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HOUSE BILL 2174

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State of Washington

56th Legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (1) "Accept a certificate" means ~~((either+~~  
22 ~~(a)))~~ to manifest approval of a certificate, while knowing or  
23 having notice of its contents~~((; or~~

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

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

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

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

36 (a) Identifies the certification authority issuing it;

37 (b) Names or identifies its subscriber;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (i) Does not exist; or

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

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

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

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

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

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

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

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

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

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

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

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

6 authorizing the issuance of certificates by a certification authority;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6       (b) The notation thus appended or attached.

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

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

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

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

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

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

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

19       (a) A licensed certification authority has issued;

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

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

22       (d) Has not expired.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) The certification authority has confirmed that:

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

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

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

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

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

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

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

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

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

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

37 (b) The reliance limit of the certificate;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26       (c) Not liable for:

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

30       (ii) Damages for pain or suffering.

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

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

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

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

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

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

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

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

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

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

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

11       (a) Is a licensed certification authority;

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

13       (i) Certificates published in the repository;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) Punitive or exemplary damages; or

37 (ii) Damages for pain or suffering;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

--- END ---