
HOUSE BILL 2174

State of Washington

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By Representatives Ruderman, Radcliff and Kenney; by request of Secretary of State and Governor Locke

Read first time 02/17/1999. Referred to Committee on Technology, Telecommunications & Energy.

1 AN ACT Relating to the promotion of electronic commerce through
2 digital signatures; amending RCW 19.34.010, 19.34.020, 19.34.030,
3 19.34.100, 19.34.110, 19.34.111, 19.34.120, 19.34.130, 19.34.200,
4 19.34.210, 19.34.231, 19.34.250, 19.34.280, 19.34.330, 19.34.340,
5 19.34.400, 19.34.410, and 43.105.320; adding a new section to chapter
6 19.34 RCW; creating a new section; providing an expiration date; and
7 declaring an emergency.

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

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

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

14 (1) To facilitate commerce by means of reliable electronic
15 messages;

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

18 (3) To provide a voluntary licensing mechanism for digital
19 signature certification authorities by which businesses, consumers,

1 courts, government agencies, and other entities can reasonably be
2 assured as to the integrity, authenticity, and nonrepudiation of a
3 digitally signed electronic communication;

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

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

10 ~~((+3)) (6) To implement legally the general import of relevant~~
11 ~~standards((, such as X.509 of the international telecommunication~~
12 ~~union, formerly known as the international telegraph and telephone~~
13 ~~consultative committee)); and~~

14 ~~((+4)) (7) To establish, in coordination with ((multiple)) states~~
15 ~~and other jurisdictions, uniform rules regarding the authentication and~~
16 ~~reliability of electronic messages.~~

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

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter:

21 (1) "Accept a certificate" means ~~((either:~~

22 ~~(a))) to manifest approval of a certificate, while knowing or~~
23 ~~having notice of its contents((; or~~

24 ~~(b) To apply to a licensed certification authority for a~~
25 ~~certificate, without canceling or revoking the application by~~
26 ~~delivering notice of the cancellation or revocation to the~~
27 ~~certification authority and obtaining a signed, written receipt from~~
28 ~~the certification authority, if the certification authority~~
29 ~~subsequently issues a certificate based on the application)). Such~~
30 ~~approval may be manifested by the use of the certificate.~~

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

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

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

36 (a) Identifies the certification authority issuing it;

37 (b) Names or identifies its subscriber;

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

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

2 (5) "Certification authority" means a person who issues a
3 certificate.

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

9 (7) "Certification practice statement" means a declaration of the
10 practices that a certification authority employs in issuing
11 certificates (~~(generally, or employed in issuing a material
12 certificate)~~).

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

16 (9) "Confirm" means to ascertain through appropriate inquiry and
17 investigation.

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

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

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

26 (b) Whether the initial message has been altered since the
27 transformation was made.

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

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

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

37 (15) "Financial institution" means a national or state-chartered
38 commercial bank or trust company, savings bank, savings association, or

1 credit union authorized to do business in the state of Washington and
2 the deposits of which are federally insured.

3 ~~((13))~~ (16) "Forge a digital signature" means either:

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

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

8 (i) Does not exist; or

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

11 ~~((14))~~ (17) "Hold a private key" means to be authorized to
12 utilize a private key.

13 ~~((15))~~ (18) "Incorporate by reference" means to make one message
14 a part of another message by identifying the message to be incorporated
15 and expressing the intention that it be incorporated.

16 ~~((16))~~ (19) "Issue a certificate" means the acts of a
17 certification authority in creating a certificate and notifying the
18 subscriber listed in the certificate of the contents of the
19 certificate.

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

24 ~~((18))~~ (21) "Licensed certification authority" means a
25 certification authority to whom a license has been issued by the
26 secretary and whose license is in effect.

27 ~~((19))~~ (22) "Message" means a digital representation of
28 information.

29 ~~((20))~~ (23) "Notify" means to communicate a fact to another
30 person in a manner reasonably likely under the circumstances to impart
31 knowledge of the information to the other person.

32 ~~((21))~~ (24) "Official public business" means any legally
33 authorized transaction or communication among state agencies, tribes,
34 and local governments, or between a state agency, tribe, or local
35 government and a private person or entity.

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

1 (a) ~~((Managerial or policymaking responsibilities for the~~
2 ~~certification authority; or~~

3 (b) ~~Duties directly involving the issuance of certificates,~~
4 ~~creation of private keys, or administration of a certification~~
5 ~~authority's computing facilities)) Direct responsibility for~~

6 authorizing the issuance of certificates by a certification authority;

7 (b) Direct responsibility for the secure operation of the
8 trustworthy system used by the certification authority or any
9 recognized repository;

10 (c) Direct responsibility, beyond general supervisory authority,
11 for establishing or adopting policies regarding the operation and
12 security of the certification authority; or

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

15 ~~((22))~~ (26) "Person" means a human being or an organization
16 capable of signing a document, either legally or as a matter of fact.

17 ~~((23))~~ (27) "Private key" means the key of a key pair used to
18 create a digital signature.

19 ~~((24))~~ (28) "Public key" means the key of a key pair used to
20 verify a digital signature.

21 ~~((25))~~ (29) "Publish" means to ~~((record or file in a repository))~~
22 make information publicly available.

23 ~~((26))~~ (30) "Qualified right to payment" means an award of
24 damages against a licensed certification authority by a court having
25 jurisdiction over the certification authority in a civil action for
26 violation of this chapter.

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

31 ~~((28))~~ (32) "Recognized repository" means a repository recognized
32 by the secretary under RCW 19.34.400.

33 ~~((29))~~ (33) "Recommended reliance limit" means the monetary
34 amount recommended for reliance on a certificate under RCW
35 19.34.280(1).

36 ~~((30))~~ (34) "Repository" means a system for storing and
37 retrieving certificates and other information relevant to digital
38 signatures.

1 (~~(31)~~) (35) "Revoke a certificate" means to make a certificate
2 ineffective permanently from a specified time forward. Revocation is
3 effected by notation or inclusion in a set of revoked certificates, and
4 does not imply that a revoked certificate is destroyed or made
5 illegible.

6 (~~(32)~~) (36) "Rightfully hold a private key" means the authority
7 to utilize a private key:

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

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

12 (~~(33)~~) (37) "Secretary" means the secretary of state.

13 (~~(34)~~) (38) "Subscriber" means a person who:

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

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

16 (c) Holds a private key that corresponds to a public key listed in
17 that certificate.

18 (~~(35)~~) (39) "Suitable guaranty" means either a surety bond
19 executed by a surety authorized by the insurance commissioner to do
20 business in this state, or an irrevocable letter of credit issued by a
21 financial institution authorized to do business in this state, which,
22 in either event, satisfies all of the following requirements:

23 (a) It is issued payable to the secretary for the benefit of
24 persons holding qualified rights of payment against the licensed
25 certification authority named as the principal of the bond or customer
26 of the letter of credit;

27 (b) It is in an amount specified by rule by the secretary under RCW
28 19.34.030;

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

30 (d) It specifies a term of effectiveness extending at least as long
31 as the term of the license to be issued to the certification authority;
32 and

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

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

38 (~~(36)~~) (40) "Suspend a certificate" means to make a certificate
39 ineffective temporarily for a specified time forward.

1 (~~(37)~~) (41) "Time stamp" means either:

2 (a) To append or attach (~~to a message, digital signature, or~~
3 ~~certificate~~) a digitally signed notation indicating at least the date,
4 time, and identity of the person appending or attaching the notation to
5 a message, digital signature, or certificate; or

6 (b) The notation thus appended or attached.

7 (~~(38)~~) (42) "Transactional certificate" means a (~~valid~~)
8 certificate (~~incorporating by reference one or more digital~~
9 ~~signatures~~) designated for use in a specific transaction identified in
10 the certificate or identified by reference in the certificate.

11 (~~(39)~~) (43) "Trustworthy system" means computer hardware and
12 software that:

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

14 (b) (~~Provide a reasonable level of availability, reliability, and~~
15 ~~correct operation~~; and

16 (c) ~~Are reasonably suited to performing their intended functions~~)

17 Conform with the requirements established by the secretary by rule.

18 (~~(40)~~) (44) "Valid certificate" means a certificate that:

19 (a) A licensed certification authority has issued;

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

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

22 (d) Has not expired.

23 (~~However, a transactional certificate is a valid certificate only~~
24 ~~in relation to the digital signature incorporated in it by reference.~~

25 (~~41~~) (45) "Verify a digital signature" means, in relation to a
26 given digital signature, message, and public key, to determine
27 accurately that:

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

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

32 NEW SECTION. Sec. 3. A new section is added to chapter 19.34 RCW
33 to read as follows:

34 Information, records, and signatures shall not be denied legal
35 effect, validity, or enforceability solely on the grounds that they are
36 in electronic form. However, the presumptions of validity and
37 reasonableness of conduct, and the limitations on liability in this
38 chapter do not apply to electronic records or electronic signatures

1 except for digital signatures created in conformance with all of the
2 requirements of this chapter and rules adopted under this chapter.

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

5 (1) The secretary must ~~((maintain a publicly accessible data base
6 containing))~~ publish a certification authority disclosure record for
7 each licensed certification authority, and a list of all judgments
8 filed with the secretary, within the previous five years, under RCW
9 19.34.290. ~~((The secretary must publish the contents of the data base
10 in at least one recognized repository.))~~

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

13 (a) To ~~((govern licensed))~~ license certification authorities
14 ~~((and))~~, ~~((recognized))~~ recognize repositories, ~~((their practice, and
15 the termination of a licensed certification authority's or recognized
16 repository's practice))~~ certify operative personnel, and govern the
17 practices of each;

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

23 (c) To specify reasonable requirements for information to be
24 contained in or the form of certificates, including transactional
25 certificates, issued by licensed certification authorities, in
26 accordance with generally accepted standards for digital signature
27 certificates;

28 (d) To specify reasonable requirements for recordkeeping by
29 licensed certification authorities;

30 (e) To specify reasonable requirements for the content, form, and
31 sources of information in certification authority disclosure records,
32 the updating and timeliness of the information, and other practices and
33 policies relating to certification authority disclosure records;

34 (f) To specify the form of and information required in
35 certification practice statements, as well as requirements regarding
36 the publication of certification practice statements;

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

1 (h) To specify the procedure and manner by which the laws of other
2 jurisdictions may be recognized, in order to further uniform rules
3 regarding the authentication and reliability of electronic messages;
4 and

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

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

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

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

12 (a) ~~((Be the subscriber of a certificate published in a recognized~~
13 ~~repository, which may include any repository maintained by the~~
14 ~~secretary;~~

15 (b) ~~Knowingly employ as operative personnel only persons who have~~
16 ~~not been convicted within the past seven years of a felony and have~~
17 ~~never been convicted of a crime involving fraud, false statement, or~~
18 ~~deception. The secretary may provide by rule for the manner in which~~
19 ~~criminal background information is provided as part of the licensing~~
20 ~~process. For purposes of this provision, a certification authority~~
21 ~~knowingly employs such a person if the certification authority knew of~~
22 ~~a conviction, or should have known based upon the background~~
23 ~~information required by rule of the secretary;~~

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

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

28 (b) Employ only certified operative personnel in appropriate
29 positions;

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

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

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

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

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

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

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

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

6 ~~(3))~~ The secretary may by rule ~~((classify licenses))~~ create
7 license classifications according to specified limitations, ~~((such as~~
8 ~~a maximum number of outstanding certificates, cumulative maximum of~~
9 ~~recommended reliance limits in certificates issued by the certification~~
10 ~~authority, or issuance only within a single firm or organization,))~~ and
11 the secretary may issue licenses restricted according to the limits of
12 each classification. ~~((The liability limits of RCW 19.34.280 do not~~
13 ~~apply to a certificate issued by a certification authority that exceeds~~
14 ~~the restrictions of the certification authority's license.))~~

15 (3) The secretary may impose license restrictions specific to the
16 practices of an individual certification authority. The secretary
17 shall set forth in writing and maintain as part of the certification
18 authority's license application file the basis for such license
19 restrictions.

20 (4) The secretary may revoke or suspend a certification authority's
21 license, in accordance with the administrative procedure act, chapter
22 34.05 RCW, for failure to comply with this chapter or for failure to
23 remain qualified under subsection (1) of this section. The secretary
24 may order the summary suspension of a license pending proceedings for
25 revocation or other action, which must be promptly instituted and
26 determined, if the secretary includes within a written order a finding
27 that the certification authority has either:

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

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

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

37 (a) RCW 19.34.300 through 19.34.350 apply to certificates issued by
38 the certification authorities licensed or authorized by that government

1 in the same manner as it applies to licensed certification authorities
2 of this state; and

3 (b) The liability limits of RCW 19.34.280 apply to the
4 certification authorities licensed or authorized by that government in
5 the same manner as they apply to licensed certification authorities of
6 this state.

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

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

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

18 (1) A licensed certification authority shall obtain a compliance
19 audit(~~(, as may be more fully defined by rule of the secretary, at
20 least once every year. The auditor shall issue an opinion evaluating
21 the degree to which the certification authority conforms to the
22 requirements of this chapter and the administrative rules adopted by))~~
23 at such times and in such manner as directed by rule of the secretary.
24 If the certification authority is also a recognized repository, the
25 audit must include the repository.

26 (2) The certification authority shall file a copy of the audit
27 report with the secretary. The secretary may provide by rule for
28 filing of the report in an electronic format(~~(. The secretary shall))~~
29 and may publish the report in the certification authority disclosure
30 record it maintains for the certification authority.

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

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

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

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

3 (~~((b) Auditors must either possess such computer security
4 qualifications as are necessary to conduct the audit or employ,
5 contract, or associate with firms or individuals who do. The secretary
6 may adopt rules establishing qualifications as to expertise or
7 experience in computer security.))~~)

8 (2) The compliance audits of state agencies and local governments
9 who are licensed certification authorities, and the secretary, must be
10 performed under the authority of the state auditor. The state auditor
11 may contract with private entities as needed to comply with this
12 chapter.

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

15 (1) The secretary may investigate the activities of a licensed
16 certification authority material to its compliance with this chapter
17 and issue orders to a certification authority to further its
18 investigation and secure compliance with this chapter.

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

22 (3) The secretary may by order impose and collect a civil
23 (~~(monetary)~~) penalty against a licensed certification authority for a
24 violation of this chapter (~~(in an amount)~~). The penalty shall not
25 (~~(to)~~) exceed ten thousand dollars per incident, or ninety percent of
26 the recommended reliance limit of a material certificate, whichever is
27 less. In case of a violation continuing for more than one day, each
28 day is considered a separate incident. The secretary may adopt rules
29 setting forth the standards governing the exercise of the secretary's
30 discretion as to penalty amounts. In the case of a state agency
31 authorized by law to be a licensed certification authority, the sole
32 penalty imposed under this subsection shall consist of specific
33 findings of noncompliance and an order requiring compliance with this
34 chapter and the rules of the secretary. Any penalty imposed under this
35 chapter and chapter 34.05 RCW shall be enforceable in any court of
36 competent jurisdiction.

37 (4) The secretary may order a certification authority, which it has
38 found to be in violation of this chapter, to pay the costs incurred by

1 the secretary in prosecuting and adjudicating proceedings relative to
2 the order, and enforcing it.

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

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

11 (1) No certification authority, whether licensed or not, may
12 conduct its business in a manner that creates an unreasonable risk of
13 loss to subscribers of the certification authority, to persons relying
14 on certificates issued by the certification authority, or to a
15 repository.

16 (2) The secretary may publish (~~in the repository it provides, or~~
17 ~~elsewhere,~~) brief statements advising subscribers, persons relying on
18 digital signatures, or other repositories about activities of a
19 certification authority, whether licensed or not, that create a risk
20 prohibited by subsection (1) of this section. The certification
21 authority named in a statement as creating or causing such a risk may
22 protest the publication of the statement by filing a written defense of
23 ten thousand bytes or less. Upon receipt of such a protest, the
24 secretary must publish the protest along with the secretary's
25 statement, and must promptly give the protesting certification
26 authority notice and an opportunity to be heard. Following the
27 hearing, the secretary must rescind the advisory statement if its
28 publication was unwarranted under this section, cancel it if its
29 publication is no longer warranted, continue or amend it if it remains
30 warranted, or take further legal action to eliminate or reduce a risk
31 prohibited by subsection (1) of this section. The secretary must
32 publish its decision in the repository it provides.

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

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

3 (1) A licensed certification authority (~~((or subscriber))~~) shall use
4 only a trustworthy system(~~(+~~

5 ~~(a))~~) to issue, suspend, or revoke (~~((a certificate;~~

6 ~~(b))~~) certificates. A licensed certification authority shall use
7 a recognized repository to publish or give notice of the issuance,
8 suspension, or revocation of a certificate(~~(; or~~

9 ~~(c) To create a private key))~~).

10 (2) A licensed certification authority (~~((must disclose any material~~
11 ~~certification practice statement, and any fact material to either the~~
12 ~~reliability of a certificate that it has issued or its ability to~~
13 ~~perform its services. A certification authority may require a signed,~~
14 ~~written, and reasonably specific inquiry from an identified person, and~~
15 ~~payment of reasonable compensation, as conditions precedent to~~
16 ~~effecting a disclosure required in this subsection.))~~) shall publish a
17 certification practice statement in accordance with the rules
18 established by the secretary. The secretary shall publish the
19 certification practice statements of licensed certification authorities
20 submitted as part of the licensing process in a manner similar to the
21 publication of the certification authority disclosure record.

22 (3) A licensed certification authority shall knowingly employ as
23 operative personnel only persons who have not been convicted within the
24 past seven years of a felony and have never been convicted of a crime
25 involving fraud, false statement, or deception. For purposes of this
26 subsection, a certification authority knowingly employs such a person
27 if the certification authority knew of a conviction, or should have
28 known based on information required by rule of the secretary.
29 Operative personnel employed by a licensed certification authority must
30 also be persons who have demonstrated knowledge and proficiency in
31 following the requirements of this chapter. The secretary may provide
32 by rule for the certification of operative personnel, and provide by
33 rule for the manner in which criminal background information is
34 provided as part of the certification process, as well as the manner in
35 which knowledge and proficiency in following the requirements of this
36 chapter may be demonstrated.

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

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

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

5 (b) The certification authority has confirmed that:

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

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

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

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

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

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

20 (vii) The certificate provides information sufficient to locate or
21 identify one or more repositories in which notification of the
22 revocation or suspension of the certificate will be listed if the
23 certificate is suspended or revoked.

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

27 (2) (~~If the subscriber accepts the issued certificate, the~~
28 ~~certification authority must publish a signed copy of the certificate~~
29 ~~in a recognized repository, as the certification authority and the~~
30 ~~subscriber named in the certificate may agree, unless a contract)) In
31 confirming that the prospective subscriber is the person to be listed
32 in the certificate to be issued, a licensed certification authority
33 shall make a reasonable inquiry into the subscriber's identity in light
34 of:~~

35 (a) Any statements made by the certification authority regarding
36 the reliability of the certificate;

37 (b) The reliance limit of the certificate;

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

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

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

4 (a) The certification authority has been presented identification
5 documents consisting of at least one of the following:

6 (i) A current identification document issued by or under the
7 authority of the United States, or such similar identification document
8 issued under the authority of another country;

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

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

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

15 (4) The certification authority may establish policies regarding
16 the publication of certificates in its certification practice
17 statement, which must be adhered to unless an agreement between the
18 certification authority and the subscriber provides otherwise. If the
19 ((subscriber does not accept the certificate, a licensed certification
20 authority must not publish it, or must cancel its publication if the
21 certificate has already been published)) certification authority does
22 not establish such a policy, the certification authority must publish
23 a signed copy of the certificate in a recognized repository.

24 ((+3)) (5) Nothing in this section precludes a licensed
25 certification authority from conforming to standards, certification
26 practice statements, security plans, or contractual requirements more
27 rigorous than, but nevertheless consistent with, this chapter.

28 ((+4)) (6) After issuing a certificate, a licensed certification
29 authority must revoke it immediately upon confirming that it was not
30 issued as required by this section. A licensed certification authority
31 may also suspend a certificate that it has issued for a ((reasonable))
32 period not exceeding ((ninety-six hours)) one week as needed for an
33 investigation to confirm grounds for revocation under this subsection.
34 The certification authority must give notice to the subscriber as soon
35 as practicable after a decision to revoke or suspend under this
36 subsection.

37 ((+5)) (7) The secretary may order the licensed certification
38 authority to suspend or revoke a certificate that the certification
39 authority issued, if, after giving any required notice and opportunity

1 for the certification authority and subscriber to be heard in
2 accordance with the administrative procedure act, chapter 34.05 RCW,
3 the secretary determines that:

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

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

8 Upon determining that an emergency requires an immediate remedy,
9 and in accordance with the administrative procedure act, chapter 34.05
10 RCW, the secretary may issue an order suspending a certificate for a
11 period not to exceed (~~ninety-six hours~~) one week.

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

14 (1) If a signature of a unit of state or local government,
15 including its appropriate officers or employees, (~~may~~) is required by
16 statute, administrative rule, court rule, or requirement of the office
17 of financial management, that unit of state or local government shall
18 become a subscriber to a certificate issued by a licensed certification
19 authority for purposes of conducting official public business(~~(, but~~
20 ~~only if the certificate is issued by a licensed certification~~
21 ~~authority. A unit of state government, except the secretary and the~~
22 ~~department of information services, may not act as a certification~~
23 ~~authority)) with electronic records.~~

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

28 (~~The limitation to licensed certification authorities in~~
29 ~~subsection (1) of this section does not apply to uses of digital~~
30 ~~signatures or key pairs limited to internal agency procedures, as to~~
31 ~~which the signature is not required by statute, administrative rule,~~
32 ~~court rule, or requirement of the office of financial management.)) A
33 unit of state government, except the secretary and the department of
34 information services, may not act as a certification authority.~~

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

1 (1) Unless the certification authority (~~((and the subscriber agree))~~)
2 provides otherwise in the certificate or its certification practice
3 statement, the licensed certification authority that issued a
4 certificate that is not a transactional certificate must suspend the
5 certificate for a period not to exceed (~~((ninety-six hours))~~) one week:

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

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

11 The certification authority need not confirm the identity or agency
12 of the person requesting suspension. The certification authority may
13 require the person requesting suspension to provide evidence, including
14 a statement under oath or affirmation, regarding the requestor's
15 identity, authorization, or the unavailability of the subscriber. Law
16 enforcement agencies may investigate suspensions for possible
17 wrongdoing by persons requesting suspension.

18 (2) Unless the (~~((certificate))~~) certification authority provides
19 otherwise (~~((or))~~) in the certificate (~~((is a transactional certificate))~~)
20 or its certification practice statement, the secretary may suspend a
21 certificate issued by a licensed certification authority for a period
22 not to exceed (~~((ninety-six hours))~~) one week, if:

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

27 (b) The requester represents that the certification authority that
28 issued the certificate is unavailable.

29 The secretary may require the person requesting suspension to
30 provide evidence, including a statement under oath or affirmation,
31 regarding his or her identity, authorization, or the unavailability of
32 the issuing certification authority, and may decline to suspend the
33 certificate in its discretion. Law enforcement agencies may
34 investigate suspensions by the secretary for possible wrongdoing by
35 persons requesting suspension.

36 (3) Immediately upon suspension of a certificate by a licensed
37 certification authority, the licensed certification authority must give
38 notice of the suspension according to the specification in the
39 certificate. If one or more repositories are specified, then the

1 licensed certification authority must publish a signed notice of the
2 suspension in all the repositories. If a repository no longer exists
3 or refuses to accept publication, or if no repository is recognized
4 under RCW 19.34.400, the licensed certification authority must also
5 publish the notice in a recognized repository. If a certificate is
6 suspended by the secretary, the secretary must give notice as required
7 in this subsection for a licensed certification authority, provided
8 that the person requesting suspension pays in advance any fee required
9 by a repository for publication of the notice of suspension.

10 (4) A certification authority must terminate a suspension initiated
11 by request only:

12 (a) If the subscriber named in the suspended certificate requests
13 termination of the suspension, the certification authority has
14 confirmed that the person requesting suspension is the subscriber or an
15 agent of the subscriber authorized to terminate the suspension; or

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

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

27 (6) No person may knowingly or intentionally misrepresent to a
28 certification authority his or her identity or authorization in
29 requesting suspension of a certificate. Violation of this subsection
30 is a gross misdemeanor.

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

36 (8) A suspension under this section must be completed within
37 twenty-four hours of receipt of all information required in this
38 section.

1 (9) A certification authority is not required to provide for
2 suspension of certificates; however, the certification authority that
3 does not provide for suspension must clearly state in its certification
4 practice statement that suspension of certificates is not available.

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

7 (1) By clearly specifying a recommended reliance limit ((in a
8 certificate)) on a certificate or in the certification practice
9 statement, the issuing certification authority recommends that persons
10 rely on the certificate only to the extent that the total amount at
11 risk does not exceed the recommended reliance limit.

12 (2) Subject to subsection (3) of this section, unless a licensed
13 certification authority waives application of this subsection, a
14 licensed certification authority is:

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

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

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

24 (ii) Failure to comply with RCW 19.34.210 in issuing the
25 certificate;

26 (c) Not liable for:

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

30 (ii) Damages for pain or suffering.

31 (3) Nothing in subsection (2)(a) of this section relieves a
32 licensed certification authority of its liability for breach of any of
33 the warranties or certifications it gives under RCW 19.34.220 or for
34 its lack of good faith, which warranties and obligation of good faith
35 may not be disclaimed. However, the standards by which the performance
36 of a licensed certification authority's obligation of good faith is to
37 be measured may be determined by agreement or notification complying
38 with subsection (4) of this section if the standards are not manifestly

1 unreasonable. The liability of a licensed certification authority
2 under this subsection is subject to the limitations in subsection
3 (2)(b) and (c) of this section unless the limits are waived by the
4 licensed certification authority.

5 (4) Consequential or incidental damages may be liquidated, or may
6 otherwise be limited, altered, or excluded unless the limitation,
7 alteration, or exclusion is unconscionable. A licensed certification
8 authority may liquidate, limit, alter, or exclude consequential or
9 incidental damages as provided in this subsection by agreement or by
10 notifying any person who will rely on a certificate of the liquidation,
11 limitation, alteration, or exclusion before the person relies on the
12 certificate.

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

15 A ~~((copy of a))~~ digitally signed message ~~((is as effective, valid,~~
16 ~~and enforceable as the original of the message, unless it is evident~~
17 ~~that the signer designated an instance of the digitally signed message~~
18 ~~to be a unique original, in which case only that instance constitutes~~
19 ~~the valid, effective, and enforceable))~~ shall be deemed to be an
20 original of the message.

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

23 ~~((1))~~ Unless otherwise provided by law ~~((or contract, if so~~
24 ~~provided in the certificate issued by a licensed certification~~
25 ~~authority))~~ or agreement, a digital signature verified by reference to
26 the public key listed in a valid certificate issued by a licensed
27 certification authority satisfies the requirements for an
28 acknowledgment under RCW 42.44.010(4) and for acknowledgment of deeds
29 and other real property conveyances under RCW 64.04.020 ~~((if words of~~
30 ~~an express acknowledgment appear with the digital signature regardless~~
31 ~~of whether the signer personally appeared before either the~~
32 ~~certification authority or some other person authorized to take~~
33 ~~acknowledgments of deeds, mortgages, or other conveyance instruments~~
34 ~~under RCW 64.08.010 when the digital signature was created, if that~~
35 ~~digital signature is:~~

- 36 (a) ~~Verifiable by that certificate; and~~
37 (b) ~~Affixed when that certificate was valid.~~

1 ~~(2) If the digital signature is used as an acknowledgment, then the~~
2 ~~certification authority is responsible to the same extent as a notary~~
3 ~~up to the recommended reliance limit for failure to satisfy the~~
4 ~~requirements for an acknowledgment. The certification authority may~~
5 ~~not disclaim or limit, other than as provided in RCW 19.34.280, the~~
6 ~~effect of this section)).~~

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

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

11 (a) Is a licensed certification authority;

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

13 (i) Certificates published in the repository;

14 (ii) Notices of suspended or revoked certificates published by
15 licensed certification authorities or other persons suspending or
16 revoking certificates; and

17 (iii) ~~((Certification authority disclosure records for licensed~~
18 ~~certification authorities;~~

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

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

22 (c) Operates by means of a trustworthy system, that may, under
23 administrative rule of the secretary, include additional or different
24 attributes than those applicable to a certification authority that does
25 not operate as a recognized repository;

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

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

32 ~~(f))~~ Keeps ~~((an archive))~~ a record of certificates that have been
33 suspended or revoked, or that have expired, ~~((within at least the past~~
34 ~~three years))~~ in accordance with requirements adopted by rule by the
35 secretary; and

36 (g) Complies with other reasonable requirements adopted by rule by
37 the secretary.

1 (2) A repository may apply to the secretary for recognition by
2 filing a written request and providing evidence to the secretary
3 sufficient for the secretary to find that the conditions for
4 recognition are satisfied, in accordance with requirements adopted by
5 rule by the secretary.

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

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

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

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

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

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

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

36 (i) Punitive or exemplary damages; or

37 (ii) Damages for pain or suffering;

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

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

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

13 (3) Consequential or incidental damages may be liquidated, or may
14 otherwise be limited, altered, or excluded unless the limitation,
15 alteration, or exclusion is unconscionable. A recognized repository
16 may liquidate, limit, alter, or exclude damages as provided in this
17 subsection by agreement, or by notifying any person who will rely on a
18 digital signature verified by the public key listed in a suspended or
19 revoked certificate of the liquidation, limitation, alteration, or
20 exclusion before the person relies on the certificate.

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

23 The department of information services may become a licensed
24 certification authority, under chapter 19.34 RCW, for the purpose of
25 providing services to ~~((state and local government))~~ agencies, local
26 governments, and other entities and persons for purposes of official
27 state business. The department is not subject to RCW 19.34.100(1)(a).
28 The department shall only issue certificates, as defined in RCW
29 19.34.020, in which the subscriber is:

30 (1) The state of Washington or a department, office, or agency of
31 the state;

32 (2) A city, county, district, or other municipal corporation, or a
33 department, office, or agency of the city, county, district, or
34 municipal corporation;

35 (3) An agent or employee of an entity described by subsection (1)
36 or (2) of this section, for purposes of official public business;
37 ~~((or))~~

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

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

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

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

14 NEW SECTION. Sec. 21. This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 immediately.

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