

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

4

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

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 ---