

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5308

55th Legislature
1997 Regular Session

Passed by the Senate March 15, 1997
YEAS 48 NAYS 1

President of the Senate

Passed by the House April 8, 1997
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5308** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5308

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators Horn, Finkbeiner, Franklin, Fraser and Winsley; by request of Secretary of State)

Read first time 02/27/97.

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, 19.34.901,
5 19.34.020, 19.34.220, and 19.34.410; adding new sections to chapter
6 19.34 RCW; adding a new section to chapter 43.105 RCW; prescribing
7 penalties; and providing an effective 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.~~

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

7 ~~((3))~~) (2) The secretary ~~((must))~~ may adopt rules consistent with
8 this chapter and in furtherance of its purposes:

9 (a) To govern licensed certification authorities and recognized
10 repositories, their practice, and the termination of a licensed
11 certification authority's or recognized repository's practice;

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

17 (c) To specify reasonable requirements for the form of certificates
18 issued by licensed certification authorities, in accordance with
19 generally accepted standards for digital signature certificates;

20 (d) To specify reasonable requirements for recordkeeping by
21 licensed certification authorities;

22 (e) To specify reasonable requirements for the content, form, and
23 sources of information in certification authority disclosure records,
24 the updating and timeliness of the information, and other practices and
25 policies relating to certification authority disclosure records;

26 (f) To specify the form of certification practice statements;
27 ~~((and))~~

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

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

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

33 The secretary may adopt rules establishing reasonable fees for all
34 services rendered by the secretary under this chapter, in amounts that
35 are reasonably calculated to be sufficient to compensate for the costs
36 of all services under this chapter, but that are not estimated to
37 exceed those costs in the aggregate. All fees recovered by the
38 secretary must be deposited in the state general fund.

1 **Sec. 3.** RCW 19.34.100 and 1996 c 250 s 201 are each amended to
2 read as follows:

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

4 (a) Be the subscriber of a certificate published in a recognized
5 repository;

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

9 (c) Employ as operative personnel only persons who have
10 demonstrated knowledge and proficiency in following the requirements of
11 this chapter;

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

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

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

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

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

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

29 (h) Comply with all further licensing requirements established by
30 rule by the secretary.

31 (2) The secretary must issue a license to a certification authority
32 that:

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

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

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

36 (3) The secretary may by rule classify licenses according to
37 specified limitations, such as a maximum number of outstanding
38 certificates, cumulative maximum of recommended reliance limits in
39 certificates issued by the certification authority, or issuance only

1 within a single firm or organization, and the secretary may issue
2 licenses restricted according to the limits of each classification.
3 (~~A certification authority acts as an unlicensed certification~~
4 ~~authority in issuing a certificate exceeding the restrictions of the~~
5 ~~certification authority's license.~~) The liability limits of RCW
6 19.34.280 do not apply to a certificate issued by a certification
7 authority that exceeds the restrictions of the certification
8 authority's license.

9 (4) The secretary may revoke or suspend a certification authority's
10 license, in accordance with the administrative procedure act, chapter
11 34.05 RCW, for failure to comply with this chapter or for failure to
12 remain qualified under subsection (1) of this section. The secretary
13 may order the summary suspension of a license pending proceedings for
14 revocation or other action, which must be promptly instituted and
15 determined, if the secretary includes within a written order a finding
16 that the certification authority has either:

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

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

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

26 (a) RCW 19.34.300 through 19.34.350 apply to certificates issued by
27 the certification authorities licensed or authorized by that government
28 in the same manner as it applies to licensed certification authorities
29 of this state; and

30 (b) The liability limits of RCW 19.34.280 apply to the
31 certification authorities licensed or authorized by that government in
32 the same manner as they apply to licensed certification authorities of
33 this state.

34 (6) Unless the parties provide otherwise by contract between
35 themselves, the licensing requirements in this section do not affect
36 the effectiveness, enforceability, or validity of any digital
37 signature, except that RCW 19.34.300 through 19.34.350 do not apply
38 (~~in relation~~) to (~~a digital signature that cannot be verified by~~)

1 a certificate, and associated digital signature, issued by an
2 unlicensed certification authority.

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

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

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

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

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

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

29 (a) ~~Full compliance.~~—~~The certification authority appears to~~
30 ~~conform to all applicable statutory and regulatory requirements.~~

31 (b) ~~Substantial compliance.~~—~~The certification authority appears~~
32 ~~generally to conform to applicable statutory and regulatory~~
33 ~~requirements. However, one or more instances of noncompliance or of~~
34 ~~inability to demonstrate compliance were found in an audited sample,~~
35 ~~but were likely to be inconsequential.~~

36 (c) ~~Partial compliance.~~—~~The certification authority appears to~~
37 ~~comply with some statutory and regulatory requirements, but was found~~

1 ~~not to have complied or not to be able to demonstrate compliance with~~
2 ~~one or more important safeguards.~~

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

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

15 ~~(a) The certification authority to be exempted requests exemption~~
16 ~~in writing;~~

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

19 ~~(c) The certification authority declares under oath, affirmation,~~
20 ~~or penalty of perjury that one or more of the following is true with~~
21 ~~respect to the certification authority:~~

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

25 ~~(ii) The aggregate lifetime of all certificates issued by the~~
26 ~~certification authority during the past year is less than thirty days~~
27 ~~and the recommended reliance limits of all of the certificates do not~~
28 ~~exceed ten thousand dollars; or~~

29 ~~(iii) The recommended reliance limits of all certificates~~
30 ~~outstanding and issued by the certification authority total less than~~
31 ~~one thousand dollars.~~

32 ~~(4) If the certification authority's declaration under subsection~~
33 ~~(3) of this section falsely states a material fact, the certification~~
34 ~~authority has failed to comply with the performance audit requirements~~
35 ~~of this section.~~

36 ~~(5) If a licensed certification authority is exempt under~~
37 ~~subsection (3) of this section, the secretary must publish in the~~
38 ~~certification authority disclosure record it maintains for the~~

1 ~~certification authority that the certification authority is exempt from~~
2 ~~the performance audit requirement))~~.

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

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

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

9 (ii) Meet such other qualifications as the secretary may establish
10 by rule.

11 (b) Auditors must either possess such computer security
12 qualifications as are necessary to conduct the audit or employ,
13 contract, or associate with firms or individuals who do. The secretary
14 may adopt rules establishing qualifications as to expertise or
15 experience in computer security.

16 (2) The compliance audits of state agencies and local governments
17 who are licensed certification authorities, and the secretary, must be
18 performed under the authority of the state auditor. The state auditor
19 may contract with private entities as needed to comply with this
20 chapter.

21 **Sec. 7.** RCW 19.34.120 and 1996 c 250 s 203 are each amended to
22 read as follows:

23 (1) The secretary may investigate the activities of a licensed
24 certification authority material to its compliance with this chapter
25 and issue orders to a certification authority to further its
26 investigation and secure compliance with this chapter.

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

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

1 governing the exercise of the secretary's discretion as to penalty
2 amounts.

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

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

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

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

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

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

20 (c) To create a private key.

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

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

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

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

34 (b) The certification authority has confirmed that:

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

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

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

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

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

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

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

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

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

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

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

1 as practicable after a decision to revoke or suspend under this
2 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 ~~((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.))~~ A private key in the possession
17 of a state agency or local agency, as those terms are defined by RCW
18 42.17.020, is exempt from public inspection and copying under chapter
19 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 dissolved and is reinstated or restored before revocation
15 is completed, the certification authority is not required to revoke the
16 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) Subject to subsection (3) of this section, unless a licensed
17 certification authority waives application of this subsection, a
18 licensed certification authority is:

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

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

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

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

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

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

36 (ii) ~~((Damages for lost profits or opportunity; or~~

37 ~~(iii)))~~ Damages for pain or suffering.

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

13 (4) Consequential or incidental damages may be liquidated, or may
14 otherwise be limited, altered, or excluded unless the limitation,
15 alteration, or exclusion is unconscionable. A licensed certification
16 authority may liquidate, limit, alter, or exclude consequential or
17 incidental damages as provided in this subsection by agreement or by
18 notifying any person who will rely on a certificate of the liquidation,
19 limitation, alteration, or exclusion before the person relies on the
20 certificate.

21 NEW SECTION. Sec. 15. A new section is added to chapter 19.34
22 RCW, to be codified to follow RCW 19.34.290 immediately, to read as
23 follows:

24 (1) A licensed certification authority that discontinues providing
25 certification authority services shall:

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

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

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

32 (2) A suitable guaranty of a licensed certification authority may
33 not be released until the expiration of the term specified in the
34 guaranty.

35 (3) The secretary may provide by rule for a process by which the
36 secretary may, in any combination, receive, administer, or disburse the
37 records of a licensed certification authority or a recognized
38 repository that discontinues providing services, for the purpose of

1 maintaining access to the records and revoking any previously issued
2 valid certificates in a manner that minimizes disruption to subscribers
3 and relying parties. The secretary's rules may include provisions by
4 which the secretary may recover costs incurred in doing so.

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

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

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

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

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

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

21 ~~((a))~~ (i) Breached a duty as a subscriber; or

22 ~~((b))~~ (ii) Does not rightfully hold the private key used to affix
23 the digital signature.

24 ~~((However,))~~ (2) Nothing in this chapter:

25 (a) Precludes a mark from being valid as a signature under other
26 applicable law;

27 (b) May be construed to obligate a recipient or any other person
28 asked to rely on a digital signature to accept a digital signature or
29 to respond to an electronic message containing a digital signature
30 except as provided in section 20 of this act; or

31 (c) Precludes the recipient of a digital signature or an electronic
32 message containing a digital signature from establishing the conditions
33 under which the recipient will accept a digital signature.

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

36 Unless otherwise provided by law or contract, the recipient of a
37 digital signature assumes the risk that a digital signature is forged,

1 if reliance on the digital signature is not reasonable under the
2 circumstances. (~~If the recipient determines not to rely on a digital
3 signature under this section, the recipient must promptly notify the
4 signer of any determination not to rely on a digital signature and the
5 grounds for that determination. Nothing in this chapter shall be
6 construed to obligate a person to accept a digital signature or to
7 respond to an electronic message containing a digital signature.~~)

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

11 The following factors, among others, are significant in evaluating
12 the reasonableness of a recipient's reliance upon a certificate and
13 upon the digital signatures verifiable with reference to the public key
14 listed in the certificate:

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

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

20 (3) The course of dealing between the relying person and subscriber
21 and the available indicia of reliability or unreliability apart from
22 the digital signature; and

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

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

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

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

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

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

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

34 Nothing in this chapter shall be construed to eliminate, modify, or
35 condition any other requirements for a contract to be valid,
36 enforceable, and effective. No digital message shall be deemed to be
37 an instrument under (~~the provisions of~~) Title 62A RCW unless all

1 parties to the transaction agree, including financial institutions
2 affected.

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

6 (1) A person may not refuse to honor, accept, or act upon a court
7 order, writ, or warrant upon the basis that it is electronic in form
8 and signed with a digital signature, if the digital signature was
9 certified by a licensed certification authority or otherwise issued
10 under court rule. This section applies to a paper printout of a
11 digitally signed document, if the printout reveals that the digital
12 signature was electronically verified before the printout, and in the
13 absence of a finding that the document has been altered.

14 (2) Nothing in this chapter shall be construed to limit the
15 authority of the supreme court to adopt rules of pleading, practice, or
16 procedure, or of the court of appeals or superior courts to adopt
17 supplementary local rules, governing the use of electronic messages or
18 documents, including rules governing the use of digital signatures, in
19 judicial proceedings.

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

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

37 ((1)) (a) Verifiable by that certificate; and

1 (~~(2)~~) (b) Affixed when that certificate was valid.

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

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

10 In adjudicating a dispute involving a digital signature, (~~a court~~
11 ~~of this state presumes~~) it is rebuttably presumed that:

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Is (~~operated under the direction of~~) a licensed certification
2 authority;

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

4 (i) Certificates published in the repository;

5 (ii) Notices of suspended or revoked certificates published by
6 licensed certification authorities or other persons suspending or
7 revoking certificates;

8 (iii) Certification authority disclosure records for licensed
9 certification authorities;

10 (iv) All orders or advisory statements published by the secretary
11 in regulating certification authorities; and

12 (v) Other information adopted by rule by the secretary;

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

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

19 (e) Contains certificates published by certification authorities
20 that conform to legally binding requirements that the secretary finds
21 to be substantially similar to, or more stringent toward the
22 certification authorities, than those of this state;

23 (f) Keeps an archive of certificates that have been suspended or
24 revoked, or that have expired, within at least the past three years;
25 and

26 (g) Complies with other reasonable requirements adopted by rule by
27 the secretary.

28 (2) A repository may apply to the secretary for recognition by
29 filing a written request and providing evidence to the secretary
30 sufficient for the secretary to find that the conditions for
31 recognition are satisfied.

32 (3) A repository may discontinue its recognition by filing thirty
33 days' written notice with the secretary. In addition the secretary may
34 discontinue recognition of a repository in accordance with the
35 administrative procedure act, chapter 34.05 RCW, if (~~it~~) the
36 secretary concludes that the repository no longer satisfies the
37 conditions for recognition listed in this section or in rules adopted
38 by the secretary.

1 **Sec. 24.** RCW 19.34.500 and 1996 c 250 s 603 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 29.** A new section is added to chapter 43.105
34 RCW to read as follows:

1 The department of information services may become a licensed
2 certification authority, under chapter 19.34 RCW, for the purpose of
3 providing services to state and local government. The department is
4 not subject to RCW 19.34.100(1)(a). The department shall only issue
5 certificates, as defined in RCW 19.34.020, in which the subscriber is:

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

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

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

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

15 **Sec. 30.** RCW 19.34.020 and 1996 c 250 s 103 are each amended to
16 read as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter:

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

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

22 (b) To apply to a licensed certification authority for a
23 certificate, without canceling or revoking the application by
24 delivering notice of the cancellation or revocation to the
25 certification authority and obtaining a signed, written receipt from
26 the certification authority, if the certification authority
27 subsequently issues a certificate based on the application.

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

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

32 ~~((+3))~~ (4) "Certificate" means a computer-based record that:

33 (a) Identifies the certification authority issuing it;

34 (b) Names or identifies its subscriber;

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

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

37 ~~((+4))~~ (5) "Certification authority" means a person who issues a
38 certificate.

1 ~~((+5))~~ (6) "Certification authority disclosure record" means an
2 on-line, publicly accessible record that concerns a licensed
3 certification authority and is kept by the secretary. A certification
4 authority disclosure record has the contents specified by rule by the
5 secretary under RCW 19.34.030.

6 ~~((+6))~~ (7) "Certification practice statement" means a declaration
7 of the practices that a certification authority employs in issuing
8 certificates generally, or employed in issuing a material certificate.

9 ~~((+7))~~ (8) "Certify" means to declare with reference to a
10 certificate, with ample opportunity to reflect, and with a duty to
11 apprise oneself of all material facts.

12 ~~((+8))~~ (9) "Confirm" means to ascertain through appropriate
13 inquiry and investigation.

14 ~~((+9))~~ (10) "Correspond," with reference to keys, means to belong
15 to the same key pair.

16 ~~((+10))~~ (11) "Digital signature" means a transformation of a
17 message using an asymmetric cryptosystem such that a person having the
18 initial message and the signer's public key can accurately determine:

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

21 (b) Whether the initial message has been altered since the
22 transformation was made.

23 ~~((+11))~~ (12) "Financial institution" means a national or state-
24 chartered commercial bank or trust company, savings bank, savings
25 association, or credit union authorized to do business in the state of
26 Washington and the deposits of which are federally insured.

27 ~~((+12))~~ (13) "Forge a digital signature" means either:

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

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

32 (i) Does not exist; or

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

35 ~~((+13))~~ (14) "Hold a private key" means to be authorized to
36 utilize a private key.

37 ~~((+14))~~ (15) "Incorporate by reference" means to make one message
38 a part of another message by identifying the message to be incorporated
39 and expressing the intention that it be incorporated.

1 ~~((15))~~ (16) "Issue a certificate" means the acts of a
2 certification authority in creating a certificate and notifying the
3 subscriber listed in the certificate of the contents of the
4 certificate.

5 ~~((16))~~ (17) "Key pair" means a private key and its corresponding
6 public key in an asymmetric cryptosystem, keys which have the property
7 that the public key can verify a digital signature that the private key
8 creates.

9 ~~((17))~~ (18) "Licensed certification authority" means a
10 certification authority to whom a license has been issued by the
11 secretary and whose license is in effect.

12 ~~((18))~~ (19) "Message" means a digital representation of
13 information.

14 ~~((19))~~ (20) "Notify" means to communicate a fact to another
15 person in a manner reasonably likely under the circumstances to impart
16 knowledge of the information to the other person.

17 ~~((20))~~ (21) "Operative personnel" means one or more natural
18 persons acting as a certification authority or its agent, or in the
19 employment of, or under contract with, a certification authority, and
20 who have:

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

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

26 ~~((21))~~ (22) "Person" means a human being or an organization
27 capable of signing a document, either legally or as a matter of fact.

28 ~~((22))~~ (23) "Private key" means the key of a key pair used to
29 create a digital signature.

30 ~~((23))~~ (24) "Public key" means the key of a key pair used to
31 verify a digital signature.

32 ~~((24))~~ (25) "Publish" means to record or file in a repository.

33 ~~((25))~~ (26) "Qualified right to payment" means an award of
34 damages against a licensed certification authority by a court having
35 jurisdiction over the certification authority in a civil action for
36 violation of this chapter.

37 ~~((26))~~ (27) "Recipient" means a person who ~~((receives or has a~~
38 digital signature)) has received a certificate and a digital signature

1 verifiable with reference to a public key listed in the certificate and
2 is in a position to rely on it.

3 ~~((27))~~ (28) "Recognized repository" means a repository recognized
4 by the secretary under RCW 19.34.400.

5 ~~((28))~~ (29) "Recommended reliance limit" means the monetary
6 amount recommended for reliance on a certificate under RCW
7 19.34.280(1).

8 ~~((29))~~ (30) "Repository" means a system for storing and
9 retrieving certificates and other information relevant to digital
10 signatures.

11 ~~((30))~~ (31) "Revoke a certificate" means to make a certificate
12 ineffective permanently from a specified time forward. Revocation is
13 effected by notation or inclusion in a set of revoked certificates, and
14 does not imply that a revoked certificate is destroyed or made
15 illegible.

16 ~~((31))~~ (32) "Rightfully hold a private key" means the authority
17 to utilize a private key:

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

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

22 ~~((32))~~ (33) "Secretary" means the secretary of state.

23 ~~((33))~~ (34) "Subscriber" means a person who:

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

25 (b) Accepts the certificate; and

26 (c) Holds a private key that corresponds to a public key listed in
27 that certificate.

28 ~~((34))~~ (35) "Suitable guaranty" means either a surety bond
29 executed by a surety authorized by the insurance commissioner to do
30 business in this state, or an irrevocable letter of credit issued by a
31 financial institution authorized to do business in this state, which,
32 in either event, satisfies all of the following requirements:

33 (a) It is issued payable to the secretary for the benefit of
34 persons holding qualified rights of payment against the licensed
35 certification authority named as the principal of the bond or customer
36 of the letter of credit;

37 (b) It is in an amount specified by rule by the secretary under RCW
38 19.34.030;

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

1 (d) It specifies a term of effectiveness extending at least as long
2 as the term of the license to be issued to the certification authority;
3 and

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

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

9 ~~((35))~~ (36) "Suspend a certificate" means to make a certificate
10 ineffective temporarily for a specified time forward.

11 ~~((36))~~ (37) "Time stamp" means either:

12 (a) To append or attach to a message, digital signature, or
13 certificate a digitally signed notation indicating at least the date,
14 time, and identity of the person appending or attaching the notation;
15 or

16 (b) The notation thus appended or attached.

17 ~~((37))~~ (38) "Transactional certificate" means a valid certificate
18 incorporating by reference one or more digital signatures.

19 ~~((38))~~ (39) "Trustworthy system" means computer hardware and
20 software that:

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

22 (b) Provide a reasonable level of availability, reliability, and
23 correct operation; and

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

25 ~~((39))~~ (40) "Valid certificate" means a certificate that:

26 (a) A licensed certification authority has issued;

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

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

29 (d) Has not expired.

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

32 ~~((40))~~ (41) "Verify a digital signature" means, in relation to a
33 given digital signature, message, and public key, to determine
34 accurately that:

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

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

1 NEW SECTION. **Sec. 31.** A new section is added to chapter 19.34 RCW
2 to read as follows:

3 Acceptance of a digital signature may be made in any manner
4 reasonable in the circumstances.

5 **Sec. 32.** RCW 19.34.220 and 1996 c 250 s 303 are each amended to
6 read as follows:

7 (1) By issuing a certificate, a licensed certification authority
8 warrants to the subscriber named in the certificate that:

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

11 (b) The certificate satisfies all material requirements of this
12 chapter; and

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

15 The certification authority may not disclaim or limit the
16 warranties of this subsection.

17 (2) Unless the subscriber and certification authority otherwise
18 agree, a certification authority, by issuing a certificate, promises to
19 the subscriber:

20 (a) To act promptly to suspend or revoke a certificate in
21 accordance with RCW 19.34.250 or 19.34.260; and

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

25 (3) By issuing a certificate, a licensed certification authority
26 certifies to all who reasonably rely on the information contained in
27 the certificate, or on a digital signature verifiable by the public key
28 listed in the certificate, that:

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

31 (b) All information foreseeably material to the reliability of the
32 certificate is stated or incorporated by reference within the
33 certificate;

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

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

37 (4) By publishing a certificate, a licensed certification authority
38 certifies to the repository in which the certificate is published and

1 to all who reasonably rely on the information contained in the
2 certificate that the certification authority has issued the certificate
3 to the subscriber.

4 **Sec. 33.** RCW 19.34.410 and 1996 c 250 s 502 are each amended to
5 read as follows:

6 (1) Notwithstanding a disclaimer by the repository or a contract to
7 the contrary between the repository, a certification authority, or a
8 subscriber, a repository is liable for a loss incurred by a person
9 reasonably relying on a digital signature verified by the public key
10 listed in a suspended or revoked certificate, if loss was incurred more
11 than one business day after receipt by the repository of a request to
12 publish notice of the suspension or revocation, and the repository had
13 failed to publish the notice when the person relied on the digital
14 signature.

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

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

20 (b) Not liable under subsection (1) of this section in excess of
21 the amount specified in the certificate as the recommended reliance
22 limit;

23 (c) Not liable under subsection (1) of this section (~~(only)~~) for
24 (~~direct compensatory damages, which do not include~~):

25 (i) Punitive or exemplary damages; or

26 (ii) (~~Damages for lost profits or opportunity; or~~

27 ~~(iii)~~) Damages for pain or suffering;

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

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

34 (f) Not liable for reporting information about a certification
35 authority, a certificate, or a subscriber, if the information is
36 published as required or permitted in this chapter or a rule adopted by
37 the secretary, or is published by order of the secretary in the

1 performance of the licensing and regulatory duties of that office under
2 this chapter.

3 (3) Consequential or incidental damages may be liquidated, or may
4 otherwise be limited, altered, or excluded unless the limitation,
5 alteration, or exclusion is unconscionable. A recognized repository
6 may liquidate, limit, alter, or exclude damages as provided in this
7 subsection by agreement, or by notifying any person who will rely on a
8 digital signature verified by the public key listed in a suspended or
9 revoked certificate of the liquidation, limitation, alteration, or
10 exclusion before the person relies on the certificate.

11 NEW SECTION. Sec. 34. A new section is added to chapter 19.34
12 RCW, to be codified to follow RCW 19.34.350 immediately, to read as
13 follows:

14 The effect of this chapter may be varied by agreement, except:

15 (1) A person may not disclaim responsibility for lack of good
16 faith, but parties may by agreement determine the standards by which
17 the duty of good faith is to be measured if the standards are not
18 manifestly unreasonable; and

19 (2) As otherwise provided in this chapter.

20 NEW SECTION. Sec. 35. Sections 1 through 23, 25 through 27, and
21 29 through 34 of this act take effect January 1, 1998.

22 NEW SECTION. Sec. 36. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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