed by
21 the certification authority in issuing the certificate are true.

22 (2) By requesting on behalf of a principal the issuance of a
23 certificate naming the principal as subscriber, the requesting person
24 certifies in that person's own right to all who reasonably rely on the
25 information contained in the certificate that the requesting person:

26 (a) Holds all authority legally required to apply for issuance of
27 a certificate naming the principal as subscriber; and

28 (b) Has authority to sign digitally on behalf of the principal,
29 and, if that authority is limited in any way, adequate safeguards exist
30 to prevent a digital signature exceeding the bounds of the person's
31 authority.

32 (3) No person may disclaim or contractually limit the application
33 of this section, nor obtain indemnity for its effects, if the
34 disclaimer, limitation, or indemnity restricts liability for
35 misrepresentation as against persons reasonably relying on the
36 certificate.

1 (4) By accepting a certificate, a subscriber undertakes to
2 indemnify the issuing certification authority for loss or damage caused
3 by issuance or publication of a certificate in reliance on:

4 (a) A false and material representation of fact by the subscriber;
5 or

6 (b) The failure by the subscriber to disclose a material fact;
7 if the representation or failure to disclose was made either with
8 intent to deceive the certification authority or a person relying on
9 the certificate, or with negligence. If the certification authority
10 issued the certificate at the request of one or more agents of the
11 subscriber, the agent or agents personally undertake to indemnify the
12 certification authority under this subsection, as if they were
13 accepting subscribers in their own right. The indemnity provided in
14 this section may not be disclaimed or contractually limited in scope.
15 However, a contract may provide consistent, additional terms regarding
16 the indemnification.

17 (5) In obtaining information of the subscriber material to issuance
18 of a certificate, the certification authority may require the
19 subscriber to certify the accuracy of relevant information under oath
20 or affirmation of truthfulness and under penalty of perjury.

21 NEW SECTION. **Sec. 305.** CONTROL OF THE PRIVATE KEY. (1) By
22 accepting a certificate issued by a licensed certification authority,
23 the subscriber identified in the certificate assumes a duty to exercise
24 reasonable care to retain control of the private key and prevent its
25 disclosure to a person not authorized to create the subscriber's
26 digital signature.

27 (2) A private key is the personal property of the subscriber who
28 rightfully holds it.

29 (3) If a certification authority holds the private key
30 corresponding to a public key listed in a certificate that it has
31 issued, the certification authority holds the private key as a
32 fiduciary of the subscriber named in the certificate, and may use that
33 private key only with the subscriber's prior, written approval, unless
34 the subscriber expressly grants the private key to the certification
35 authority and expressly permits the certification authority to hold the
36 private key according to other terms.

1 NEW SECTION. **Sec. 306.** SUSPENSION OF A CERTIFICATE. (1) Unless
2 the certification authority and the subscriber agree otherwise, the
3 licensed certification authority that issued a certificate that is not
4 a transactional certificate must suspend the certificate for a period
5 not to exceed forty-eight hours:

6 (a) Upon request by a person identifying himself or herself as the
7 subscriber named in the certificate, or as a person in a position
8 likely to know of a compromise of the security of a subscriber's
9 private key, such as an agent, business associate, employee, or member
10 of the immediate family of the subscriber; or

11 (b) By order of the secretary under section 302(5) of this act.

12 The certification authority need not confirm the identity or agency
13 of the person requesting suspension.

14 (2) Unless the certificate provides otherwise or the certificate is
15 a transactional certificate, the secretary or a county clerk may
16 suspend a certificate issued by a licensed certification authority for
17 a period of forty-eight hours, if:

18 (a) A person identifying himself or herself as the subscriber named
19 in the certificate or as an agent, business associate, employee, or
20 member of the immediate family of the subscriber requests suspension;
21 and

22 (b) The requester represents that the certification authority that
23 issued the certificate is unavailable.

24 The secretary or county clerk may require the person requesting
25 suspension to provide evidence, including a statement under oath or
26 affirmation, regarding his or her identity, authorization, or the
27 unavailability of the issuing certification authority, and may decline
28 to suspend the certificate in its discretion. The secretary or law
29 enforcement agencies may investigate suspensions by the secretary or
30 county clerk for possible wrongdoing by persons requesting suspension.

31 (3) Immediately upon suspension of a certificate by a licensed
32 certification authority, the licensed certification authority must give
33 notice of the suspension according to the specification in the
34 certificate. If one or more repositories are specified, then the
35 licensed certification authority must publish a signed notice of the
36 suspension in all the repositories. If a repository no longer exists
37 or refuses to accept publication, or if no repository is recognized
38 under section 501 of this act, the licensed certification authority
39 must also publish the notice in a recognized repository. If a

1 certificate is suspended by the secretary or county clerk, the
2 secretary or clerk must give notice as required in this subsection for
3 a licensed certification authority, provided that the person requesting
4 suspension pays in advance any fee required by a repository for
5 publication of the notice of suspension.

6 (4) A certification authority must terminate a suspension initiated
7 by request only:

8 (a) If the subscriber named in the suspended certificate requests
9 termination of the suspension, the certification authority has
10 confirmed that the person requesting suspension is the subscriber or an
11 agent of the subscriber authorized to terminate the suspension; or

12 (b) When the certification authority discovers and confirms that
13 the request for the suspension was made without authorization by the
14 subscriber. However, this subsection (4)(b) does not require the
15 certification authority to confirm a request for suspension.

16 (5) The contract between a subscriber and a licensed certification
17 authority may limit or preclude requested suspension by the
18 certification authority, or may provide otherwise for termination of a
19 requested suspension. However, if the contract limits or precludes
20 suspension by the secretary or county clerk when the issuing
21 certification authority is unavailable, the limitation or preclusion
22 is effective only if notice of it is published in the certificate.

23 (6) No person may knowingly or intentionally misrepresent to a
24 certification authority his or her identity or authorization in
25 requesting suspension of a certificate. Violation of this subsection
26 is a misdemeanor.

27 (7) The subscriber is released from the duty to keep the private
28 key secure under section 305(1) of this act while the certificate is
29 suspended.

30 NEW SECTION. **Sec. 307.** REVOCATION OF A CERTIFICATE. (1) A
31 licensed certification authority must revoke a certificate that it
32 issued but which is not a transactional certificate, after:

33 (a) Receiving a request for revocation by the subscriber named in
34 the certificate; and

35 (b) Confirming that the person requesting revocation is the
36 subscriber, or is an agent of the subscriber with authority to request
37 the revocation.

1 (2) A licensed certification authority must confirm a request for
2 revocation and revoke a certificate within one business day after
3 receiving both a subscriber's written request and evidence reasonably
4 sufficient to confirm the identity and any agency of the person
5 requesting the suspension.

6 (3) A licensed certification authority must revoke a certificate
7 that it issued:

8 (a) Upon receiving a certified copy of the subscriber's death
9 certificate, or upon confirming by other evidence that the subscriber
10 is dead; or

11 (b) Upon presentation of documents effecting a dissolution of the
12 subscriber, or upon confirming by other evidence that the subscriber
13 has been dissolved or has ceased to exist.

14 (4) A licensed certification authority may revoke one or more
15 certificates that it issued if the certificates are or become
16 unreliable, regardless of whether the subscriber consents to the
17 revocation and notwithstanding a provision to the contrary in a
18 contract between the subscriber and certification authority.

19 (5) Immediately upon revocation of a certificate by a licensed
20 certification authority, the licensed certification authority must give
21 notice of the revocation according to the specification in the
22 certificate. If one or more repositories are specified, then the
23 licensed certification authority must publish a signed notice of the
24 revocation in all repositories. If a repository no longer exists or
25 refuses to accept publication, or if no repository is recognized under
26 section 501 of this act, then the licensed certification authority must
27 also publish the notice in a recognized repository.

28 (6) A subscriber ceases to certify, as provided in section 304 of
29 this act, and has no further duty to keep the private key secure, as
30 required by section 305 of this act, in relation to the certificate
31 whose revocation the subscriber has requested, beginning at the earlier
32 of either:

33 (a) When notice of the revocation is published as required in
34 subsection (5) of this section; or

35 (b) One business day after the subscriber requests revocation in
36 writing, supplies to the issuing certification authority information
37 reasonably sufficient to confirm the request, and pays any
38 contractually required fee.

1 (7) Upon notification as required by subsection (5) of this
2 section, a licensed certification authority is discharged of its
3 warranties based on issuance of the revoked certificate and ceases to
4 certify as provided in section 303(2) and (3) of this act in relation
5 to the revoked certificate.

6 NEW SECTION. **Sec. 308.** EXPIRATION OF A CERTIFICATE. (1) A
7 certificate must indicate the date on which it expires.

8 (2) When a certificate expires, the subscriber and certification
9 authority cease to certify as provided in this chapter and the
10 certification authority is discharged of its duties based on issuance,
11 in relation to the expired certificate.

12 NEW SECTION. **Sec. 309.** RECOMMENDED RELIANCE LIMITS AND LIABILITY.

13 (1) By specifying a recommended reliance limit in a certificate, the
14 issuing certification authority and accepting subscriber recommend that
15 persons rely on the certificate only to the extent that the total
16 amount at risk does not exceed the recommended reliance limit.

17 (2) Unless a licensed certification authority waives application of
18 this subsection, a licensed certification authority is:

19 (a) Not liable for a loss caused by reliance on a false or forged
20 digital signature of a subscriber, if, with respect to the false or
21 forged digital signature, the certification authority complied with all
22 material requirements of this chapter;

23 (b) Not liable in excess of the amount specified in the certificate
24 as its recommended reliance limit for either:

25 (i) A loss caused by reliance on a misrepresentation in the
26 certificate of a fact that the licensed certification authority is
27 required to confirm; or

28 (ii) Failure to comply with section 302 of this act in issuing the
29 certificate;

30 (c) Liable only for direct compensatory damages in an action to
31 recover a loss due to reliance on the certificate. Direct compensatory
32 damages do not include:

33 (i) Punitive or exemplary damages. Nothing in this chapter may be
34 interpreted to permit punitive or exemplary damages that would not
35 otherwise be permitted by the law of this state;

36 (ii) Damages for lost profits or opportunity; or

37 (iii) Damages for pain or suffering.

1 NEW SECTION. **Sec. 310.** COLLECTION BASED ON SUITABLE GUARANTY.

2 (1)(a) If the suitable guaranty is a surety bond, a person may recover
3 from the surety the full amount of a qualified right to payment against
4 the principal named in the bond, or, if there is more than one such
5 qualified right to payment during the term of the bond, a ratable
6 share, up to a maximum total liability of the surety equal to the
7 amount of the bond.

8 (b) If the suitable guaranty is a letter of credit, a person may
9 recover from the issuing financial institution only in accordance with
10 the terms of the letter of credit.

11 Claimants may recover successively on the same suitable guaranty,
12 provided that the total liability on the suitable guaranty to all
13 persons making qualified rights of payment during its term must not
14 exceed the amount of the suitable guaranty.

15 (2) In addition to recovering the amount of a qualified right to
16 payment, a claimant may recover from the proceeds of the guaranty,
17 until depleted, the attorneys' fees, reasonable in amount, and court
18 costs incurred by the claimant in collecting the claim, provided that
19 the total liability on the suitable guaranty to all persons making
20 qualified rights of payment or recovering attorneys' fees during its
21 term must not exceed the amount of the suitable guaranty.

22 (3) To recover a qualified right to payment against a surety or
23 issuer of a suitable guaranty, the claimant must:

24 (a) File written notice of the claim with the secretary stating the
25 name and address of the claimant, the amount claimed, and the grounds
26 for the qualified right to payment, and any other information required
27 by rule by the secretary; and

28 (b) Append to the notice a certified copy of the judgment on which
29 the qualified right to payment is based.

30 Recovery of a qualified right to payment from the proceeds of the
31 suitable guaranty is barred unless the claimant substantially complies
32 with this subsection (3).

33 (4) Recovery of a qualified right to payment from the proceeds of
34 a suitable guaranty are forever barred unless notice of the claim is
35 filed as required in subsection (3)(a) of this section within three
36 years after the occurrence of the violation of this chapter that is the
37 basis for the claim. Notice under this subsection need not include the
38 requirement imposed by subsection (3)(b) of this section.

1 (2) That digital signature is verified by the public key listed in
2 a certificate that:

3 (a) Was issued by a licensed certification authority; and

4 (b) Was valid at the time the digital signature was created.

5 Nothing in this chapter shall be construed to eliminate, modify, or
6 condition any other requirements for a contract to be valid,
7 enforceable, and effective. No digital message shall be deemed to be
8 an instrument under the provisions of Title 62A RCW unless all parties
9 to the transaction agree.

10 NEW SECTION. Sec. 404. DIGITALLY SIGNED ORIGINALS. A copy of a
11 digitally signed message is as effective, valid, and enforceable as the
12 original of the message, unless it is evident that the signer
13 designated an instance of the digitally signed message to be a unique
14 original, in which case only that instance constitutes the valid,
15 effective, and enforceable message.

16 NEW SECTION. Sec. 405. CERTIFICATE AS AN ACKNOWLEDGMENT. Unless
17 otherwise provided by law or contract, a certificate issued by a
18 licensed certification authority is an acknowledgment of a digital
19 signature verified by reference to the public key listed in the
20 certificate, regardless of whether words of an express acknowledgment
21 appear with the digital signature and regardless of whether the signer
22 physically appeared before the certification authority when the digital
23 signature was created, if that digital signature is:

24 (1) Verifiable by that certificate; and

25 (2) Affixed when that certificate was valid.

26 NEW SECTION. Sec. 406. PRESUMPTIONS IN ADJUDICATING DISPUTES. In
27 adjudicating a dispute involving a digital signature, a court of this
28 state presumes that:

29 (1) A certificate digitally signed by a licensed certification
30 authority and either published in a recognized repository, or made
31 available by the issuing certification authority or by the subscriber
32 listed in the certificate is issued by the certification authority that
33 digitally signed it and is accepted by the subscriber listed in it.

34 (2) The information listed in a valid certificate and confirmed by
35 a licensed certification authority issuing the certificate is accurate.

1 (3) If a digital signature is verified by the public key listed in
2 a valid certificate issued by a licensed certification authority:
3 (a) That digital signature is the digital signature of the
4 subscriber listed in that certificate;
5 (b) That digital signature was affixed by that subscriber with the
6 intention of signing the message; and
7 (c) The recipient of that digital signature has no knowledge or
8 notice that the signer:
9 (i) Breached a duty as a subscriber; or
10 (ii) Does not rightfully hold the private key used to affix the
11 digital signature.
12 (4) A digital signature was created before it was time stamped by
13 a disinterested person utilizing a trustworthy system.

14 **PART V. REPOSITORIES**

15 NEW SECTION. **Sec. 501.** RECOGNITION OF REPOSITORIES. (1) The
16 secretary must recognize one or more repositories, after finding that
17 a repository to be recognized:

18 (a) Is operated under the direction of a licensed certification
19 authority;

20 (b) Includes a data base containing:

21 (i) Certificates published in the repository;

22 (ii) Notices of suspended or revoked certificates published by
23 licensed certification authorities or other persons suspending or
24 revoking certificates;

25 (iii) Certification authority disclosure records for licensed
26 certification authorities;

27 (iv) All orders or advisory statements published by the secretary
28 in regulating certification authorities; and

29 (v) Other information adopted by rule by the secretary;

30 (c) Operates by means of a trustworthy system;

31 (d) Contains no significant amount of information that is known or
32 likely to be untrue, inaccurate, or not reasonably reliable;

33 (e) Contains certificates published by certification authorities
34 that conform to legally binding requirements that the secretary finds
35 to be substantially similar to, or more stringent toward the
36 certification authorities, than those of this state;

1 (f) Keeps an archive of certificates that have been suspended or
2 revoked, or that have expired, within at least the past three years;
3 and

4 (g) Complies with other reasonable requirements adopted by rule by
5 the secretary.

6 (2) A repository may apply to the secretary for recognition by
7 filing a written request and providing evidence to the secretary
8 sufficient for the secretary to find that the conditions for
9 recognition are satisfied.

10 (3) A repository may discontinue its recognition by filing thirty
11 days' written notice with the secretary. In addition the secretary may
12 discontinue recognition of a repository in accordance with the
13 administrative procedure act, chapter 34.05 RCW, if it concludes that
14 the repository no longer satisfies the conditions for recognition
15 listed in this section or in rules adopted by the secretary.

16 NEW SECTION. **Sec. 502.** LIABILITY OF REPOSITORIES. (1)
17 Notwithstanding a disclaimer by the repository or a contract to the
18 contrary between the repository, a certification authority, or a
19 subscriber, a repository is liable for a loss incurred by a person
20 reasonably relying on a digital signature verified by the public key
21 listed in a suspended or revoked certificate, if loss was incurred more
22 than one business day after receipt by the repository of a request to
23 publish notice of the suspension or revocation, and the repository had
24 failed to publish the notice when the person relied on the digital
25 signature.

26 (2) Unless waived, a recognized repository or the owner or operator
27 of a recognized repository is:

28 (a) Not liable for failure to record publication of a suspension or
29 revocation, unless the repository has received notice of publication
30 and one business day has elapsed since the notice was received;

31 (b) Not liable under subsection (1) of this section in excess of
32 the amount specified in the certificate as the recommended reliance
33 limit;

34 (c) Liable under subsection (1) of this section only for direct
35 compensatory damages, which do not include:

36 (i) Punitive or exemplary damages;

37 (ii) Damages for lost profits or opportunity; or

38 (iii) Damages for pain or suffering;

1 (d) Not liable for misrepresentation in a certificate published by
2 a licensed certification authority;

3 (e) Not liable for accurately recording or reporting information
4 that a licensed certification authority, or court clerk, or the
5 secretary has published as required or permitted in this chapter,
6 including information about suspension or revocation of a certificate;

7 (f) Not liable for reporting information about a certification
8 authority, a certificate, or a subscriber, if the information is
9 published as required or permitted in this chapter or a rule adopted by
10 the secretary, or is published by order of the secretary in the
11 performance of the licensing and regulatory duties of that office under
12 this chapter.

13 **PART VI. MISCELLANEOUS**

14 NEW SECTION. **Sec. 601.** LEGISLATIVE DIRECTIVE. Sections 101
15 through 502, 603, and 604 of this act shall constitute a new chapter in
16 Title 19 RCW.

17 NEW SECTION. **Sec. 602.** EFFECTIVE DATE. This act shall take
18 effect January 1, 1998.

19 NEW SECTION. **Sec. 603.** RULE MAKING. The secretary of state may
20 adopt rules to implement this chapter beginning July 1, 1996.

21 NEW SECTION. **Sec. 604.** SEVERABILITY. If any provision of this
22 act or its application to any person or circumstance is held invalid,
23 the remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 605.** PART HEADINGS AND SECTION CAPTIONS. Part
26 headings and section captions as used in this act do not constitute any
27 part of the law.

Passed the Senate March 2, 1996.
Passed the House February 28, 1996.
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