

2 **ESB 6423 - H COMM AMD ADOPTED 2-28-96**
3 By Committee on Energy & Utilities

4

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

7 **"PART I. SHORT TITLE, INTERPRETATION, AND DEFINITIONS**

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

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

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

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

17 (3) To implement legally the general import of relevant standards,
18 such as X.509 of the international telecommunication union, formerly
19 known as the international telegraph and telephone consultative
20 committee; and

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

24 NEW SECTION. **Sec. 103.** DEFINITIONS. Unless the context clearly
25 requires otherwise, the definitions in this section apply throughout
26 this chapter:

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

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

30 (b) To apply to a licensed certification authority for a
31 certificate, without cancelling or revoking the application by
32 delivering notice of the cancellation or revocation to the
33 certification authority and obtaining a signed, written receipt from

1 the certification authority, if the certification authority
2 subsequently issues a certificate based on the application.

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

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

6 (a) Identifies the certification authority issuing it;

7 (b) Names or identifies its subscriber;

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

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

10 (4) "Certification authority" means a person who issues a
11 certificate.

12 (5) "Certification authority disclosure record" means an on-line,
13 publicly accessible record that concerns a licensed certification
14 authority and is kept by the secretary. A certification authority
15 disclosure record has the contents specified by rule by the secretary
16 under section 104 of this act.

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

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

23 (8) "Confirm" means to ascertain through appropriate inquiry and
24 investigation.

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

27 (10) "Digital signature" means a transformation of a message using
28 an asymmetric cryptosystem such that a person having the initial
29 message and the signer's public key can accurately determine:

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

32 (b) Whether the initial message has been altered since the
33 transformation was made.

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

38 (12) "Forge a digital signature" means either:

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

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

5 (i) Does not exist; or

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

8 (13) "Hold a private key" means to be authorized to utilize a
9 private key.

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

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

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

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

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

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

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

30 (a) Managerial or policymaking responsibilities for the
31 certification authority; or

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

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

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

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

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

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

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

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

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

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

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

21 (31) "Rightfully hold a private key" means the authority to utilize
22 a private key:

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

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

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

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

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

30 (b) Accepts the certificate; and

31 (c) Holds a private key that corresponds to a public key listed in
32 that certificate.

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

38 (a) It is issued payable to the secretary for the benefit of
39 persons holding qualified rights of payment against the licensed

1 certification authority named as the principal of the bond or customer
2 of the letter of credit;

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

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

6 (d) It specifies a term of effectiveness extending at least as long
7 as the term of the license to be issued to the certification authority;
8 and

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

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

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

16 (36) "Time stamp" means either:

17 (a) To append or attach to a message, digital signature, or
18 certificate a digitally signed notation indicating at least the date,
19 time, and identity of the person appending or attaching the notation;
20 or

21 (b) The notation thus appended or attached.

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

24 (38) "Trustworthy system" means computer hardware and software
25 that:

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

27 (b) Provide a reasonable level of availability, reliability, and
28 correct operation; and

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

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

31 (a) A licensed certification authority has issued;

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

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

34 (d) Has not expired.

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

37 (40) "Verify a digital signature" means, in relation to a given
38 digital signature, message, and public key, to determine accurately
39 that:

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

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

5 NEW SECTION. **Sec. 104.** ROLE OF THE SECRETARY. (1) If six months
6 elapse during which time no certification authority is licensed in this
7 state, then the secretary shall be a certification authority, and may
8 issue, suspend, and revoke certificates in the manner prescribed for
9 licensed certification authorities. Except for licensing requirements,
10 this chapter applies to the secretary with respect to certificates he
11 or she issues. The secretary must discontinue acting as a
12 certification authority if another certification authority is licensed,
13 in a manner allowing reasonable transition to private enterprise.

14 (2) The secretary must maintain a publicly accessible data base
15 containing a certification authority disclosure record for each
16 licensed certification authority. The secretary must publish the
17 contents of the data base in at least one recognized repository.

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

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

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

27 (c) To review software for use in creating digital signatures;

28 (d) To specify reasonable requirements for the form of certificates
29 issued by licensed certification authorities, in accordance with
30 generally accepted standards for digital signature certificates;

31 (e) To specify reasonable requirements for recordkeeping by
32 licensed certification authorities;

33 (f) To specify reasonable requirements for the content, form, and
34 sources of information in certification authority disclosure records,
35 the updating and timeliness of the information, and other practices and
36 policies relating to certification authority disclosure records;

37 (g) To specify the form of certification practice statements; and

38 (h) Otherwise to give effect to and implement this chapter.

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

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

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

10 (a) Be the subscriber of a certificate published in a recognized
11 repository;

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

15 (c) Employ as operative personnel only persons who have
16 demonstrated knowledge and proficiency in following the requirements of
17 this chapter;

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

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

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

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

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

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

34 (h) Comply with all further licensing requirements established by
35 rule by the secretary.

36 (2) The secretary must issue a license to a certification authority
37 that:

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

4 (3) The secretary may by rule classify licenses according to
5 specified limitations, such as a maximum number of outstanding
6 certificates, cumulative maximum of recommended reliance limits in
7 certificates issued by the certification authority, or issuance only
8 within a single firm or organization, and the secretary may issue
9 licenses restricted according to the limits of each classification. A
10 certification authority acts as an unlicensed certification authority
11 in issuing a certificate exceeding the restrictions of the
12 certification authority's license.

13 (4) The secretary may revoke or suspend a certification authority's
14 license, in accordance with the administrative procedure act, chapter
15 34.05 RCW, for failure to comply with this chapter or for failure to
16 remain qualified under subsection (1) of this section.

17 (5) The secretary may recognize by rule the licensing or
18 authorization of certification authorities by other governmental
19 entities, provided that those licensing or authorization requirements
20 are substantially similar to those of this state. If licensing by
21 another government is so recognized:

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

26 (b) The liability limits of section 309 of this act apply to the
27 certification authorities licensed or authorized by that government in
28 the same manner as they apply to licensed certification authorities of
29 this state.

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

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

1 NEW SECTION. **Sec. 202.** PERFORMANCE AUDITS. (1) A certified

2 public accountant having expertise in computer security or an
3 accredited computer security professional must audit the operations of
4 each licensed certification authority at least once each year to
5 evaluate compliance with this chapter. The secretary may by rule
6 specify the qualifications of auditors.

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

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

12 (b) Substantial compliance. The certification authority appears
13 generally to conform to applicable statutory and regulatory
14 requirements. However, one or more instances of noncompliance or of
15 inability to demonstrate compliance were found in an audited sample,
16 but were likely to be inconsequential.

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

21 (d) Noncompliance. The certification authority complies with few
22 or none of the statutory and regulatory requirements, fails to keep
23 adequate records to demonstrate compliance with more than a few
24 requirements, or refused to submit to an audit.

25 The secretary must publish in the certification authority
26 disclosure record it maintains for the certification authority the date
27 of the audit and the resulting categorization of the certification
28 authority.

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

31 (a) The certification authority to be exempted requests exemption
32 in writing;

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

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

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

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

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

11 (4) If the certification authority's declaration under subsection
12 (3) of this section falsely states a material fact, the certification
13 authority has failed to comply with the performance audit requirements
14 of this section.

15 (5) If a licensed certification authority is exempt under
16 subsection (3) of this section, the secretary must publish in the
17 certification authority disclosure record it maintains for the
18 certification authority that the certification authority is exempt from
19 the performance audit requirement.

20 NEW SECTION. **Sec. 203.** ENFORCEMENT OF REQUIREMENTS FOR LICENSED
21 CERTIFICATION AUTHORITIES. (1) The secretary may investigate the
22 activities of a licensed certification authority material to its
23 compliance with this chapter and issue orders to a certification
24 authority to further its investigation and secure compliance with this
25 chapter.

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

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

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

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

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

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

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

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

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

4 (a) To issue, suspend, or revoke a certificate;

5 (b) To publish or give notice of the issuance, suspension, or
6 revocation of a certificate; or

7 (c) To create a private key.

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

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

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

20 (b) The certification authority has confirmed that:

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

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

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

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

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

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

35 The requirements of this subsection may not be waived or disclaimed
36 by either the licensed certification authority, the subscriber, or
37 both.

1 (2) If the subscriber accepts the issued certificate, the
2 certification authority must publish a signed copy of the certificate
3 in a recognized repository, as the certification authority and the
4 subscriber named in the certificate may agree, unless a contract
5 between the certification authority and the subscriber provides
6 otherwise. If the subscriber does not accept the certificate, a
7 licensed certification authority must not publish it, or must cancel
8 its publication if the certificate has already been published.

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

13 (4) After issuing a certificate, a licensed certification authority
14 must revoke it immediately upon confirming that it was not issued as
15 required by this section. A licensed certification authority may also
16 suspend a certificate that it has issued for a reasonable period not
17 exceeding forty-eight hours as needed for an investigation to confirm
18 grounds for revocation under this subsection. The certification
19 authority must give notice to the subscriber as soon as practicable
20 after a decision to revoke or suspend under this subsection.

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

27 (a) The certificate was issued without substantial compliance with
28 this section; and

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

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

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

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

3 (b) The certificate satisfies all material requirements of this
4 chapter; and

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

7 The certification authority may not disclaim or limit the
8 warranties of this subsection.

9 (2) Unless the subscriber and certification authority otherwise
10 agree, a certification authority, by issuing a certificate, promises to
11 the subscriber:

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

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

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

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

22 (b) All information foreseeably material to the reliability of the
23 certificate is stated or incorporated by reference within the
24 certificate;

25 (c) The subscriber has accepted the certificate; and

26 (d) The licensed certification authority has complied with all
27 applicable laws of this state governing issuance of the certificate.

28 (4) By publishing a certificate, a licensed certification authority
29 certifies to the repository in which the certificate is published and
30 to all who reasonably rely on the information contained in the
31 certificate that the certification authority has issued the certificate
32 to the subscriber.

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

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

3 (b) All representations made by the subscriber to the certification
4 authority and material to the information listed in the certificate are
5 true; and

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

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

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

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

19 (3) No person may disclaim or contractually limit the application
20 of this section, nor obtain indemnity for its effects, if the
21 disclaimer, limitation, or indemnity restricts liability for
22 misrepresentation as against persons reasonably relying on the
23 certificate.

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

27 (a) A false and material representation of fact by the subscriber;
28 or

29 (b) The failure by the subscriber to disclose a material fact;
30 if the representation or failure to disclose was made either with
31 intent to deceive the certification authority or a person relying on
32 the certificate, or with negligence. If the certification authority
33 issued the certificate at the request of one or more agents of the
34 subscriber, the agent or agents personally undertake to indemnify the
35 certification authority under this subsection, as if they were
36 accepting subscribers in their own right. The indemnity provided in
37 this section may not be disclaimed or contractually limited in scope.
38 However, a contract may provide consistent, additional terms regarding
39 the indemnification.

1 (5) In obtaining information of the subscriber material to issuance
2 of a certificate, the certification authority may require the
3 subscriber to certify the accuracy of relevant information under oath
4 or affirmation of truthfulness and under penalty of perjury.

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

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

13 (3) If a certification authority holds the private key
14 corresponding to a public key listed in a certificate that it has
15 issued, the certification authority holds the private key as a
16 fiduciary of the subscriber named in the certificate, and may use that
17 private key only with the subscriber's prior, written approval, unless
18 the subscriber expressly grants the private key to the certification
19 authority and expressly permits the certification authority to hold the
20 private key according to other terms.

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

26 (a) Upon request by a person identifying himself or herself as the
27 subscriber named in the certificate, or as a person in a position
28 likely to know of a compromise of the security of a subscriber's
29 private key, such as an agent, business associate, employee, or member
30 of the immediate family of the subscriber; or

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

32 The certification authority need not confirm the identity or agency
33 of the person requesting suspension.

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

1 (a) A person identifying himself or herself as the subscriber named
2 in the certificate or as an agent, business associate, employee, or
3 member of the immediate family of the subscriber requests suspension;
4 and

5 (b) The requester represents that the certification authority that
6 issued the certificate is unavailable.

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

14 (3) Immediately upon suspension of a certificate by a licensed
15 certification authority, the licensed certification authority must give
16 notice of the suspension according to the specification in the
17 certificate. If one or more repositories are specified, then the
18 licensed certification authority must publish a signed notice of the
19 suspension in all the repositories. If a repository no longer exists
20 or refuses to accept publication, or if no repository is recognized
21 under section 501 of this act, the licensed certification authority
22 must also publish the notice in a recognized repository. If a
23 certificate is suspended by the secretary or county clerk, the
24 secretary or clerk must give notice as required in this subsection for
25 a licensed certification authority, provided that the person requesting
26 suspension pays in advance any fee required by a repository for
27 publication of the notice of suspension.

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

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

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

38 (5) The contract between a subscriber and a licensed certification
39 authority may limit or preclude requested suspension by the

1 certification authority, or may provide otherwise for termination of a
2 requested suspension. However, if the contract limits or precludes
3 suspension by the secretary or county clerk when the issuing
4 certification authority is unavailable, the limitation or preclusion
5 is effective only if notice of it is published in the certificate.

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

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

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

16 (a) Receiving a request for revocation by the subscriber named in
17 the certificate; and

18 (b) Confirming that the person requesting revocation is the
19 subscriber, or is an agent of the subscriber with authority to request
20 the revocation.

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

26 (3) A licensed certification authority must revoke a certificate
27 that it issued:

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

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

34 (4) A licensed certification authority may revoke one or more
35 certificates that it issued if the certificates are or become
36 unreliable, regardless of whether the subscriber consents to the
37 revocation and notwithstanding a provision to the contrary in a
38 contract between the subscriber and certification authority.

1 (5) Immediately upon revocation of a certificate by a licensed
2 certification authority, the licensed certification authority must give
3 notice of the revocation according to the specification in the
4 certificate. If one or more repositories are specified, then the
5 licensed certification authority must publish a signed notice of the
6 revocation in all repositories. If a repository no longer exists or
7 refuses to accept publication, or if no repository is recognized under
8 section 501 of this act, then the licensed certification authority must
9 also publish the notice in a recognized repository.

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

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

17 (b) One business day after the subscriber requests revocation in
18 writing, supplies to the issuing certification authority information
19 reasonably sufficient to confirm the request, and pays any
20 contractually required fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (iii) Damages for pain or suffering.

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

23 (1)(a) If the suitable guaranty is a surety bond, a person may recover
24 from the surety the full amount of a qualified right to payment against
25 the principal named in the bond, or, if there is more than one such
26 qualified right to payment during the term of the bond, a ratable
27 share, up to a maximum total liability of the surety equal to the
28 amount of the bond.

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

32 Claimants may recover successively on the same suitable guaranty,
33 provided that the total liability on the suitable guaranty to all
34 persons making qualified rights of payment during its term must not
35 exceed the amount of the suitable guaranty.

36 (2) In addition to recovering the amount of a qualified right to
37 payment, a claimant may recover from the proceeds of the guaranty,
38 until depleted, the attorneys' fees, reasonable in amount, and court

1 costs incurred by the claimant in collecting the claim, provided that
2 the total liability on the suitable guaranty to all persons making
3 qualified rights of payment or recovering attorneys' fees during its
4 term must not exceed the amount of the suitable guaranty.

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

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

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

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

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

22 **PART IV. EFFECT OF A DIGITAL SIGNATURE**

23 NEW SECTION. **Sec. 401.** SATISFACTION OF SIGNATURE REQUIREMENTS.
24 Where a rule of law requires a signature, or provides for certain
25 consequences in the absence of a signature, that rule is satisfied by
26 a digital signature, if:

27 (1) No party affected by a digital signature objects to the use of
28 digital signatures in lieu of a signature, and the objection may be
29 evidenced by refusal to provide or accept a digital signature;

30 (2) That digital signature is verified by reference to the public
31 key listed in a valid certificate issued by a licensed certification
32 authority;

33 (3) That digital signature was affixed by the signer with the
34 intention of signing the message, and after the signer has had an
35 opportunity to review items being signed; and

36 (4) The recipient has no knowledge or notice that the signer
37 either:

- 1 (a) Breached a duty as a subscriber; or
- 2 (b) Does not rightfully hold the private key used to affix the
- 3 digital signature.

4 However, nothing in this chapter precludes a mark from being valid
5 as a signature under other applicable law.

6 NEW SECTION. **Sec. 402.** UNRELIABLE DIGITAL SIGNATURES. Unless
7 otherwise provided by law or contract, the recipient of a digital
8 signature assumes the risk that a digital signature is forged, if
9 reliance on the digital signature is not reasonable under the
10 circumstances. If the recipient determines not to rely on a digital
11 signature under this section, the recipient must promptly notify the
12 signer of any determination not to rely on a digital signature and the
13 grounds for that determination.

14 NEW SECTION. **Sec. 403.** DIGITALLY SIGNED DOCUMENT IS WRITTEN. A
15 message is as valid, enforceable, and effective as if it had been
16 written on paper, if it:

- 17 (1) Bears in its entirety a digital signature; and
- 18 (2) That digital signature is verified by the public key listed in
19 a certificate that:
 - 20 (a) Was issued by a licensed certification authority; and
 - 21 (b) Was valid at the time the digital signature was created.

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

27 NEW SECTION. **Sec. 404.** DIGITALLY SIGNED ORIGINALS. A copy of a
28 digitally signed message is as effective, valid, and enforceable as the
29 original of the message, unless it is evident that the signer
30 designated an instance of the digitally signed message to be a unique
31 original, in which case only that instance constitutes the valid,
32 effective, and enforceable message.

33 NEW SECTION. **Sec. 405.** CERTIFICATE AS AN ACKNOWLEDGMENT. Unless
34 otherwise provided by law or contract, a certificate issued by a
35 licensed certification authority is an acknowledgment of a digital

1 signature verified by reference to the public key listed in the
2 certificate, regardless of whether words of an express acknowledgment
3 appear with the digital signature and regardless of whether the signer
4 physically appeared before the certification authority when the digital
5 signature was created, if that digital signature is:

- 6 (1) Verifiable by that certificate; and
- 7 (2) Affixed when that certificate was valid.

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

11 (1) A certificate digitally signed by a licensed certification
12 authority and either published in a recognized repository, or made
13 available by the issuing certification authority or by the subscriber
14 listed in the certificate is issued by the certification authority that
15 digitally signed it and is accepted by the subscriber listed in it.

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

18 (3) If a digital signature is verified by the public key listed in
19 a valid certificate issued by a licensed certification authority:

20 (a) That digital signature is the digital signature of the
21 subscriber listed in that certificate;

22 (b) That digital signature was affixed by that subscriber with the
23 intention of signing the message; and

24 (c) The recipient of that digital signature has no knowledge or
25 notice that the signer:

26 (i) Breached a duty as a subscriber; or

27 (ii) Does not rightfully hold the private key used to affix the
28 digital signature.

29 (4) A digital signature was created before it was time stamped by
30 a disinterested person utilizing a trustworthy system.

31 **PART V. REPOSITORIES**

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

35 (a) Is operated under the direction of a licensed certification
36 authority;

- 1 (b) Includes a data base containing:
- 2 (i) Certificates published in the repository;
- 3 (ii) Notices of suspended or revoked certificates published by
- 4 licensed certification authorities or other persons suspending or
- 5 revoking certificates;
- 6 (iii) Certification authority disclosure records for licensed
- 7 certification authorities;
- 8 (iv) All orders or advisory statements published by the secretary
- 9 in regulating certification authorities; and
- 10 (v) Other information adopted by rule by the secretary;
- 11 (c) Operates by means of a trustworthy system;
- 12 (d) Contains no significant amount of information that is known or
- 13 likely to be untrue, inaccurate, or not reasonably reliable;
- 14 (e) Contains certificates published by certification authorities
- 15 that conform to legally binding requirements that the secretary finds
- 16 to be substantially similar to, or more stringent toward the
- 17 certification authorities, than those of this state;
- 18 (f) Keeps an archive of certificates that have been suspended or
- 19 revoked, or that have expired, within at least the past three years;
- 20 and
- 21 (g) Complies with other reasonable requirements adopted by rule by
- 22 the secretary.

23 (2) A repository may apply to the secretary for recognition by

24 filing a written request and providing evidence to the secretary

25 sufficient for the secretary to find that the conditions for

26 recognition are satisfied.

27 (3) A repository may discontinue its recognition by filing thirty

28 days' written notice with the secretary. In addition the secretary may

29 discontinue recognition of a repository in accordance with the

30 administrative procedure act, chapter 34.05 RCW, if it concludes that

31 the repository no longer satisfies the conditions for recognition

32 listed in this section or in rules adopted by the secretary.

33 NEW SECTION. **Sec. 502.** LIABILITY OF REPOSITORIES. (1)

34 Notwithstanding a disclaimer by the repository or a contract to the

35 contrary between the repository, a certification authority, or a

36 subscriber, a repository is liable for a loss incurred by a person

37 reasonably relying on a digital signature verified by the public key

38 listed in a suspended or revoked certificate, if loss was incurred more

1 than one business day after receipt by the repository of a request to
2 publish notice of the suspension or revocation, and the repository had
3 failed to publish the notice when the person relied on the digital
4 signature.

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

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

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

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

15 (i) Punitive or exemplary damages;

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

17 (iii) Damages for pain or suffering;

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

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

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

30 **PART VI. MISCELLANEOUS**

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

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

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

3 NEW SECTION. **Sec. 604.** SEVERABILITY. If any provision of this
4 act or its application to any person or circumstance is held invalid,
5 the remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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

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