
HOUSE BILL 1326

State of Washington

55th Legislature

1997 Regular Session

By Representatives McMorris, Conway, Boldt, Hatfield, Clements, Wood, Lisk, Cole, Wensman, Costa and Dunn; by request of Secretary of State

Read first time 01/22/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to electronic signatures; amending RCW 19.34.030,
2 19.34.040, 19.34.100, 19.34.110, 19.34.120, 19.34.200, 19.34.210,
3 19.34.240, 19.34.250, 19.34.260, 19.34.280, 19.34.300, 19.34.310,
4 19.34.320, 19.34.340, 19.34.350, 19.34.400, 19.34.500, and 19.34.901;
5 adding new sections to chapter 19.34 RCW; adding a new section to
6 chapter 43.105 RCW; prescribing penalties; and providing an effective
7 date.

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

9 **Sec. 1.** RCW 19.34.030 and 1996 c 250 s 104 are each amended to
10 read as follows:

11 ~~(1) ((If six months elapse during which time no certification~~
12 ~~authority is licensed in this state, then the secretary shall be a~~
13 ~~certification authority, and may issue, suspend, and revoke~~
14 ~~certificates in the manner prescribed for licensed certification~~
15 ~~authorities. Except for licensing requirements, this chapter applies~~
16 ~~to the secretary with respect to certificates he or she issues. The~~
17 ~~secretary must discontinue acting as a certification authority if~~
18 ~~another certification authority is licensed, in a manner allowing~~
19 ~~reasonable transition to private enterprise.))~~ The secretary is a

1 certification authority. A certificate issued by the secretary has the
2 same effect as a certificate issued by a licensed certification
3 authority. The secretary shall only issue certificates in which the
4 subscriber is:

5 (a) The secretary or an authorized agent or employee of the
6 secretary for purposes of official business; or

7 (b) An applicant for a license as a certification authority, for
8 the purpose of compliance with RCW 19.34.100(1)(a).

9 (2) The secretary must maintain a publicly accessible data base
10 containing a certification authority disclosure record for each
11 licensed certification authority, and a list of all judgments filed
12 with the secretary, within the previous five years, under RCW
13 19.34.290. The secretary must publish the contents of the data base in
14 at least one recognized repository.

15 (3) The secretary (~~must~~) may adopt rules consistent with this
16 chapter and in furtherance of its purposes:

17 (a) To govern licensed certification authorities and recognized
18 repositories, their practice, and the termination of a licensed
19 certification authority's or recognized repository's practice;

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

25 (c) To specify reasonable requirements for the form of certificates
26 issued by licensed certification authorities, in accordance with
27 generally accepted standards for digital signature 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 certification practice statements;
35 (~~and~~)

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

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

1 **Sec. 2.** RCW 19.34.040 and 1996 c 250 s 105 are each amended to
2 read as follows:

3 The secretary may adopt rules establishing reasonable fees for all
4 services rendered by the secretary under this chapter, in amounts that
5 are reasonably calculated to be sufficient to compensate for the costs
6 of all services under this chapter, but that are not estimated to
7 exceed those costs in the aggregate. All fees recovered by the
8 secretary must be deposited in the state general fund.

9 **Sec. 3.** RCW 19.34.100 and 1996 c 250 s 201 are each amended to
10 read 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;

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

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

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

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

26 ~~(ii) This state or one of the public entities in (d) of this~~
27 ~~subsection is the subscriber of all certificates issued by the~~
28 ~~certification authority)) that is self-insured or the department of
29 information services;~~

30 ~~(e) ((Have the right to))~~ Use a trustworthy system, including a
31 secure means for limiting access to its private key;

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

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

37 (h) Comply with all further licensing requirements established by
38 rule by the secretary.

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

15 (4) The secretary may revoke or suspend a certification authority's
16 license, in accordance with the administrative procedure act, chapter
17 34.05 RCW, for failure to comply with this chapter or for failure to
18 remain qualified under subsection (1) of this section. The secretary
19 may order the summary suspension of a license pending proceedings for
20 revocation or other action, which must be promptly instituted and
21 determined, if the secretary includes within a written order a finding
22 that the certification authority has either:

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

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

27 (5) The secretary may recognize by rule the licensing or
28 authorization of certification authorities by other governmental
29 entities, provided that those licensing or authorization requirements
30 are substantially similar to those of this state. If licensing by
31 another government is so recognized:

32 (a) RCW 19.34.300 through 19.34.350 apply to certificates issued by
33 the certification authorities licensed or authorized by that government
34 in the same manner as it applies to licensed certification authorities
35 of this state; and

36 (b) The liability limits of RCW 19.34.280 apply to the
37 certification authorities licensed or authorized by that government in
38 the same manner as they apply to licensed certification authorities of
39 this state.

1 (6) Unless the parties provide otherwise by contract between
2 themselves, the licensing requirements in this section do not affect
3 the effectiveness, enforceability, or validity of any digital
4 signature, except that RCW 19.34.300 through 19.34.350 do not apply
5 ~~((in relation)) to ((a digital signature that cannot be verified by))~~
6 a certificate, and associated digital signature, issued by an
7 unlicensed certification authority.

8 (7) A certification authority that has not obtained a license is
9 not subject to the provisions of this chapter, except as specifically
10 provided.

11 NEW SECTION. Sec. 4. A new section is added to chapter 19.34 RCW,
12 to be codified to follow RCW 19.34.100 immediately, to read as follows:

13 Licenses issued under this chapter expire one year after issuance,
14 except that the secretary may provide by rule for a longer duration.
15 The secretary shall provide, by rule, for a system of license renewal,
16 which may include requirements for continuing education.

17 **Sec. 5.** RCW 19.34.110 and 1996 c 250 s 202 are each amended to
18 read as follows:

19 ~~(1) ((A certified public accountant having expertise in computer~~
20 ~~security or an accredited computer security professional must audit the~~
21 ~~operations of each licensed certification authority at least once each~~
22 ~~year to evaluate compliance with this chapter. The secretary may by~~
23 ~~rule specify the qualifications of auditors.))~~ A licensed certification
24 authority shall obtain a compliance audit, as may be more fully defined
25 by rule of the secretary, at least once every year. The auditor shall
26 issue an opinion evaluating the degree to which the certification
27 authority conforms to the requirements of this chapter and the
28 administrative rules adopted by the secretary. If the certification
29 authority is also a recognized repository, the audit must include the
30 repository.

31 (2) ~~((Based on information gathered in the audit, the auditor must~~
32 ~~categorize the licensed certification authority's compliance as one of~~
33 ~~the following:~~

34 ~~(a) Full compliance. The certification authority appears to~~
35 ~~conform to all applicable statutory and regulatory requirements.~~

36 ~~(b) Substantial compliance. The certification authority appears~~
37 ~~generally to conform to applicable statutory and regulatory~~

1 requirements. However, one or more instances of noncompliance or of
2 inability to demonstrate compliance were found in an audited sample,
3 but were likely to be inconsequential.

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

8 (d) Noncompliance. The certification authority complies with few
9 or none of the statutory and regulatory requirements, fails to keep
10 adequate records to demonstrate compliance with more than a few
11 requirements, or refused to submit to an audit.)) The certification
12 authority shall file a copy of the audit report with the secretary.
13 The secretary may provide by rule for filing of the report in an
14 electronic format. The secretary ((must)) shall publish the report in
15 the certification authority disclosure record it maintains for the
16 certification authority ((the date of the audit and the resulting
17 categorization of the certification authority.

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

20 (a) The certification authority to be exempted requests exemption
21 in writing;

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

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

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

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

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

37 (4) If the certification authority's declaration under subsection
38 (3) of this section falsely states a material fact, the certification

1 authority has failed to comply with the performance audit requirements
2 of this section.

3 (5) ~~If a licensed certification authority is exempt under~~
4 ~~subsection (3) of this section, the secretary must publish in the~~
5 ~~certification authority disclosure record it maintains for the~~
6 ~~certification authority that the certification authority is exempt from~~
7 ~~the performance audit requirement)).~~

8 NEW SECTION. Sec. 6. A new section is added to chapter 19.34 RCW,
9 to be codified to follow RCW 19.34.110 immediately, to read as follows:

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

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

14 (ii) Meet such other qualifications as the secretary may establish
15 by rule.

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

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

26 Sec. 7. RCW 19.34.120 and 1996 c 250 s 203 are each amended to
27 read as follows:

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

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

35 (3) The secretary may by order impose and collect a civil monetary
36 penalty for a violation of this chapter in an amount not to exceed
37 ((five)) ten thousand dollars per incident, or ninety percent of the

1 recommended reliance limit of a material certificate, whichever is
2 (~~less~~) greater. In case of a violation continuing for more than one
3 day, each day is considered a separate incident. The secretary may
4 adopt rules setting forth the standards governing the exercise of the
5 secretary's discretion as to penalty amounts.

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

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

16 **Sec. 8.** RCW 19.34.200 and 1996 c 250 s 301 are each amended to
17 read as follows:

18 (1) A licensed certification authority or subscriber (~~may~~) shall
19 use only a trustworthy system:

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

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

23 (c) To create a private key.

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

31 **Sec. 9.** RCW 19.34.210 and 1996 c 250 s 302 are each amended to
32 read as follows:

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

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

37 (b) The certification authority has confirmed that:

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

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

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

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

10 (v) The prospective subscriber holds a private key capable of
11 creating a digital signature; ~~((and))~~

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

15 (vii) The certificate provides information sufficient to locate or
16 identify one or more repositories in which notification of the
17 revocation or suspension of the certificate will be listed if the
18 certificate is suspended or revoked.

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

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

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

34 (4) After issuing a certificate, a licensed certification authority
35 must revoke it immediately upon confirming that it was not issued as
36 required by this section. A licensed certification authority may also
37 suspend a certificate that it has issued for a reasonable period not
38 exceeding forty-eight hours as needed for an investigation to confirm
39 grounds for revocation under this subsection. The certification

1 authority must give notice to the subscriber as soon as practicable
2 after a decision to revoke or suspend under this subsection.

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

9 (a) The certificate was issued without substantial compliance with
10 this section; and

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

13 Upon determining that an emergency requires an immediate remedy,
14 and in accordance with the administrative procedure act, chapter 34.05
15 RCW, the secretary may issue an order suspending a certificate for a
16 period not to exceed (~~forty-eight~~) ninety-six hours.

17 NEW SECTION. **Sec. 10.** A new section is added to chapter 19.34
18 RCW, to be codified to follow RCW 19.34.230 immediately, to read as
19 follows:

20 (1) A unit of state or local government, including its appropriate
21 officers or employees, may become a subscriber to a certificate for
22 purposes of conducting official business, but only if the certificate
23 is issued by a licensed certification authority. A unit of state
24 government, except the secretary and the department of information
25 services, may not act as a certification authority.

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

30 (3) The limitation to licensed certification authorities in
31 subsection (1) of this section does not apply to uses of digital
32 signatures or key pairs limited to internal agency procedures, as to
33 which the signature is not required by statute, administrative rule,
34 court rule, or requirement of the office of financial management.

35 **Sec. 11.** RCW 19.34.240 and 1996 c 250 s 305 are each amended to
36 read as follows:

1 (1) By accepting a certificate issued by a licensed certification
2 authority, the subscriber identified in the certificate assumes a duty
3 to exercise reasonable care to retain control of the private key and
4 prevent its disclosure to a person not authorized to create the
5 subscriber's digital signature. The subscriber is released from this
6 duty if the certificate expires or is revoked.

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

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

17 (4) A private key in the possession of a state agency or local
18 agency, as those terms are defined by RCW 42.17.020, is exempt from
19 public inspection and copying under chapter 42.17 RCW.

20 **Sec. 12.** RCW 19.34.250 and 1996 c 250 s 306 are each amended to
21 read as follows:

22 (1) Unless the certification authority and the subscriber agree
23 otherwise, the licensed certification authority that issued a
24 certificate that is not a transactional certificate must suspend the
25 certificate for a period not to exceed ~~((forty-eight))~~ ninety-six
26 hours:

27 (a) Upon request by a person ~~((identifying himself or herself as))~~
28 whom the certification authority reasonably believes to be: (i) The
29 subscriber named in the certificate((7)); (ii) a person duly authorized
30 to act for that subscriber; or ((as a person in a position likely to
31 know of a compromise of the security of a subscriber's private key,
32 such as an agent, business associate, employee, or member of the
33 immediate family of the subscriber)) (iii) a person acting on behalf of
34 the unavailable subscriber; or

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

36 The certification authority need not confirm the identity or agency
37 of the person requesting suspension. The certification authority may
38 require the person requesting suspension to provide evidence, including

1 a statement under oath or affirmation, regarding the requestor's
2 identity, authorization, or the unavailability of the subscriber. Law
3 enforcement agencies may investigate suspensions for possible
4 wrongdoing by persons requesting suspension.

5 (2) Unless the certificate provides otherwise or the certificate is
6 a transactional certificate, the secretary (~~or a county clerk~~) may
7 suspend a certificate issued by a licensed certification authority for
8 a period (~~of forty-eight~~) not to exceed ninety-six hours, if:

9 (a) A person identifying himself or herself as the subscriber named
10 in the certificate (~~or as an agent, business associate, employee, or~~
11 ~~member of the immediate family of the subscriber requests suspension~~),
12 a person authorized to act for that subscriber, or a person acting on
13 behalf of that unavailable subscriber; and

14 (b) The requester represents that the certification authority that
15 issued the certificate is unavailable.

16 The secretary (~~or county clerk~~) may require the person requesting
17 suspension to provide evidence, including a statement under oath or
18 affirmation, regarding his or her identity, authorization, or the
19 unavailability of the issuing certification authority, and may decline
20 to suspend the certificate in its discretion. (~~The secretary or~~) Law
21 enforcement agencies may investigate suspensions by the secretary (~~or~~
22 county clerk) for possible wrongdoing by persons requesting
23 suspension.

24 (3) Immediately upon suspension of a certificate by a licensed
25 certification authority, the licensed certification authority must give
26 notice of the suspension according to the specification in the
27 certificate. If one or more repositories are specified, then the
28 licensed certification authority must publish a signed notice of the
29 suspension in all the repositories. If a repository no longer exists
30 or refuses to accept publication, or if no repository is recognized
31 under RCW 19.34.400, the licensed certification authority must also
32 publish the notice in a recognized repository. If a certificate is
33 suspended by the secretary (~~or county clerk~~), the secretary (~~or~~
34 ~~clerk~~) must give notice as required in this subsection for a licensed
35 certification authority, provided that the person requesting suspension
36 pays in advance any fee required by a repository for publication of the
37 notice of suspension.

38 (4) A certification authority must terminate a suspension initiated
39 by request only:

1 (a) If the subscriber named in the suspended certificate requests
2 termination of the suspension, the certification authority has
3 confirmed that the person requesting suspension is the subscriber or an
4 agent of the subscriber authorized to terminate the suspension; or

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

9 (5) The contract between a subscriber and a licensed certification
10 authority may limit or preclude requested suspension by the
11 certification authority, or may provide otherwise for termination of a
12 requested suspension. However, if the contract limits or precludes
13 suspension by the secretary (~~or county clerk~~) when the issuing
14 certification authority is unavailable, the limitation or preclusion is
15 effective only if notice of it is published in the certificate.

16 (6) No person may knowingly or intentionally misrepresent to a
17 certification authority his or her identity or authorization in
18 requesting suspension of a certificate. Violation of this subsection
19 is a gross misdemeanor.

20 (7) (~~The subscriber is released from the duty to keep the private~~
21 ~~key secure under RCW 19.34.240(1) while the certificate is suspended.~~)
22 The secretary may authorize other state or local governmental agencies
23 to perform any of the functions of the secretary under this section
24 upon a regional basis. The authorization must be formalized by an
25 agreement under chapter 39.34 RCW. The secretary may provide by rule
26 the terms and conditions of the regional services.

27 (8) A suspension under this section must be completed within
28 twenty-four hours of receipt of all information required in this
29 section.

30 **Sec. 13.** RCW 19.34.260 and 1996 c 250 s 307 are each amended to
31 read as follows:

32 (1) A licensed certification authority must revoke a certificate
33 that it issued but which is not a transactional certificate, after:

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

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

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

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

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

11 (b) Upon presentation of documents effecting a dissolution of the
12 subscriber, or upon confirming by other evidence that the subscriber
13 has been dissolved or has ceased to exist, except that if the
14 subscriber is administratively dissolved and is reinstated before
15 revocation is completed, the certification authority is not required to
16 revoke the certificate.

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

22 (5) Immediately upon revocation of a certificate by a licensed
23 certification authority, the licensed certification authority must give
24 notice of the revocation according to the specification in the
25 certificate. If one or more repositories are specified, then the
26 licensed certification authority must publish a signed notice of the
27 revocation in all repositories. If a repository no longer exists or
28 refuses to accept publication, or if no repository is recognized under
29 RCW 19.34.400, then the licensed certification authority must also
30 publish the notice in a recognized repository.

31 (6) A subscriber ceases to certify, as provided in RCW 19.34.230,
32 and has no further duty to keep the private key secure, as required by
33 RCW 19.34.240, in relation to the certificate whose revocation the
34 subscriber has requested, beginning at the earlier of either:

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

37 (b) One business day after the subscriber requests revocation in
38 writing, supplies to the issuing certification authority information

1 reasonably sufficient to confirm the request, and pays any
2 contractually required fee.

3 (7) Upon notification as required by subsection (5) of this
4 section, a licensed certification authority is discharged of its
5 warranties based on issuance of the revoked certificate, as to
6 transactions occurring after the notification, and ceases to certify as
7 provided in RCW 19.34.220 (2) and (3) in relation to the revoked
8 certificate.

9 **Sec. 14.** RCW 19.34.280 and 1996 c 250 s 309 are each amended to
10 read as follows:

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

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

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

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

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

27 (ii) Failure to comply with RCW 19.34.210 in issuing the
28 certificate;

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

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

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

36 (iii) Damages for pain or suffering.

1 NEW SECTION. **Sec. 15.** A new section is added to chapter 19.34
2 RCW, to be codified to follow RCW 19.34.290 immediately, to read as
3 follows:

4 (1) A licensed certification authority that discontinues providing
5 certification authority services shall:

6 (a) Notify all subscribers listed in valid certificates issued by
7 the certification authority, before discontinuing services;

8 (b) Minimize, to the extent commercially reasonable, disruption to
9 the subscribers of valid certificates and relying parties; and

10 (c) Make reasonable arrangements for preservation of the
11 certification authority's records.

12 (2) A suitable guaranty of a licensed certification authority may
13 not be released until the expiration of the term specified in the
14 guaranty.

15 (3) The secretary may provide by rule for a process by which the
16 secretary may, in any combination, receive, administer, or disburse the
17 records of a licensed certification authority or a recognized
18 repository that discontinues providing services, for the purpose of
19 maintaining access to the records and revoking any previously issued
20 valid certificates in a manner that minimizes disruption to subscribers
21 and relying parties. The secretary's rules may include provisions by
22 which the secretary may recover costs incurred in doing so.

23 **Sec. 16.** RCW 19.34.300 and 1996 c 250 s 401 are each amended to
24 read as follows:

25 (1) Where a rule of law requires a signature, or provides for
26 certain consequences in the absence of a signature, that rule is
27 satisfied by a digital signature, if:

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

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

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

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

1 (~~(a)~~) (i) Breached a duty as a subscriber; or
2 (~~(b)~~) (ii) Does not rightfully hold the private key used to affix
3 the digital signature.
4 (~~However,~~) (2) Nothing in this chapter precludes a mark from
5 being valid as a signature under other applicable law.

6 **Sec. 17.** RCW 19.34.310 and 1996 c 250 s 402 are each amended to
7 read as follows:

8 Unless otherwise provided by law or contract, the recipient of a
9 digital signature assumes the risk that a digital signature is forged,
10 if reliance on the digital signature is not reasonable under the
11 circumstances. If the recipient determines not to rely on a digital
12 signature under this section, the recipient must promptly notify the
13 signer of any determination not to rely on a digital signature and the
14 grounds for that determination. Nothing in this chapter shall be
15 construed to obligate a person to accept a digital signature or to
16 respond to an electronic message containing a digital signature, except
17 as provided in section 20 of this act.

18 NEW SECTION. **Sec. 18.** A new section is added to chapter 19.34
19 RCW, to be codified to follow RCW 19.34.310 immediately, to read as
20 follows:

21 The following factors, among others, are significant in evaluating
22 the reasonableness of a recipient's reliance upon a certificate and
23 upon the digital signatures verifiable with reference to the public key
24 listed in the certificate:

25 (1) Facts which the relying party knows or of which the relying
26 party has notice, including all facts listed in the certificate or
27 incorporated in it by reference;

28 (2) The value or importance of the digitally signed message, if
29 known;

30 (3) The course of dealing between the relying person and subscriber
31 and the available indicia of reliability or unreliability apart from
32 the digital signature; and

33 (4) Usage of trade, particularly trade conducted by trustworthy
34 systems or other computer-based means.

35 **Sec. 19.** RCW 19.34.320 and 1996 c 250 s 403 are each amended to
36 read as follows:

1 A message is as valid, enforceable, and effective as if it had been
2 written on paper, if it:

3 (1) Bears in its entirety a digital signature; and

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

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

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

8 Nothing in this chapter shall be construed to eliminate, modify, or
9 condition any other requirements for a contract to be valid,
10 enforceable, and effective. No digital message shall be deemed to be
11 an instrument under ~~((the provisions of))~~ Title 62A RCW unless all
12 parties to the transaction agree, including financial institutions
13 affected.

14 NEW SECTION. **Sec. 20.** A new section is added to chapter 19.34
15 RCW, to be codified to follow RCW 19.34.320 immediately, to read as
16 follows:

17 (1) A person may not refuse to honor, accept, or act upon a court
18 order, writ, or warrant upon the basis that it is electronic in form
19 and signed with a digital signature, if the digital signature was
20 certified by a licensed certification authority or otherwise issued
21 under court rule. This section applies to a paper printout of a
22 digitally signed document, if the printout reveals that the digital
23 signature was electronically verified before the printout, and in the
24 absence of a finding that the document has been altered.

25 (2) Nothing in this chapter shall be construed to limit the
26 authority of the supreme court to adopt rules of pleading, practice, or
27 procedure, or of the court of appeals or superior courts to adopt
28 supplementary local rules, governing the use of electronic messages or
29 documents, including rules governing the use of digital signatures, in
30 judicial proceedings.

31 **Sec. 21.** RCW 19.34.340 and 1996 c 250 s 405 are each amended to
32 read as follows:

33 Unless otherwise provided by law or contract, a certificate issued
34 by a licensed certification authority is an acknowledgment, and
35 satisfies any requirement for a notarized signature, of a digital
36 signature verified by reference to the public key listed in the
37 certificate, regardless of whether words of an express acknowledgment

1 appear with the digital signature and regardless of whether the signer
2 physically appeared before the certification authority when the digital
3 signature was created, if that digital signature is:

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

6 **Sec. 22.** RCW 19.34.350 and 1996 c 250 s 406 are each amended to
7 read as follows:

8 In adjudicating a dispute involving a digital signature, a court of
9 this state presumes that:

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

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

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

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

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

23 (c) The message associated with the digital signature has not been
24 altered since the signature was affixed; and

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

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

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

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

32 **Sec. 23.** RCW 19.34.400 and 1996 c 250 s 501 are each amended to
33 read as follows:

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

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

- 1 (b) Includes, or will include, 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, that may, under
- 12 administrative rule of the secretary, include additional or different
- 13 attributes than those applicable to a certification authority that does
- 14 not operate as a recognized repository;
- 15 (d) Contains no significant amount of information that is known or
- 16 likely to be untrue, inaccurate, or not reasonably reliable;
- 17 (e) Contains certificates published by certification authorities
- 18 that conform to legally binding requirements that the secretary finds
- 19 to be substantially similar to, or more stringent toward the
- 20 certification authorities, than those of this state;
- 21 (f) Keeps an archive of certificates that have been suspended or
- 22 revoked, or that have expired, within at least the past three years;
- 23 and
- 24 (g) Complies with other reasonable requirements adopted by rule by
- 25 the secretary.

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

27 filing a written request and providing evidence to the secretary

28 sufficient for the secretary to find that the conditions for

29 recognition are satisfied.

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

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

32 discontinue recognition of a repository in accordance with the

33 administrative procedure act, chapter 34.05 RCW, if ~~((it))~~ the

34 secretary concludes that the repository no longer satisfies the

35 conditions for recognition listed in this section or in rules adopted

36 by the secretary.

37 **Sec. 24.** RCW 19.34.500 and 1996 c 250 s 603 are each amended to

38 read as follows:

1 The secretary of state may adopt rules to implement this chapter
2 beginning (~~(July 1, 1996)~~) July 27, 1997, but the rules may not take
3 effect until January 1, 1998.

4 NEW SECTION. Sec. 25. A new section is added to chapter 19.34
5 RCW, to be codified to follow RCW 19.34.500 immediately, to read as
6 follows:

7 This chapter supersedes and preempts all local laws or ordinances
8 regarding the same subject matter.

9 NEW SECTION. Sec. 26. A new section is added to chapter 19.34
10 RCW, to be codified to follow section 25 of this act immediately, to
11 read as follows:

12 This chapter does not preclude criminal prosecution under other
13 laws of this state, nor may any provision of this chapter be regarded
14 as an exclusive remedy for a violation. Injunctive relief may not be
15 denied to a party regarding conduct governed by this chapter on the
16 basis that the conduct is also subject to potential criminal
17 prosecution.

18 NEW SECTION. Sec. 27. A new section is added to chapter 19.34
19 RCW, to be codified to follow section 26 of this act immediately, to
20 read as follows:

21 Issues regarding jurisdiction, venue, and choice of laws for all
22 actions involving digital signatures must be determined according to
23 the same principles as if all transactions had been performed through
24 paper documents.

25 **Sec. 28.** RCW 19.34.901 and 1996 c 250 s 602 are each amended to
26 read as follows:

27 (~~(This act shall)~~) (1) Sections 1 through 601, 604, and 605,
28 chapter 250, Laws of 1996 take effect January 1, 1998.

29 (2) Sections 602 and 603, chapter 250, Laws of 1996 take effect
30 July 27, 1997.

31 NEW SECTION. Sec. 29. A new section is added to chapter 43.105
32 RCW to read as follows:

33 The department of information services may become a licensed
34 certification authority, under chapter 19.34 RCW, for the purpose of

1 providing services to state and local government. The department shall
2 only issue certificates, as defined in RCW 19.34.020, in which the
3 subscriber is:

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

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

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

11 NEW SECTION. **Sec. 30.** Sections 1 through 23, 25 through 27, and
12 29 of this act takes effect January 1, 1998.

13 NEW SECTION. **Sec. 31.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

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