

2 **SB 5962** - S AMD - 140  
3 By Senators Brown and Horn

4 ADOPTED 3/11/99

5 Strike everything after the enacting clause and insert the  
6 following:

7 "**Sec. 1.** RCW 19.34.010 and 1996 c 250 s 102 are each amended to  
8 read as follows:

9 This chapter shall be construed consistently with what is  
10 commercially reasonable under the circumstances and to effectuate the  
11 following purposes:

12 (1) To facilitate commerce by means of reliable electronic  
13 messages;

14 (2) To ensure that electronic signatures are not denied legal  
15 recognition solely because they are in electronic form;

16 (3) To provide a voluntary licensing mechanism for digital  
17 signature certification authorities by which businesses, consumers,  
18 courts, government agencies, and other entities can reasonably be  
19 assured as to the integrity, authenticity, and nonrepudiation of a  
20 digitally signed electronic communication;

21 (4) To establish procedures governing the use of digital signatures  
22 for official public business to provide reasonable assurance of the  
23 integrity, authenticity, and nonrepudiation of an electronic  
24 communication;

25 (5) To minimize the incidence of forged digital signatures and  
26 fraud in electronic commerce;

27 ~~((3))~~ (6) To implement legally the general import of relevant  
28 standards(~~(, such as X.509 of the international telecommunication~~  
29 ~~union, formerly known as the international telegraph and telephone~~  
30 ~~consultative committee)); and~~

31 ~~((4))~~ (7) To establish, in coordination with ~~((multiple))~~ states  
32 and other jurisdictions, uniform rules regarding the authentication and  
33 reliability of electronic messages.

34 **Sec. 2.** RCW 19.34.020 and 1997 c 27 s 30 are each amended to read  
35 as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter:

3 (1) "Accept a certificate" means ~~((either:~~  
4 ~~(a)))~~ to manifest approval of a certificate, while knowing or  
5 having notice of its contents~~((; or~~

6 ~~(b) To apply to a licensed certification authority for a~~  
7 ~~certificate, without canceling or revoking the application by~~  
8 ~~delivering notice of the cancellation or revocation to the~~  
9 ~~certification authority and obtaining a signed, written receipt from~~  
10 ~~the certification authority, if the certification authority~~  
11 ~~subsequently issues a certificate based on the application)).~~ Such  
12 approval may be manifested by the use of the certificate.

13 (2) "Accept a digital signature" means to verify a digital  
14 signature or take an action in reliance on a digital signature.

15 (3) "Asymmetric cryptosystem" means an algorithm or series of  
16 algorithms that provide a secure key pair.

17 (4) "Certificate" means a computer-based record that:

18 (a) Identifies the certification authority issuing it;

19 (b) Names or identifies its subscriber;

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

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

22 (5) "Certification authority" means a person who issues a  
23 certificate.

24 (6) "Certification authority disclosure record" means an on-line,  
25 publicly accessible record that concerns a licensed certification  
26 authority and is kept by the secretary. ~~((A certification authority~~  
27 ~~disclosure record has the contents specified by rule by the secretary~~  
28 ~~under RCW 19.34.030.))~~

29 (7) "Certification practice statement" means a declaration of the  
30 practices that a certification authority employs in issuing  
31 certificates ~~((generally, or employed in issuing a material~~  
32 ~~certificate)).~~

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

36 (9) "Confirm" means to ascertain through appropriate inquiry and  
37 investigation.

38 (10) "Correspond," with reference to keys, means to belong to the  
39 same key pair.

1 (11) "Digital signature" means an electronic signature that is a  
2 transformation of a message using an asymmetric cryptosystem such that  
3 a person having the initial message and the signer's public key can  
4 accurately determine:

5 (a) Whether the transformation was created using the private key  
6 that corresponds to the signer's public key; and

7 (b) Whether the initial message has been altered since the  
8 transformation was made.

9 (12) "Electronic" means electrical, digital, magnetic, optical,  
10 electromagnetic, or any other form of technology that entails  
11 capabilities similar to these technologies.

12 (13) "Electronic record" means a record generated, communicated,  
13 received, or stored by electronic means for use in an information  
14 system or for transmission from one information system to another.

15 (14) "Electronic signature" means a signature in electronic form  
16 attached to or logically associated with an electronic record,  
17 including but not limited to a digital signature.

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

22 (~~(13)~~) (16) "Forge a digital signature" means either:

23 (a) To create a digital signature without the authorization of the  
24 rightful holder of the private key; or

25 (b) To create a digital signature verifiable by a certificate  
26 listing as subscriber a person who either:

27 (i) Does not exist; or

28 (ii) Does not hold the private key corresponding to the public key  
29 listed in the certificate.

30 (~~(14)~~) (17) "Hold a private key" means to be authorized to  
31 utilize a private key.

32 (~~(15)~~) (18) "Incorporate by reference" means to make one message  
33 a part of another message by identifying the message to be incorporated  
34 and expressing the intention that it be incorporated.

35 (~~(16)~~) (19) "Issue a certificate" means the acts of a  
36 certification authority in creating a certificate and notifying the  
37 subscriber listed in the certificate of the contents of the  
38 certificate.

1       (~~(17)~~) (20) "Key pair" means a private key and its corresponding  
2 public key in an asymmetric cryptosystem, keys which have the property  
3 that the public key can verify a digital signature that the private key  
4 creates.

5       (~~(18)~~) (21) "Licensed certification authority" means a  
6 certification authority to whom a license has been issued by the  
7 secretary and whose license is in effect.

8       (~~(19)~~) (22) "Message" means a digital representation of  
9 information.

10       (~~(20)~~) (23) "Notify" means to communicate a fact to another  
11 person in a manner reasonably likely under the circumstances to impart  
12 knowledge of the information to the other person.

13       (~~(21)~~) (24) "Official public business" means any legally  
14 authorized transaction or communication among state agencies, tribes,  
15 and local governments, or between a state agency, tribe, or local  
16 government and a private person or entity.

17       (25) "Operative personnel" means one or more natural persons acting  
18 as a certification authority or its agent, or in the employment of, or  
19 under contract with, a certification authority, and who have:

20       (a) (~~(Managerial or policymaking responsibilities for the~~  
21 ~~certification authority; or~~

22       **(b))** Duties directly involving the issuance of certificates,  
23 creation of private keys(~~(, or administration of a certification~~  
24 ~~authority's computing facilities));~~

25       (b) Responsibility for the secure operation of the trustworthy  
26 system used by the certification authority or any recognized  
27 repository;

28       (c) Direct responsibility, beyond general supervisory authority,  
29 for establishing or adopting policies regarding the operation and  
30 security of the certification authority; or

31       (d) Such other responsibilities or duties as the secretary may  
32 establish by rule.

33       (~~(22)~~) (26) "Person" means a human being or an organization  
34 capable of signing a document, either legally or as a matter of fact.

35       (~~(23)~~) (27) "Private key" means the key of a key pair used to  
36 create a digital signature.

37       (~~(24)~~) (28) "Public key" means the key of a key pair used to  
38 verify a digital signature.

1        ~~((25))~~ (29) "Publish" means to ~~((record or file in a repository))~~  
2 make information publicly available.

3        ~~((26))~~ (30) "Qualified right to payment" means an award of  
4 damages against a licensed certification authority by a court having  
5 jurisdiction over the certification authority in a civil action for  
6 violation of this chapter.

7        ~~((27))~~ (31) "Recipient" means a person who has received a  
8 certificate and a digital signature verifiable with reference to a  
9 public key listed in the certificate and is in a position to rely on  
10 it.

11        ~~((28))~~ (32) "Recognized repository" means a repository recognized  
12 by the secretary under RCW 19.34.400.

13        ~~((29))~~ (33) "Recommended reliance limit" means the monetary  
14 amount recommended for reliance on a certificate under RCW  
15 19.34.280(1).

16        ~~((30))~~ (34) "Repository" means a system for storing and  
17 retrieving certificates and other information relevant to digital  
18 signatures.

19        ~~((31))~~ (35) "Revoke a certificate" means to make a certificate  
20 ineffective permanently from a specified time forward. Revocation is  
21 effected by notation or inclusion in a set of revoked certificates, and  
22 does not imply that a revoked certificate is destroyed or made  
23 illegible.

24        ~~((32))~~ (36) "Rightfully hold a private key" means the authority  
25 to utilize a private key:

26        (a) That the holder or the holder's agents have not disclosed to a  
27 person in violation of RCW 19.34.240(1); and

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

30        ~~((33))~~ (37) "Secretary" means the secretary of state.

31        ~~((34))~~ (38) "Subscriber" means a person who:

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

33        (b) Applies for or accepts the certificate; and

34        (c) Holds a private key that corresponds to a public key listed in  
35 that certificate.

36        ~~((35))~~ (39) "Suitable guaranty" means either a surety bond  
37 executed by a surety authorized by the insurance commissioner to do  
38 business in this state, or an irrevocable letter of credit issued by a

1 financial institution authorized to do business in this state, which,  
2 in either event, satisfies all of the following requirements:

3 (a) It is issued payable to the secretary for the benefit of  
4 persons holding qualified rights of payment against the licensed  
5 certification authority named as the principal of the bond or customer  
6 of the letter of credit;

7 (b) It is in an amount specified by rule by the secretary under RCW  
8 19.34.030;

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

10 (d) It specifies a term of effectiveness extending at least as long  
11 as the term of the license to be issued to the certification authority;  
12 and

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

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

18 ~~((+36+))~~ (40) "Suspend a certificate" means to make a certificate  
19 ineffective temporarily for a specified time forward.

20 ~~((+37+))~~ (41) "Time stamp" means either:

21 (a) To append or attach ~~((to a message, digital signature, or  
22 certificate))~~ a digitally signed notation indicating at least the date,  
23 time, and identity of the person appending or attaching the notation to  
24 a message, digital signature, or certificate; or

25 (b) The notation thus appended or attached.

26 ~~((+38+))~~ (42) "Transactional certificate" means a valid certificate  
27 incorporating by reference one or more digital signatures.

28 ~~((+39+))~~ (43) "Trustworthy system" means computer hardware and  
29 software that:

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

31 ~~((Provide a reasonable level of availability, reliability, and  
32 correct operation; and~~

33 ~~(c) Are reasonably suited to performing their intended functions))~~  
34 Conform with the requirements established by the secretary by rule.

35 ~~((+40+))~~ (44) "Valid certificate" means a certificate that:

36 (a) A licensed certification authority has issued;

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

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

39 (d) Has not expired.

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

3        ~~((41))~~ (45) "Verify a digital signature" means, in relation to a  
4 given digital signature, message, and public key, to determine  
5 accurately that:

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

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

10       NEW SECTION.    **Sec. 3.** A new section is added to chapter 19.34 RCW  
11 to read as follows:

12        The presumptions of validity and reasonableness of conduct, and the  
13 limitations on liability in this chapter do not apply to electronic  
14 records or electronic signatures except for digital signatures created  
15 in conformance with all of the requirements of this chapter and rules  
16 adopted under this chapter.

17        **Sec. 4.** RCW 19.34.030 and 1997 c 27 s 1 are each amended to read  
18 as follows:

19        (1) The secretary must ~~((maintain a publicly accessible data base  
20 containing))~~ publish a certification authority disclosure record for  
21 each licensed certification authority, and a list of all judgments  
22 filed with the secretary, within the previous five years, under RCW  
23 19.34.290. ~~((The secretary must publish the contents of the data base  
24 in at least one recognized repository.))~~

25        (2) The secretary may adopt rules consistent with this chapter and  
26 in furtherance of its purposes:

27        (a) To ~~((govern licensed))~~ license certification authorities  
28 ~~((and))~~, ~~((recognized))~~ recognize repositories, ~~((their practice, and  
29 the termination of a licensed certification authority's or recognized  
30 repository's practice))~~ certify operative personnel, and govern the  
31 practices of each;

32        (b) To determine ~~((an))~~ the form and amount reasonably appropriate  
33 for a suitable guaranty, in light of the burden a suitable guaranty  
34 places upon licensed certification authorities and the assurance of  
35 quality and financial responsibility it provides to persons who rely on  
36 certificates issued by licensed certification authorities;

1 (c) To specify reasonable requirements for information to be  
2 contained in or the form of certificates, including transactional  
3 certificates, issued by licensed certification authorities, in  
4 accordance with generally accepted standards for digital signature  
5 certificates;

6 (d) To specify reasonable requirements for recordkeeping by  
7 licensed certification authorities;

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

12 (f) To specify the form of and information required in  
13 certification practice statements, as well as requirements regarding  
14 the publication of certification practice statements;

15 (g) To specify the procedure and manner in which a certificate may  
16 be suspended or revoked, as consistent with this chapter; ((and))

17 (h) To specify the procedure and manner by which the laws of other  
18 jurisdictions may be recognized, in order to further uniform rules  
19 regarding the authentication and reliability of electronic messages;  
20 and

21 (i) Otherwise to give effect to and implement this chapter.

22 (3) The secretary may act as a certification authority, and the  
23 certificates issued by the secretary shall be treated as having been  
24 issued by a licensed certification authority.

25 **Sec. 5.** RCW 19.34.100 and 1998 c 33 s 1 are each amended to read  
26 as follows:

27 (1) To obtain or retain a license, a certification authority must:

28 (a) ~~((Be the subscriber of a certificate published in a recognized~~  
29 ~~repository, which may include any repository maintained by the~~  
30 ~~secretary;~~

31 ~~(b) Knowingly employ as operative personnel only persons who have~~  
32 ~~not been convicted within the past seven years of a felony and have~~  
33 ~~never been convicted of a crime involving fraud, false statement, or~~  
34 ~~deception. The secretary may provide by rule for the manner in which~~  
35 ~~criminal background information is provided as part of the licensing~~  
36 ~~process. For purposes of this provision, a certification authority~~  
37 ~~knowingly employs such a person if the certification authority knew of~~

1 a conviction, or should have known based upon the background  
2 information required by rule of the secretary;

3 ~~(c) Employ as operative personnel only persons who have~~  
4 ~~demonstrated knowledge and proficiency in following the requirements of~~  
5 ~~this chapter;~~

6 ~~(d)) Provide proof of identity to the secretary;~~

7 ~~(b) Employ only certified operative personnel in appropriate~~  
8 ~~positions;~~

9 ~~(c) File with the secretary ((a)) an appropriate, suitable~~  
10 ~~guaranty, unless the certification authority is a city or county that~~  
11 ~~is self-insured or the department of information services;~~

12 ~~((e)) (d) Use a trustworthy system(~~(, including a secure means~~~~  
13 ~~for limiting access to its private key));~~

14 ~~((f)) (e) Maintain an office in this state or have established a~~  
15 ~~registered agent for service of process in this state; and~~

16 ~~((g)) (f) Comply with all further licensing and practice~~  
17 ~~requirements established by rule by the secretary.~~

18 (2) ~~((The secretary must issue a license to a certification~~  
19 ~~authority that:~~

20 ~~(a) Is qualified under subsection (1) of this section;~~  
21 ~~(b) Applies in writing to the secretary for a license; and~~  
22 ~~(c) Pays a filing fee adopted by rule by the secretary.~~

23 ~~(3)) The secretary may by rule ((classify licenses)) create~~  
24 ~~license classifications according to specified limitations, ((such as~~  
25 ~~a maximum number of outstanding certificates, cumulative maximum of~~  
26 ~~recommended reliance limits in certificates issued by the certification~~  
27 ~~authority, or issuance only within a single firm or organization,)) and~~  
28 ~~the secretary may issue licenses restricted according to the limits of~~  
29 ~~each classification. ((The liability limits of RCW 19.34.280 do not~~  
30 ~~apply to a certificate issued by a certification authority that exceeds~~  
31 ~~the restrictions of the certification authority's license.))~~

32 ~~(3) The secretary may impose license restrictions specific to the~~  
33 ~~practices of an individual certification authority. The secretary~~  
34 ~~shall set forth in writing and maintain as part of the certification~~  
35 ~~authority's license application file the basis for such license~~  
36 ~~restrictions.~~

37 (4) The secretary may revoke or suspend a certification authority's  
38 license, in accordance with the administrative procedure act, chapter  
39 34.05 RCW, for failure to comply with this chapter or for failure to

1 remain qualified under subsection (1) of this section. The secretary  
2 may order the summary suspension of a license pending proceedings for  
3 revocation or other action, which must be promptly instituted and  
4 determined, if the secretary includes within a written order a finding  
5 that the certification authority has either:

6 (a) Utilized its license in the commission of a violation of a  
7 state or federal criminal statute or of chapter 19.86 RCW; or

8 (b) Engaged in conduct giving rise to a serious risk of loss to  
9 public or private parties if the license is not immediately suspended.

10 (5) The secretary may recognize by rule the licensing or  
11 authorization of certification authorities by other governmental  
12 entities, in whole or in part, provided that those licensing or  
13 authorization requirements are substantially similar to those of this  
14 state. If licensing by another government is so recognized:

15 (a) RCW 19.34.300 through 19.34.350 apply to certificates issued by  
16 the certification authorities licensed or authorized by that government  
17 in the same manner as it applies to licensed certification authorities  
18 of this state; and

19 (b) The liability limits of RCW 19.34.280 apply to the  
20 certification authorities licensed or authorized by that government in  
21 the same manner as they apply to licensed certification authorities of  
22 this state.

23 ~~(6) ((Unless the parties provide otherwise by contract between  
24 themselves, the licensing requirements in this section do not affect  
25 the effectiveness, enforceability, or validity of any digital  
26 signature, except that RCW 19.34.300 through 19.34.350 do not apply to  
27 a certificate, and associated digital signature, issued by an  
28 unlicensed certification authority.~~

29 ~~(7))~~) A certification authority that has not obtained a license is  
30 not subject to the provisions of this chapter, except as specifically  
31 provided.

32 **Sec. 6.** RCW 19.34.110 and 1997 c 27 s 5 are each amended to read  
33 as follows:

34 (1) A licensed certification authority shall obtain a compliance  
35 audit(~~(, as may be more fully defined by rule of the secretary, at  
36 least once every year. The auditor shall issue an opinion evaluating  
37 the degree to which the certification authority conforms to the  
38 requirements of this chapter and the administrative rules adopted by))~~)

1 at such times and in such manner as directed by rule of the secretary.  
2 If the certification authority is also a recognized repository, the  
3 audit must include the repository.

4 (2) The certification authority shall file a copy of the audit  
5 report with the secretary. The secretary may provide by rule for  
6 filing of the report in an electronic format(~~(. The secretary shall))~~)  
7 and may publish the report in the certification authority disclosure  
8 record it maintains for the certification authority.

9 **Sec. 7.** RCW 19.34.111 and 1997 c 27 s 6 are each amended to read  
10 as follows:

11 (1)~~((a))~~ An auditor signing a report of opinion as to a  
12 compliance audit required by RCW 19.34.110 must:

13 ~~((i))~~ (a) Be a certified public accountant, licensed under  
14 chapter 18.04 RCW or equivalent licensing statute of another  
15 jurisdiction; ~~((or))~~ and

16 ~~((ii))~~ (b) Meet such other qualifications as the secretary may  
17 establish by rule.

18 ~~((b) Auditors must either possess such computer security  
19 qualifications as are necessary to conduct the audit or employ,  
20 contract, or associate with firms or individuals who do. The secretary  
21 may adopt rules establishing qualifications as to expertise or  
22 experience in computer security.))~~

23 (2) The compliance audits of state agencies and local governments  
24 who are licensed certification authorities, and the secretary, must be  
25 performed under the authority of the state auditor. The state auditor  
26 may contract with private entities as needed to comply with this  
27 chapter.

28 **Sec. 8.** RCW 19.34.120 and 1997 c 27 s 7 are each amended to read  
29 as follows:

30 (1) The secretary may investigate the activities of a licensed  
31 certification authority material to its compliance with this chapter  
32 and issue orders to a certification authority to further its  
33 investigation and secure compliance with this chapter.

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

1 (3) The secretary may by order impose and collect a civil  
2 (~~monetary~~) penalty against a licensed certification authority for a  
3 violation of this chapter (~~in an amount~~). The penalty shall not  
4 (~~to~~) exceed ten thousand dollars per incident, or ninety percent of  
5 the recommended reliance limit of a material certificate, whichever is  
6 less. In case of a violation continuing for more than one day, each  
7 day is considered a separate incident. The secretary may adopt rules  
8 setting forth the standards governing the exercise of the secretary's  
9 discretion as to penalty amounts. In the case of a state agency  
10 authorized by law to be a licensed certification authority, the sole  
11 penalty imposed under this subsection shall consist of specific  
12 findings of noncompliance and an order requiring compliance with this  
13 chapter and the rules of the secretary. Any penalty imposed under this  
14 chapter and chapter 34.05 RCW shall be enforceable in any court of  
15 competent jurisdiction.

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

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

26 **Sec. 9.** RCW 19.34.130 and 1996 c 250 s 204 are each amended to  
27 read as follows:

28 (1) No certification authority, whether licensed or not, may  
29 conduct its business in a manner that creates an unreasonable risk of  
30 loss to subscribers of the certification authority, to persons relying  
31 on certificates issued by the certification authority, or to a  
32 repository.

33 (2) The secretary may publish (~~in the repository it provides, or~~  
34 ~~elsewhere,~~) brief statements advising subscribers, persons relying on  
35 digital signatures, or other repositories about activities of a  
36 certification authority, whether licensed or not, that create a risk  
37 prohibited by subsection (1) of this section. The certification  
38 authority named in a statement as creating or causing such a risk may

1 protest the publication of the statement by filing a written defense of  
2 ten thousand bytes or less. Upon receipt of such a protest, the  
3 secretary must publish the protest along with the secretary's  
4 statement, and must promptly give the protesting certification  
5 authority notice and an opportunity to be heard. Following the  
6 hearing, the secretary must rescind the advisory statement if its  
7 publication was unwarranted under this section, cancel it if its  
8 publication is no longer warranted, continue or amend it if it remains  
9 warranted, or take further legal action to eliminate or reduce a risk  
10 prohibited by subsection (1) of this section. The secretary must  
11 publish its decision in the repository it provides.

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

18 **Sec. 10.** RCW 19.34.200 and 1997 c 27 s 8 are each amended to read  
19 as follows:

20 (1) A licensed certification authority (~~(or subscriber)~~) shall use  
21 only a trustworthy system(~~(+~~  
22 ~~(a))~~) to issue, suspend, or revoke (~~(a certificate;~~  
23 ~~(b))~~) certificates. A licensed certification authority shall use  
24 a recognized repository to publish or give notice of the issuance,  
25 suspension, or revocation of a certificate(~~(; or~~  
26 ~~(c) To create a private key))~~).

27 (2) A licensed certification authority (~~(must disclose any material~~  
28 ~~certification practice statement, and any fact material to either the~~  
29 ~~reliability of a certificate that it has issued or its ability to~~  
30 ~~perform its services. A certification authority may require a signed,~~  
31 ~~written, and reasonably specific inquiry from an identified person, and~~  
32 ~~payment of reasonable compensation, as conditions precedent to~~  
33 ~~effecting a disclosure required in this subsection.))~~ shall publish a  
34 certification practice statement in accordance with the rules  
35 established by the secretary. The secretary shall publish the  
36 certification practice statements of licensed certification authorities  
37 submitted as part of the licensing process in a manner similar to the  
38 publication of the certification authority disclosure record.

1       (3) A licensed certification authority shall knowingly employ as  
2 operative personnel only persons who have not been convicted within the  
3 past seven years of a felony and have never been convicted of a crime  
4 involving fraud, false statement, or deception. For purposes of this  
5 subsection, a certification authority knowingly employs such a person  
6 if the certification authority knew of a conviction, or should have  
7 known based on information required by rule of the secretary.  
8 Operative personnel employed by a licensed certification authority must  
9 also be persons who have demonstrated knowledge and proficiency in  
10 following the requirements of this chapter. The secretary may provide  
11 by rule for the certification of operative personnel, and provide by  
12 rule for the manner in which criminal background information is  
13 provided as part of the certification process, as well as the manner in  
14 which knowledge and proficiency in following the requirements of this  
15 chapter may be demonstrated.

16       **Sec. 11.** RCW 19.34.210 and 1997 c 27 s 9 are each amended to read  
17 as follows:

18       (1) A licensed certification authority may issue a certificate to  
19 a subscriber only after all of the following conditions are satisfied:

20       (a) The certification authority has received a request for issuance  
21 signed by the prospective subscriber; and

22       (b) The certification authority has confirmed that:

23       (i) The prospective subscriber is the person to be listed in the  
24 certificate to be issued;

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

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

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

32       (v) The prospective subscriber holds a private key capable of  
33 creating a digital signature;

34       (vi) The public key to be listed in the certificate can be used to  
35 verify a digital signature affixed by the private key held by the  
36 prospective subscriber; and

37       (vii) The certificate provides information sufficient to locate or  
38 identify one or more repositories in which notification of the

1 revocation or suspension of the certificate will be listed if the  
2 certificate is suspended or revoked.

3 (c) The requirements of this subsection may not be waived or  
4 disclaimed by either the licensed certification authority, the  
5 subscriber, or both.

6 (2) ~~((If the subscriber accepts the issued certificate, the  
7 certification authority must publish a signed copy of the certificate  
8 in a recognized repository, as the certification authority and the  
9 subscriber named in the certificate may agree, unless a contract))~~ In  
10 confirming that the prospective subscriber is the person to be listed  
11 in the certificate to be issued, a licensed certification authority  
12 shall make a reasonable inquiry into the subscriber's identity in light  
13 of:

14 (a) Any statements made by the certification authority regarding  
15 the reliability of the certificate;

16 (b) The reliance limit of the certificate;

17 (c) Any recommended uses or applications for the certificate; and

18 (d) Whether the certificate is a transactional certificate or not.

19 (3) A certification authority shall be presumed to have confirmed  
20 that the prospective subscriber is the person to be listed in a  
21 certificate where:

22 (a) The subscriber appears before the certification authority and  
23 presents identification documents consisting of at least one of the  
24 following:

25 (i) A current identification document issued by or under the  
26 authority of the United States, or such similar identification document  
27 issued under the authority of another country;

28 (ii) A current driver's license issued by a state of the United  
29 States; or

30 (iii) A current personal identification card issued by a state of  
31 the United States; and

32 (b) Operative personnel certified according to law or a notary has  
33 reviewed and accepted the identification information of the subscriber.

34 (4) The certification authority may establish policies regarding  
35 the publication of certificates in its certification practice  
36 statement, which must be adhered to unless an agreement between the  
37 certification authority and the subscriber provides otherwise. If the  
38 ~~((subscriber does not accept the certificate, a licensed certification  
39 authority must not publish it, or must cancel its publication if the~~

1 ~~certificate has already been published~~) certification authority does  
2 not establish such a policy, the certification authority must publish  
3 a signed copy of the certificate in a recognized repository.

4 ((+3)) (5) Nothing in this section precludes a licensed  
5 certification authority from conforming to standards, certification  
6 practice statements, security plans, or contractual requirements more  
7 rigorous than, but nevertheless consistent with, this chapter.

8 ((+4)) (6) After issuing a certificate, a licensed certification  
9 authority must revoke it immediately upon confirming that it was not  
10 issued as required by this section. A licensed certification authority  
11 may also suspend a certificate that it has issued for a (~~reasonable~~)  
12 period not exceeding (~~ninety-six hours~~) five business days as needed  
13 for an investigation to confirm grounds for revocation under this  
14 subsection. The certification authority must give notice to the  
15 subscriber as soon as practicable after a decision to revoke or suspend  
16 under this subsection.

17 ((+5)) (7) The secretary may order the licensed certification  
18 authority to suspend or revoke a certificate that the certification  
19 authority issued, if, after giving any required notice and opportunity  
20 for the certification authority and subscriber to be heard in  
21 accordance with the administrative procedure act, chapter 34.05 RCW,  
22 the secretary determines that:

23 (a) The certificate was issued without substantial compliance with  
24 this section; and

25 (b) The noncompliance poses a significant risk to persons  
26 (~~reasonably~~) relying on the certificate.

27 Upon determining that an emergency requires an immediate remedy,  
28 and in accordance with the administrative procedure act, chapter 34.05  
29 RCW, the secretary may issue an order suspending a certificate for a  
30 period not to exceed (~~ninety-six hours~~) five business days.

31 **Sec. 12.** RCW 19.34.231 and 1997 c 27 s 10 are each amended to read  
32 as follows:

33 (1) If a signature of a unit of state or local government,  
34 including its appropriate officers or employees, (~~may~~) is required by  
35 statute, administrative rule, court rule, or requirement of the office  
36 of financial management, that unit of state or local government shall  
37 become a subscriber to a certificate issued by a licensed certification  
38 authority for purposes of conducting official public business(~~, but~~

1 only if the certificate is issued by a licensed certification  
2 authority. A unit of state government, except the secretary and the  
3 department of information services, may not act as a certification  
4 authority)) with electronic records.

5 (2) A city or county may become a licensed certification authority  
6 under RCW 19.34.100 for purposes of providing services to local  
7 government, if authorized by ordinance adopted by the city or county  
8 legislative authority.

9 (3) (~~The limitation to licensed certification authorities in~~  
10 ~~subsection (1) of this section does not apply to uses of digital~~  
11 ~~signatures or key pairs limited to internal agency procedures, as to~~  
12 ~~which the signature is not required by statute, administrative rule,~~  
13 ~~court rule, or requirement of the office of financial management.)) A  
14 unit of state government, except the secretary and the department of  
15 information services, may not act as a certification authority.~~

16 **Sec. 13.** RCW 19.34.250 and 1997 c 27 s 12 are each amended to read  
17 as follows:

18 (1) Unless the certification authority (~~and the subscriber agree~~)  
19 provides otherwise in the certificate or its certification practice  
20 statement, the licensed certification authority that issued a  
21 certificate that is not a transactional certificate must suspend the  
22 certificate for a period not to exceed (~~ninety-six hours~~) five  
23 business days:

24 (a) Upon request by a person whom the certification authority  
25 reasonably believes to be: (i) The subscriber named in the  
26 certificate; (ii) a person duly authorized to act for that subscriber;  
27 or (iii) a person acting on behalf of the unavailable subscriber; or

28 (b) By order of the secretary under RCW 19.34.210(5).

29 The certification authority need not confirm the identity or agency  
30 of the person requesting suspension. The certification authority may  
31 require the person requesting suspension to provide evidence, including  
32 a statement under oath or affirmation, regarding the requestor's  
33 identity, authorization, or the unavailability of the subscriber. Law  
34 enforcement agencies may investigate suspensions for possible  
35 wrongdoing by persons requesting suspension.

36 (2) Unless the (~~certificate~~) certification authority provides  
37 otherwise (~~or~~) in the certificate (~~is a transactional certificate~~)  
38 or its certification practice statement, the secretary may suspend a

1 certificate issued by a licensed certification authority for a period  
2 not to exceed (~~ninety-six hours~~) five business days, if:

3 (a) A person identifying himself or herself as the subscriber named  
4 in the certificate, a person authorized to act for that subscriber, or  
5 a person acting on behalf of that unavailable subscriber [requests  
6 suspension]; and

7 (b) The requester represents that the certification authority that  
8 issued the certificate is unavailable.

9 The secretary may require the person requesting suspension to  
10 provide evidence, including a statement under oath or affirmation,  
11 regarding his or her identity, authorization, or the unavailability of  
12 the issuing certification authority, and may decline to suspend the  
13 certificate in its discretion. Law enforcement agencies may  
14 investigate suspensions by the secretary for possible wrongdoing by  
15 persons requesting suspension.

16 (3) Immediately upon suspension of a certificate by a licensed  
17 certification authority, the licensed certification authority must give  
18 notice of the suspension according to the specification in the  
19 certificate. If one or more repositories are specified, then the  
20 licensed certification authority must publish a signed notice of the  
21 suspension in all the repositories. If a repository no longer exists  
22 or refuses to accept publication, or if no repository is recognized  
23 under RCW 19.34.400, the licensed certification authority must also  
24 publish the notice in a recognized repository. If a certificate is  
25 suspended by the secretary, the secretary must give notice as required  
26 in this subsection for a licensed certification authority, provided  
27 that the person requesting suspension pays in advance any fee required  
28 by a repository for publication of the notice of suspension.

29 (4) A certification authority must terminate a suspension initiated  
30 by request only:

31 (a) If the subscriber named in the suspended certificate requests  
32 termination of the suspension, the certification authority has  
33 confirmed that the person requesting suspension is the subscriber or an  
34 agent of the subscriber authorized to terminate the suspension; or

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

1 (5) The contract between a subscriber and a licensed certification  
2 authority may limit or preclude requested suspension by the  
3 certification authority, or may provide otherwise for termination of a  
4 requested suspension. However, if the contract limits or precludes  
5 suspension by the secretary when the issuing certification authority is  
6 unavailable, the limitation or preclusion is effective only if notice  
7 of it is published in the certificate.

8 (6) No person may knowingly or intentionally misrepresent to a  
9 certification authority his or her identity or authorization in  
10 requesting suspension of a certificate. Violation of this subsection  
11 is a gross misdemeanor.

12 (7) The secretary may authorize other state or local governmental  
13 agencies to perform any of the functions of the secretary under this  
14 section upon a regional basis. The authorization must be formalized by  
15 an agreement under chapter 39.34 RCW. The secretary may provide by  
16 rule the terms and conditions of the regional services.

17 (8) A suspension under this section must be completed within  
18 twenty-four hours of receipt of all information required in this  
19 section.

20 **Sec. 14.** RCW 19.34.280 and 1997 c 27 s 14 are each amended to read  
21 as follows:

22 (1) By clearly specifying a recommended reliance limit in a  
23 certificate and in the certification practice statement, the issuing  
24 certification authority recommends that persons rely on the certificate  
25 only to the extent that the total amount at risk does not exceed the  
26 recommended reliance limit.

27 (2) Subject to subsection (3) of this section, unless a licensed  
28 certification authority waives application of this subsection, a  
29 licensed certification authority is:

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

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

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

1 (ii) Failure to comply with RCW 19.34.210 in issuing the  
2 certificate;

3 (c) Not liable for:

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

7 (ii) Damages for pain or suffering.

8 (3) Nothing in subsection (2)(a) of this section relieves a  
9 licensed certification authority of its liability for breach of any of  
10 the warranties or certifications it gives under RCW 19.34.220 or for  
11 its lack of good faith, which warranties and obligation of good faith  
12 may not be disclaimed. However, the standards by which the performance  
13 of a licensed certification authority's obligation of good faith is to  
14 be measured may be determined by agreement or notification complying  
15 with subsection (4) of this section if the standards are not manifestly  
16 unreasonable. The liability of a licensed certification authority  
17 under this subsection is subject to the limitations in subsection  
18 (2)(b) and (c) of this section unless the limits are waived by the  
19 licensed certification authority.

20 (4) Consequential or incidental damages may be liquidated, or may  
21 otherwise be limited, altered, or excluded unless the limitation,  
22 alteration, or exclusion is unconscionable. A licensed certification  
23 authority may liquidate, limit, alter, or exclude consequential or  
24 incidental damages as provided in this subsection by agreement or by  
25 notifying any person who will rely on a certificate of the liquidation,  
26 limitation, alteration, or exclusion before the person relies on the  
27 certificate.

28 **Sec. 15.** RCW 19.34.330 and 1996 c 250 s 404 are each amended to  
29 read as follows:

30 A ~~((copy of a))~~ digitally signed message ~~((is as effective, valid,~~  
31 ~~and enforceable as the original of the message, unless it is evident~~  
32 ~~that the signer designated an instance of the digitally signed message~~  
33 ~~to be a unique original, in which case only that instance constitutes~~  
34 ~~the valid, effective, and enforceable))~~ shall be deemed to be an  
35 original of the message.

36 **Sec. 16.** RCW 19.34.340 and 1997 c 27 s 21 are each amended to read  
37 as follows:

1       (~~(1)~~) Unless otherwise provided by law (~~or contract, if so~~  
2 ~~provided in the certificate issued by a licensed certification~~  
3 ~~authority)~~ or agreement, a digital signature verified by reference to  
4 the public key listed in a valid certificate issued by a licensed  
5 certification authority satisfies the requirements for an  
6 acknowledgment under RCW 42.44.010(4) and for acknowledgment of deeds  
7 and other real property conveyances under RCW 64.04.020 (~~if words of~~  
8 ~~an express acknowledgment appear with the digital signature regardless~~  
9 ~~of whether the signer personally appeared before either the~~  
10 ~~certification authority or some other person authorized to take~~  
11 ~~acknowledgments of deeds, mortgages, or other conveyance instruments~~  
12 ~~under RCW 64.08.010 when the digital signature was created, if that~~  
13 ~~digital signature is:~~

14       (a) Verifiable by that certificate; and

15       (b) Affixed when that certificate was valid.

16       (2) If the digital signature is used as an acknowledgment, then the  
17 certification authority is responsible to the same extent as a notary  
18 up to the recommended reliance limit for failure to satisfy the  
19 requirements for an acknowledgment. The certification authority may  
20 not disclaim or limit, other than as provided in RCW 19.34.280, the  
21 effect of this section).

22       **Sec. 17.** RCW 19.34.400 and 1997 c 27 s 23 are each amended to read  
23 as follows:

24       (1) The secretary must recognize one or more repositories, after  
25 finding that a repository to be recognized:

26       (a) Is a licensed certification authority;

27       (b) Includes, or will include, a data base containing:

28       (i) Certificates published in the repository;

29       (ii) Notices of suspended or revoked certificates published by  
30 licensed certification authorities or other persons suspending or  
31 revoking certificates; and

32       (iii) (~~Certification authority disclosure records for licensed~~  
33 ~~certification authorities;~~

34       ~~(iv) All orders or advisory statements published by the secretary~~  
35 ~~in regulating certification authorities; and~~

36       ~~(v))~~ Other information adopted by rule by the secretary;

37       (c) Operates by means of a trustworthy system, that may, under  
38 administrative rule of the secretary, include additional or different

1 attributes than those applicable to a certification authority that does  
2 not operate as a recognized repository;

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

5 (e) ~~((Contains certificates published by certification authorities  
6 that conform to legally binding requirements that the secretary finds  
7 to be substantially similar to, or more stringent toward the  
8 certification authorities, than those of this state;~~

9 ~~{f}))~~ Keeps ~~((an archive))~~ a record of certificates that have been  
10 suspended or revoked, or that have expired, ~~((within at least the past  
11 three years))~~ in accordance with requirements adopted by rule by the  
12 secretary; and

13 (g) Complies with other reasonable requirements adopted by rule by  
14 the secretary.

15 (2) A repository may apply to the secretary for recognition by  
16 filing a written request and providing evidence to the secretary  
17 sufficient for the secretary to find that the conditions for  
18 recognition are satisfied, in accordance with requirements adopted by  
19 rule by the secretary.

20 (3) A repository may discontinue its recognition by filing thirty  
21 days' written notice with the secretary, upon meeting any conditions  
22 for discontinuance adopted by rule by the secretary. In addition the  
23 secretary may discontinue recognition of a repository in accordance  
24 with the administrative procedure act, chapter 34.05 RCW, if the  
25 secretary concludes that the repository no longer satisfies the  
26 conditions for recognition listed in this section or in rules adopted  
27 by the secretary.

28 **Sec. 18.** RCW 19.34.410 and 1997 c 27 s 33 are each amended to read  
29 as follows:

30 (1) Notwithstanding a disclaimer by the repository or a contract to  
31 the contrary between the repository, a certification authority, or a  
32 subscriber, a repository is liable for a loss incurred by a person  
33 reasonably relying on a digital signature verified by the public key  
34 listed in a certificate that has been suspended or revoked by the  
35 licensed certification authority that issued the certificate, if loss  
36 was incurred more than one business day after receipt by the repository  
37 of a request from the issuing licensed certification authority to  
38 publish notice of the suspension or revocation, and the repository had

1 failed to publish the notice when the person relied on the digital  
2 signature.

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

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

8 (b) Not liable under subsection (1) of this section in excess of  
9 the amount specified in the certificate as the recommended reliance  
10 limit;

11 (c) Not liable under subsection (1) of this section for:

12 (i) Punitive or exemplary damages; or

13 (ii) Damages for pain or suffering;

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

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

20 (f) Not liable for reporting information about a certification  
21 authority, a certificate, or a subscriber, if the information is  
22 published as required or permitted in this chapter or a rule adopted by  
23 the secretary, or is published by order of the secretary in the  
24 performance of the licensing and regulatory duties of that office under  
25 this chapter.

26 (3) Consequential or incidental damages may be liquidated, or may  
27 otherwise be limited, altered, or excluded unless the limitation,  
28 alteration, or exclusion is unconscionable. A recognized repository  
29 may liquidate, limit, alter, or exclude damages as provided in this  
30 subsection by agreement, or by notifying any person who will rely on a  
31 digital signature verified by the public key listed in a suspended or  
32 revoked certificate of the liquidation, limitation, alteration, or  
33 exclusion before the person relies on the certificate.

34 **Sec. 19.** RCW 43.105.320 and 1997 c 27 s 29 are each amended to  
35 read as follows:

36 The department of information services may become a licensed  
37 certification authority, under chapter 19.34 RCW, for the purpose of  
38 providing services to (~~state and local government~~) agencies, local

1 governments, and other entities and persons for purposes of official  
2 state business. The department is not subject to RCW 19.34.100(1)(a).  
3 The department shall only issue certificates, as defined in RCW  
4 19.34.020, in which the subscriber is:

5 (1) The state of Washington or a department, office, or agency of  
6 the state;

7 (2) A city, county, district, or other municipal corporation, or a  
8 department, office, or agency of the city, county, district, or  
9 municipal corporation;

10 (3) An agent or employee of an entity described by subsection (1)  
11 or (2) of this section, for purposes of official public business;  
12 ((or))

13 (4) Any other person or entity engaged in matters of official  
14 public business, however, such certificates shall be limited only to  
15 matters of official public business; or

16 (5) An applicant for a license as a certification authority for the  
17 purpose of compliance with RCW 19.34.100(1)(a).

18 NEW SECTION. Sec. 20. (1) The office of financial management  
19 shall convene a task force, which shall include both governmental and  
20 nongovernmental representatives, to review the practice of the state  
21 issuing certificates to nongovernmental entities or individuals for the  
22 purpose of conducting official public business. The task force shall  
23 prepare and submit its findings to the appropriate legislative  
24 committees by December 31, 2000.

25 (2) This section expires June 30, 2001.

26 NEW SECTION. Sec. 21. This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 immediately."

30 **SB 5962** - S AMD - 140  
31 By Senators Brown and Horn

32 ADOPTED 3/11/99

33 On page 1, line 2 of the title, after "signatures;" strike the  
34 remainder of the title and insert "amending RCW 19.34.010, 19.34.020,

1 19.34.030, 19.34.100, 19.34.110, 19.34.111, 19.34.120, 19.34.130,  
2 19.34.200, 19.34.210, 19.34.231, 19.34.250, 19.34.280, 19.34.330,  
3 19.34.340, 19.34.400, 19.34.410, and 43.105.320; adding a new section  
4 to chapter 19.34 RCW; creating a new section; providing an expiration  
5 date; and declaring an emergency."

--- END ---