

CF 7r1389

By: Senator Forehand

Introduced and read first time: February 10, 1997

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Maryland Digital Signature Act**

3 FOR the purpose of requiring the Secretary of State to be a certification authority;
4 authorizing the Secretary to issue, suspend, or revoke certificates of authority to
5 other entities for purposes of facilitating commerce by means of reliable electronic
6 messages and certain other purposes under certain circumstances; requiring the
7 Secretary to adopt regulations as required by this Act; imposing certain
8 requirements on a certification authority in order to obtain or retain a license;
9 requiring the Secretary to issue a license to a certification authority under certain
10 circumstances; requiring a certain audit of each licensed certification authority
11 under certain circumstances; requiring the Secretary to investigate and publish
12 certain information about a certification authority under certain circumstances;
13 imposing certain duties on certification authorities and subscribers concerning the
14 issuance, suspension, and revocation of a certificate and certain warranties and
15 representations of a certificate; composing certain reliance limits and liabilities on a
16 certificate; establishing certain effects of a digital signature; authorizing the
17 Secretary to recognize a repository under certain circumstances; exempting certain
18 records from certain provisions of law; providing that the alteration of certain
19 writing may be forgery under certain circumstances; defining certain terms; and
20 generally relating to the Maryland Digital Signature Act.

21 BY adding to

22 Article - Commercial Law
23 Section 20-101 through 20-602, inclusive, to be under the new title "Title 20.
24 Maryland Digital Signature Act"
25 Annotated Code of Maryland
26 (1990 Replacement Volume and 1996 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

28 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Commercial Law**

2 TITLE 20. MARYLAND DIGITAL SIGNATURE ACT.
3 SUBTITLE 1. GENERAL PROVISIONS.

4 20-101.

5 THIS TITLE SHALL BE CONSTRUED CONSISTENT WITH WHAT IS
6 COMMERCIALLY REASONABLE UNDER THE CIRCUMSTANCES AND TO EFFECTUATE
7 THE FOLLOWING PURPOSES:

8 (1) TO FACILITATE COMMERCE BY MEANS OF RELIABLE ELECTRONIC
9 MESSAGES;

10 (2) TO MINIMIZE THE INCIDENCE OF FORGED DIGITAL SIGNATURES
11 AND FRAUD IN ELECTRONIC COMMERCE;

12 (3) TO IMPLEMENT LEGALLY THE GENERAL IMPORT OF RELEVANT
13 STANDARDS, SUCH AS X.509 OF THE INTERNATIONAL TELECOMMUNICATION UNION
14 (FORMALLY INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE
15 COMMITTEE OR CCITT); AND

16 (4) TO ESTABLISH, IN COORDINATION WITH MULTIPLE STATES,
17 UNIFORM RULES REGARDING THE AUTHENTICATION AND RELIABILITY OF
18 ELECTRONIC MESSAGES.

19 20-102.

20 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

21 (B) "ACCEPT A CERTIFICATE" MEANS:

22 (1) TO MANIFEST APPROVAL OF A CERTIFICATE, WHILE KNOWING OR
23 HAVING NOTICE OF ITS CONTENTS; OR

24 (2) TO APPLY TO A LICENSED CERTIFICATION AUTHORITY FOR A
25 CERTIFICATE, WITHOUT CANCELING OR REVOKING THE APPLICATION, IF THE
26 CERTIFICATION AUTHORITY SUBSEQUENTLY ISSUES A CERTIFICATE BASED ON THE
27 APPLICATION.

28 (C) "ASYMMETRIC CRYPTOSYSTEM" MEANS AN ALGORITHM OR SERIES OF
29 ALGORITHMS WHICH PROVIDE A SECURE KEY PAIR.

30 (D) "CERTIFICATE" MEANS A COMPUTER-BASED RECORD WHICH:

31 (1) IDENTIFIES THE CERTIFICATION AUTHORITY ISSUING IT;

32 (2) NAMES OR IDENTIFIES ITS SUBSCRIBER;

33 (3) CONTAINS THE SUBSCRIBER'S PUBLIC KEY; AND

34 (4) IS DIGITALLY SIGNED BY THE CERTIFICATION AUTHORITY ISSUING
35 IT.

1 (E) "CERTIFICATION AUTHORITY" MEANS A PERSON WHO ISSUES A
2 CERTIFICATE.

3 (F) "CERTIFICATION AUTHORITY DISCLOSURE RECORD" MEANS AN ON-LINE,
4 PUBLICLY ACCESSIBLE RECORD WHICH CONCERNS A LICENSED CERTIFICATION
5 AUTHORITY AND IS KEPT BY THE SECRETARY. A CERTIFICATION AUTHORITY
6 DISCLOSURE RECORD HAS THE CONTENTS SPECIFIED BY REGULATION OF THE
7 SECRETARY UNDER § 20-201 OF THIS TITLE.

8 (G) "CERTIFICATION PRACTICE STATEMENT" MEANS A DECLARATION OF
9 THE PRACTICES WHICH A CERTIFICATION AUTHORITY EMPLOYS IN ISSUING
10 CERTIFICATES GENERALLY, OR EMPLOYS IN ISSUING A MATERIAL CERTIFICATE.

11 (H) "CERTIFY" MEANS THE DECLARATION OF MATERIAL FACTS BY THE
12 CERTIFICATION AUTHORITY REGARDING A CERTIFICATE.

13 (I) "CONFIRM" MEANS TO ASCERTAIN THROUGH APPROPRIATE INQUIRY
14 AND INVESTIGATION.

15 (J) "CORRESPOND", WITH REFERENCE TO KEYS, MEANS TO BELONG TO THE
16 SAME KEY PAIR.

17 (K) "DIGITAL SIGNATURE" MEANS A TRANSFORMATION OF A MESSAGE
18 USING AN ASYMMETRIC CRYPTOSYSTEM SUCH THAT A PERSON HAVING THE
19 INITIAL MESSAGE AND THE SIGNER'S PUBLIC KEY CAN ACCURATELY DETERMINE
20 WHETHER:

21 (1) THE TRANSFORMATION WAS CREATED USING THE PRIVATE KEY
22 THAT CORRESPONDS TO THE SIGNER'S PUBLIC KEY; AND

23 (2) THE MESSAGE HAS BEEN ALTERED SINCE THE TRANSFORMATION
24 WAS MADE.

25 (L) "FORGE A DIGITAL SIGNATURE" MEANS EITHER:

26 (1) TO CREATE A DIGITAL SIGNATURE WITHOUT THE AUTHORIZATION
27 OF THE RIGHTFUL HOLDER OF THE PRIVATE KEY; OR

28 (2) TO CREATE A DIGITAL SIGNATURE VERIFIABLE BY A CERTIFICATE
29 LISTING AS A SUBSCRIBER A PERSON WHO EITHER:

30 (I) DOES NOT EXIST; OR

31 (II) DOES NOT HOLD THE PRIVATE KEY CORRESPONDING TO THE
32 PUBLIC KEY LISTED IN THE CERTIFICATE.

33 (M) "HOLD A PRIVATE KEY" MEANS TO BE ABLE TO UTILIZE A PRIVATE KEY.

34 (N) "INCORPORATE BY REFERENCE" MEANS TO MAKE ONE MESSAGE A PART
35 OF ANOTHER MESSAGE BY IDENTIFYING THE MESSAGE TO BE INCORPORATED AND
36 EXPRESSING THE INTENTION THAT IT BE INCORPORATED.

1 (O) "ISSUE A CERTIFICATE" MEANS THE ACTS OF A CERTIFICATION
2 AUTHORITY IN CREATING A CERTIFICATE NOT NOTIFYING THE SUBSCRIBER LISTED
3 IN THE CERTIFICATE OF THE CONTENTS OF THE CERTIFICATE.

4 (P) "KEY PAIR" MEANS A PRIVATE KEY AND ITS CORRESPONDING PUBLIC
5 KEY IN AN ASYMMETRIC CRYPTOSYSTEM, HAVING THE PROPERTY BY WHICH THE
6 PUBLIC KEY CAN VERIFY A DIGITAL SIGNATURE THAT THE PRIVATE KEY CREATES.

7 (Q) "LICENSED CERTIFICATION AUTHORITY" MEANS A CERTIFICATION
8 AUTHORITY TO WHOM A LICENSE HAS BEEN ISSUED BY THE SECRETARY AND
9 WHOSE LICENSE IS IN EFFECT.

10 (R) "MESSAGE" MEANS A DIGITAL REPRESENTATION OF INFORMATION.

11 (S) "NOTIFY" MEANS TO COMMUNICATE A FACT TO ANOTHER PERSON IN A
12 MANNER REASONABLY LIKELY, UNDER THE CIRCUMSTANCES, TO IMPART
13 KNOWLEDGE OF THE INFORMATION TO THE OTHER PERSON.

14 (T) "OPERATIVE PERSONNEL" MEANS ONE OR MORE INDIVIDUALS ACTING
15 AS A CERTIFICATION AUTHORITY OR ITS AGENT, OR IN THE EMPLOYMENT OF OR
16 UNDER CONTRACT WITH A CERTIFICATION AUTHORITY, AND WHO HAVE:

17 (1) MANAGERIAL OR POLICY-MAKING RESPONSIBILITIES FOR THE
18 CERTIFICATION AUTHORITY; OR

19 (2) DUTIES DIRECTLY INVOLVING THE ISSUANCE OF CERTIFICATES,
20 CREATION OF PRIVATE KEYS, OR ADMINISTRATION OR A CERTIFICATION
21 AUTHORITY'S COMPUTING FACILITIES.

22 (U) "PERSON" MEANS A HUMAN BEING OR ANY ORGANIZATION CAPABLE OF
23 SIGNING A DOCUMENT, EITHER LEGALLY OR AS A MATTER OF FACT.

24 (V) "PRIVATE KEY" MEANS THE KEY OF A KEY PAIR USED TO CREATE A
25 DIGITAL SIGNATURE.

26 (W) "PUBLIC KEY" MEANS THE KEY OF A KEY PAIR USED TO VERIFY A
27 DIGITAL SIGNATURE.

28 (X) "PUBLISH" MEANS TO RECORD OR FILE IN A REPOSITORY.

29 (Y) "QUALIFIED RIGHT TO PAYMENT" MEANS AN AWARD OF DAMAGES
30 AGAINST A LICENSED CERTIFICATION AUTHORITY BY A COURT HAVING
31 JURISDICTION OVER THE CERTIFICATION AUTHORITY IN A CIVIL ACTION FOR
32 VIOLATION OF THIS TITLE.

33 (Z) "RECIPIENT" MEANS A PERSON WHO RECEIVES OR HAS A DIGITAL
34 SIGNATURE AND IS IN A POSITION TO RELY ON IT.

35 (AA) "RECOGNIZED REPOSITORY" MEANS A REPOSITORY RECOGNIZED BY
36 THE SECRETARY UNDER § 20-501 OF THIS TITLE.

37 (BB) "RECOMMENDED RELIANCE LIMIT" MEANS THE LIMITATION ON THE
38 MONETARY AMOUNT RECOMMENDED FOR RELIANCE ON A CERTIFICATE UNDER §
39 20-309(A) FOR THIS TITLE.

1 (CC) "REPOSITORY" MEANS A SYSTEM FOR STORING AND RETRIEVING
2 CERTIFICATES AND OTHER INFORMATION RELEVANT TO DIGITAL SIGNATURES.

3 (DD) "REVOKE A CERTIFICATE" MEANS TO MAKE A CERTIFICATE INEFFECTIVE
4 PERMANENTLY FROM A SPECIFIED TIME FORWARD. REVOCATION IS AFFECTED BY
5 NOTATION OR INCLUSION IN A SET OF REVOKED CERTIFICATES, AND DOES NOT
6 IMPLY THAT A REVOKED CERTIFICATE IS DESTROYED OR MADE ILLEGIBLE.

7 (EE) "RIGHTFULLY HOLD A PRIVATE KEY" MEANS TO BE ABLE TO UTILIZE A
8 PRIVATE KEY:

9 (1) WHICH THE HOLDER OR THE HOLDER'S AGENTS HAVE NOT
10 DISCLOSED TO ANY PERSON IN VIOLATION OF § 20-305(A) OF THIS TITLE; AND

11 (2) WHICH THE HOLDER HAS NOT OBTAINED THROUGH THEFT, DECEIT,
12 EAVESDROPPING, OR OTHER UNLAWFUL MEANS.

13 (FF) "SECRETARY" MEANS THE SECRETARY OF STATE.

14 (GG) "SIGNER" MEANS A PERSON WHO CREATES A DIGITAL SIGNATURE FOR A
15 MESSAGE.

16 (HH) "SUBSCRIBER" MEANS A PERSON WHO:

17 (1) IS THE SUBJECT LISTED IN A CERTIFICATE;

18 (2) ACCEPTS THE CERTIFICATE; AND

19 (3) HOLDS A PRIVATE KEY WHICH CORRESPONDS TO A PUBLIC KEY
20 LISTED IN THAT CERTIFICATE.

21 (II) (1) "SUITABLE GUARANTY" MEANS EITHER A SURETY BOND EXECUTED
22 BY A SURETY AUTHORIZED BY THE MARYLAND INSURANCE COMMISSIONER TO DO
23 BUSINESS IN THIS STATE, OR AN IRREVOCABLE LETTER OF CREDIT ISSUED BY A
24 FINANCIAL INSTITUTION AUTHORIZED TO DO BUSINESS IN THIS STATE BY THE
25 COMMISSIONER OF FINANCIAL REGULATION, WHICH, IN EITHER EVENT, SATISFIES
26 ALL OF THE FOLLOWING REQUIREMENTS, THAT IT:

27 (I) IS ISSUED PAYABLE TO THE SECRETARY FOR THE BENEFIT OF
28 PERSONS HOLDING QUALIFIED RIGHTS OF PAYMENT AGAINST THE LICENSED
29 CERTIFICATION AUTHORITY NAMED AS THE PRINCIPAL OF THE BOND OR
30 CUSTOMER OF THE LETTER OF CREDIT;

31 (II) IS IN AN AMOUNT SPECIFIED BY RULE OF THE SECRETARY
32 UNDER § 20-201 OF THIS TITLE;

33 (III) STATES THAT IT IS ISSUED FOR FILING UNDER THIS TITLE;

34 (IV) SPECIFIES A TERM OF EFFECTIVENESS EXTENDING AT LEAST
35 AS LONG AS THE TERM OF THE LICENSE TO BE ISSUED TO THE CERTIFICATION
36 AUTHORITY; AND

37 (V) IS IN A FORM PRESCRIBED BY REGULATION OF THE
38 SECRETARY.

6

1 (2) A SUITABLE GUARANTY MAY ALSO PROVIDE THAT THE TOTAL
2 ANNUAL LIABILITY ON THE GUARANTY TO ALL PERSONS MAKING CLAIMS BASED
3 ON IT MAY NOT EXCEED THE FACE AMOUNT OF THE GUARANTY.

4 (3) A FINANCIAL INSTITUTION ACTING AS A CERTIFICATION
5 AUTHORITY MAY SATISFY THE REQUIREMENTS OF THIS SUBSECTION FROM ITS
6 ASSETS OR CAPITAL, TO THE EXTENT OF ITS LENDING LIMIT AS PROVIDED BY THE
7 COMMISSIONER OF FINANCIAL REGULATION.

8 (JJ) "SUSPEND A CERTIFICATE" MEANS TO MAKE A CERTIFICATE
9 INEFFECTIVE TEMPORARILY FROM A SPECIFIED TIME FORWARD.

10 (KK) "TIME STAMP" MEANS EITHER:

11 (1) TO APPEND OR ATTACH TO A MESSAGE, DIGITAL SIGNATURE, OR
12 CERTIFICATE A DIGITALLY SIGNED NOTATION INDICATING AT LEAST THE DATE
13 AND TIME THE NOTATION WAS APPENDED OR ATTACHED, AND THE IDENTITY OF
14 THE PERSON APPENDING OR ATTACHING THE NOTATION; OR

15 (2) THE NOTATION THUS APPENDED OR ATTACHED.

16 (LL) "TRANSACTIONAL CERTIFICATE" MEANS A VALID CERTIFICATE
17 INCORPORATING BY REFERENCE ONE OR MORE DIGITAL SIGNATURES.

18 (MM) "TRUSTWORTHY SYSTEM" MEANS COMPUTER HARDWARE AND
19 SOFTWARE THAT:

20 (1) ARE REASONABLY SECURE FROM INTRUSION AND MISUSE;

21 (2) PROVIDE A REASONABLE LEVEL OF AVAILABILITY, RELIABILITY,
22 AND CORRECT OPERATION; AND

23 (3) ARE REASONABLY SUITED TO PERFORMING THEIR INTENDED
24 FUNCTIONS.

25 (NN) (1) "VALID CERTIFICATE" MEANS A CERTIFICATE THAT:

26 (I) A LICENSED CERTIFICATION AUTHORITY HAS ISSUED;

27 (II) THE SUBSCRIBER LISTED IN IT HAS ACCEPTED;

28 (III) HAS NOT BEEN REVOKED OR SUSPENDED; AND

29 (IV) HAS NOT EXPIRED.

30 (2) A TRANSACTIONAL CERTIFICATE IS A VALID CERTIFICATE ONLY IN
31 RELATION TO THE DIGITAL SIGNATURE INCORPORATED IN IT BY REFERENCE.

32 (OO) "VERIFY A DIGITAL SIGNATURE" MEANS, IN RELATION TO A GIVEN
33 DIGITAL SIGNATURE, MESSAGE, AND PUBLIC KEY, TO DETERMINE ACCURATELY
34 THAT:

35 (1) THE DIGITAL SIGNATURE WAS CREATED BY THE PRIVATE KEY
36 CORRESPONDING TO THE PUBLIC KEY; AND

7

1 (2) THE MESSAGE HAS NOT BEEN ALTERED SINCE ITS DIGITAL
2 SIGNATURE WAS CREATED.

3 SUBTITLE 2. LICENSING AND REGULATION OF CERTIFICATION AUTHORITIES.

4 20-201.

5 (A) THE SECRETARY SHALL BE A CERTIFICATION AUTHORITY AND MAY
6 ISSUE, SUSPEND, AND REVOKE CERTIFICATES IN THE MANNER PRESCRIBED FOR
7 LICENSED CERTIFICATION AUTHORITIES IN THIS TITLE.

8 (B) THE SECRETARY SHALL MAINTAIN A PUBLICLY ACCESSIBLE DATABASE
9 CONTAINING A CERTIFICATION AUTHORITY DISCLOSURE RECORD FOR EACH
10 LICENSED CERTIFICATION AUTHORITY. THE SECRETARY SHALL PUBLISH THE
11 CONTENTS OF THE DATABASE IN AT LEAST ONE RECOGNIZED REPOSITORY.

12 (C) THE SECRETARY SHALL ADOPT REGULATIONS AS REQUIRED BY THIS
13 TITLE, INCLUDING:

14 (1) GOVERNING LICENSED CERTIFICATION AUTHORITIES, THEIR
15 PRACTICE, AND THE TERMINATION OF A CERTIFICATION AUTHORITY'S PRACTICE;

16 (2) DETERMINING AN AMOUNT APPROPRIATE FOR A SUITABLE
17 GUARANTY, IN LIGHT OF:

18 (I) THE BURDEN A SUITABLE GUARANTY PLACES UPON LICENSED
19 CERTIFICATION AUTHORITIES; AND

20 (II) THE ASSURANCE OF FINANCIAL RESPONSIBILITY IT PROVIDES
21 TO PERSONS WHO RELY ON CERTIFICATES ISSUED BY LICENSED CERTIFICATION
22 AUTHORITIES;

23 (3) FOR REVIEWING SOFTWARE FOR USE IN CREATING DIGITAL
24 SIGNATURES AND PUBLISH REPORTS CONCERNING SOFTWARE;

25 (4) SPECIFYING REASONABLE REQUIREMENTS FOR THE FORM OF
26 CERTIFICATES ISSUED BY LICENSED CERTIFICATION AUTHORITIES, IN
27 ACCORDANCE WITH GENERALLY ACCEPTED STANDARDS FOR DIGITAL SIGNATURE
28 CERTIFICATES;

29 (5) SPECIFYING REASONABLE REQUIREMENTS FOR RECORD KEEPING
30 BY LICENSED CERTIFICATION AUTHORITIES;

31 (6) SPECIFYING REASONABLE REQUIREMENTS FOR THE CONTENT,
32 FORM, AND SOURCES OF INFORMATION IN CERTIFICATION AUTHORITY
33 DISCLOSURE RECORDS, THE UPDATING AND TIMELINESS OF SUCH INFORMATION,
34 AND OTHER PRACTICES AND POLICIES RELATING TO CERTIFICATION AUTHORITY
35 DISCLOSURE RECORDS; AND

36 (7) SPECIFYING THE FORM OF CERTIFICATION PRACTICE STATEMENTS.

37 20-202.

38 (A) TO OBTAIN OR RETAIN A LICENSE, A CERTIFICATION AUTHORITY SHALL:

1 (1) BE THE SUBSCRIBER OF A CERTIFICATE PUBLISHED IN A
2 RECOGNIZED REPOSITORY;

3 (2) EMPLOY AS OPERATIVE PERSONNEL ONLY INDIVIDUALS WHO HAVE
4 NOT BEEN CONVICTED OF A FELONY OR CRIME INVOLVING FRAUD, FALSE
5 STATEMENT, OR DECEPTION;

6 (3) EMPLOY AS OPERATIVE PERSONNEL ONLY INDIVIDUALS WHO HAVE
7 DEMONSTRATED KNOWLEDGE AND PROFICIENCY IN FOLLOWING THE
8 REQUIREMENTS OF THIS ACT;

9 (4) FILE WITH THE SECRETARY A SUITABLE GUARANTY, UNLESS THE
10 CERTIFICATION AUTHORITY IS THE GOVERNOR, A DEPARTMENT OR DIVISION OF
11 STATE GOVERNMENT, THE ATTORNEY GENERAL, STATE TREASURER, A STATE
12 COURT, A MUNICIPAL CORPORATION, A COUNTY, OR THE GENERAL ASSEMBLY OR
13 ITS STAFF OFFICES, PROVIDED THAT:

14 (I) EACH OF THE ABOVE NAMED GOVERNMENTAL ENTITIES MAY
15 ACT THROUGH DESIGNATED OFFICIALS AUTHORIZED BY ORDINANCE, RULE, OR
16 STATUTE TO PERFORM CERTIFICATION AUTHORITY FUNCTIONS; AND

17 (II) ONE OF THE GOVERNMENTAL ENTITIES LISTED IN THIS
18 PARAGRAPH IS THE SUBSCRIBER OF ALL CERTIFICATES ISSUED BY THE
19 CERTIFICATION AUTHORITY;

20 (5) HAVE THE RIGHT TO USE A TRUSTWORTHY SYSTEM, INCLUDING A
21 SECURE MEANS FOR CONTROLLING USAGE OF ITS PRIVATE KEY;

22 (6) PRESENT PROOF TO THE SECRETARY OF HAVING WORKING
23 CAPITAL REASONABLY SUFFICIENT, ACCORDING TO REGULATIONS OF THE
24 SECRETARY, TO ENABLE THE APPLICANT TO CONDUCT BUSINESS AS A
25 CERTIFICATION AUTHORITY;

26 (7) MAINTAIN AN OFFICE IN THE STATE OR HAVE ESTABLISHED A
27 REGISTERED AGENT FOR SERVICE OF PROCESS IN THE STATE; AND

28 (8) COMPLY WITH ALL OTHER LICENSING REQUIREMENTS
29 ESTABLISHED THE SECRETARY.

30 (B) THE SECRETARY SHALL ISSUE A LICENSE TO A CERTIFICATION
31 AUTHORITY WHICH:

32 (1) IS QUALIFIED UNDER SUBSECTION (A) OF THIS SECTION;

33 (2) APPLIES IN WRITING TO THE SECRETARY FOR A LICENSE; AND

34 (3) PAYS THE REQUIRED FILING FEE.

35 (C) (1) THE SECRETARY MAY CLASSIFY AND ISSUE LICENSES ACCORDING
36 TO SPECIFIED LIMITATIONS, SUCH AS A MAXIMUM NUMBER OF OUTSTANDING
37 CERTIFICATES, CUMULATIVE MAXIMUM RECOMMENDED RELIANCE LIMITS IN
38 CERTIFICATES ISSUED BY THE CERTIFICATION AUTHORITY, OR ISSUANCE ONLY
39 WITHIN A SINGLE FIRM OR ORGANIZATION.

1 (2) A CERTIFICATION AUTHORITY ACTS AS AN UNLICENSED
2 CERTIFICATION AUTHORITY WHEN ISSUING A CERTIFICATE EXCEEDING THE
3 LIMITS OF THE LICENSE.

4 (D) (1) THE SECRETARY MAY REVOKE OR SUSPEND A CERTIFICATION
5 AUTHORITY'S LICENSE FOR FAILURE TO COMPLY WITH THIS TITLE OR FOR FAILURE
6 TO REMAIN QUALIFIED PURSUANT TO SUBSECTION (A) OF THIS SECTION.

7 (2) THE ACTIONS OF THE SECRETARY UNDER THIS SUBSECTION ARE
8 SUBJECT TO THE PROCEDURES FOR ADJUDICATIVE PROCEEDINGS IN TITLE 10,
9 SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

10 (E) THE SECRETARY MAY RECOGNIZE BY REGULATION THE LICENSING OR
11 AUTHORIZATION OF CERTIFICATION AUTHORITIES BY OTHER GOVERNMENTAL
12 ENTITIES, PROVIDED THAT THOSE LICENSING OR AUTHORIZATION REQUIREMENTS
13 ARE SUBSTANTIALLY SIMILAR TO THOSE OF THIS STATE. IF LICENSING BY ANOTHER
14 GOVERNMENTAL ENTITY IS SO RECOGNIZED:

15 (1) THE PROVISIONS OF SUBTITLE 4 OF THIS TITLE, WHICH RELATE TO
16 PRESUMPTIONS AND LEGAL EFFECTS, APPLY TO CERTIFICATES ISSUED BY THE
17 CERTIFICATION AUTHORITIES LICENSED OR AUTHORIZED BY THAT
18 GOVERNMENTAL ENTITY IN THE SAME MANNER AS THEY APPLY TO LICENSED
19 CERTIFICATION AUTHORITIES OF THIS STATE; AND

20 (2) THE LIABILITY LIMITS OF § 20-309 OF THIS TITLE APPLY TO THE
21 CERTIFICATION AUTHORITIES LICENSED OR AUTHORIZED BY THAT
22 GOVERNMENTAL ENTITY IN THE SAME MANNER AS THEY APPLY TO LICENSED
23 CERTIFICATION AUTHORITIES OF THIS STATE.

24 (F) UNLESS THE PARTIES PROVIDE OTHERWISE BY CONTRACT BETWEEN
25 THEMSELVES, THE LICENSING REQUIREMENTS IN THIS SECTION DO NOT AFFECT
26 THE EFFECTIVENESS, ENFORCEABILITY, OR VALIDITY OF ANY DIGITAL SIGNATURE
27 EXCEPT THAT SUBTITLE 4 OF THIS TITLE DOES NOT APPLY TO A DIGITAL
28 SIGNATURE WHICH CANNOT BE VERIFIED BY A CERTIFICATE ISSUED BY A
29 LICENSED CERTIFICATION AUTHORITY. FURTHER, THE LIABILITY LIMITS OF § 20-309
30 OF THIS TITLE DO NOT APPLY TO UNLICENSED CERTIFICATION AUTHORITIES.

31 20-203.

32 (A) A CERTIFIED PUBLIC ACCOUNTANT HAVING EXPERTISE IN COMPUTER
33 SECURITY, OR AN ACCREDITED COMPUTER SECURITY PROFESSIONAL, SHALL AUDIT
34 THE OPERATIONS OF EACH LICENSED CERTIFICATION AUTHORITY AT LEAST ONCE
35 EACH YEAR TO EVALUATE COMPLIANCE WITH THIS TITLE. THE SECRETARY MAY
36 SPECIFY QUALIFICATIONS FOR AUDITORS IN GREATER DETAIL BY REGULATION.

37 (B) (1) BASED ON INFORMATION GATHERED IN THE AUDIT, THE AUDITOR
38 SHALL CATEGORIZE THE LICENSED CERTIFICATION AUTHORITY'S COMPLIANCE AS
39 ONE OF THE FOLLOWING:

40 (I) FULL COMPLIANCE, WHICH MEANS THE CERTIFICATION
41 AUTHORITY APPEARS TO CONFORM TO ALL APPLICABLE STATUTORY AND
42 REGULATORY REQUIREMENTS;

10

1 (II) SUBSTANTIAL COMPLIANCE, WHICH MEANS THE
2 CERTIFICATION AUTHORITY GENERALLY APPEARS TO CONFORM TO ALL
3 APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS; HOWEVER, ONE OR
4 MORE INSTANCES OF NONCOMPLIANCE OR INABILITY TO DEMONSTRATE
5 COMPLIANCE WERE FOUND IN THE AUDITED SAMPLE, BUT WERE LIKELY TO BE
6 INCONSEQUENTIAL;

7 (III) PARTIAL COMPLIANCE, WHICH MEANS THE CERTIFICATION
8 AUTHORITY APPEARS TO COMPLY WITH SOME STATUTORY AND REGULATORY
9 REQUIREMENTS, BUT WAS FOUND NOT TO HAVE COMPLIED OR NOT TO BE ABLE TO
10 DEMONSTRATE COMPLIANCE WITH ONE OR MORE IMPORTANT SAFEGUARDS; OR

11 (IV) NONCOMPLIANCE, WHICH MEANS THE CERTIFICATION
12 AUTHORITY COMPLIES WITH FEW OR NONE OF THE STATUTORY AND REGULATORY
13 REQUIREMENTS, FAILS TO KEEP ADEQUATE RECORDS TO DEMONSTRATE
14 COMPLIANCE WITH MORE THAN A FEW REQUIREMENTS, OR REFUSED TO SUBMIT
15 TO AN AUDIT.

16 (2) THE AUDITOR SHALL REPORT THE DATE OF THE AUDIT OF THE
17 LICENSED CERTIFICATION AUTHORITY AND RESULTING CATEGORIZATION TO THE
18 SECRETARY.

19 (3) THE SECRETARY SHALL PUBLISH IN THE CERTIFICATION
20 AUTHORITY DISCLOSURE RECORD IT MAINTAINS FOR THE CERTIFICATION
21 AUTHORITY, THE DATE OF THE AUDIT, AND THE RESULTING CATEGORIZATION OF
22 THE CERTIFICATION AUTHORITY.

23 (C) (1) THE SECRETARY MAY EXEMPT A LICENSED CERTIFICATION
24 AUTHORITY FROM THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION IF:

25 (I) THE CERTIFICATION AUTHORITY TO BE EXEMPTED REQUESTS
26 EXEMPTION IN WRITING;

27 (II) THE MOST RECENT PERFORMANCE AUDIT, IF ANY, OF THE
28 CERTIFICATION AUTHORITY RESULTED IN A FINDING OF FULL OR SUBSTANTIAL
29 COMPLIANCE; AND

30 (III) THE CERTIFICATION AUTHORITY DECLARES UNDER OATH OR
31 AFFIRMATION THAT ONE OR MORE OF THE FOLLOWING IS TRUE WITH RESPECT TO
32 THE CERTIFICATION AUTHORITY:

33 1. THE CERTIFICATION AUTHORITY HAS ISSUED FEWER
34 THAN SIX CERTIFICATES DURING THE PAST YEAR AND THE TOTAL OF THE
35 RECOMMENDED RELIANCE LIMITS OF ALL SUCH CERTIFICATES DOES NOT EXCEED
36 \$10,000;

37 2. THE AGGREGATE LIFETIME OF ALL CERTIFICATES
38 ISSUED BY THE CERTIFICATION AUTHORITY DURING THE PAST YEAR IS LESS THAN
39 30 DAYS AND THE TOTAL OF THE RECOMMENDED RELIANCE LIMITS OF ALL SUCH
40 CERTIFICATES DOES NOT EXCEED \$10,000; OR

11

1 3. THE RECOMMENDED RELIANCE LIMITS OF ALL
2 CERTIFICATES OUTSTANDING AND ISSUED BY THE CERTIFICATION AUTHORITY
3 TOTAL LESS THAN \$1,000.

4 (2) IF THE CERTIFICATION AUTHORITY'S DECLARATION UNDER
5 PARAGRAPH (1) OF THIS SUBSECTION FALSELY STATES A MATERIAL FACT, THE
6 CERTIFICATION AUTHORITY SHALL HAVE FAILED TO COMPLY WITH THE
7 PERFORMANCE AUDIT REQUIREMENT OF THIS SUBSECTION.

8 (3) IF A LICENSED CERTIFICATION AUTHORITY IS EXEMPT UNDER THIS
9 SUBSECTION, THE SECRETARY SHALL PUBLISH IN THE CERTIFICATION AUTHORITY
10 DISCLOSURE RECORD THAT IT MAINTAINS FOR THE CERTIFICATION AUTHORITY A
11 STATEMENT THAT THE CERTIFICATION AUTHORITY IS EXEMPT FROM THE
12 PERFORMANCE AUDIT REQUIREMENT.

13 20-204.

14 (A) THE SECRETARY MAY INVESTIGATE THE ACTIVITIES OF A LICENSED
15 CERTIFICATION AUTHORITY THAT ARE MATERIAL TO ITS COMPLIANCE WITH THIS
16 TITLE AND ISSUE ORDERS TO A CERTIFICATION AUTHORITY TO FURTHER ITS
17 INVESTIGATION AND ENSURE COMPLIANCE WITH THIS TITLE.

18 (B) AS PROVIDED IN § 20-202 OF THIS SUBTITLE, THE SECRETARY MAY
19 RESTRICT A CERTIFICATION AUTHORITY'S LICENSE FOR ITS FAILURE TO COMPLY
20 WITH AN ORDER OF THE SECRETARY OR MAY SUSPEND OR REVOKE THE LICENSE
21 OF A CERTIFICATION AUTHORITY.

22 (C) ANY PERSON WHO KNOWINGLY OR INTENTIONALLY VIOLATES AN
23 ORDER OF THE SECRETARY ISSUED UNDER THIS SECTION OR § 20-205 OF THIS
24 SUBTITLE IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$5,000 PER
25 VIOLATION OR 90% OF THE RECOMMENDED RELIANCE LIMIT OF A MATERIAL
26 CERTIFICATE, WHICHEVER IS LESS.

27 (D) THE SECRETARY MAY ORDER A CERTIFICATION AUTHORITY IN
28 VIOLATION OF THIS TITLE TO PAY THE COSTS INCURRED BY THE SECRETARY IN
29 PROSECUTING AND ADJUDICATING PROCEEDINGS RELATIVE TO, AND IN
30 ENFORCEMENT OF, THE ORDER.

31 (E) IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
32 ARTICLE:

33 (1) THE SECRETARY SHALL EXERCISE ITS AUTHORITY UNDER THIS
34 SECTION IN ACCORDANCE WITH PROCEDURES FOR ADJUDICATIVE PROCEEDINGS;

35 (2) A LICENSED CERTIFICATION AUTHORITY MAY OBTAIN JUDICIAL
36 REVIEW OF THE ACTIONS OF THE SECRETARY UNDER THIS SECTION; AND

37 (3) IF THE SECRETARY SEEKS INJUNCTIVE RELIEF, AS PROVIDED IN §
38 20-205 OF THIS SUBTITLE, TO COMPEL COMPLIANCE WITH ANY OF ITS ORDERS, THE
39 SECRETARY MAY COLLECT THE COST OF ENFORCEMENT.

12

1 20-205.

2 (A) A CERTIFICATION AUTHORITY, WHETHER LICENSED OR NOT, MAY NOT
3 CONDUCT ITS BUSINESS IN A MANNER THAT CREATES AN UNREASONABLE RISK OF
4 LOSS TO SUBSCRIBERS OF THE CERTIFICATION AUTHORITY, TO PERSONS RELYING
5 ON CERTIFICATES ISSUED BY THE CERTIFICATION AUTHORITY, OR TO A
6 REPOSITORY.

7 (B) (1) THE SECRETARY MAY PUBLISH IN ONE OR MORE RECOGNIZED
8 REPOSITORIES BRIEF STATEMENTS ADVISING SUBSCRIBERS, PERSONS RELYING ON
9 DIGITAL SIGNATURES, AND REPOSITORIES ABOUT ANY ACTIVITIES OF A LICENSED
10 OR UNLICENSED CERTIFICATION AUTHORITY, OF WHICH THE SECRETARY HAS
11 ACTUAL KNOWLEDGE, WHICH CREATES A RISK PROHIBITED UNDER SUBSECTION
12 (A) OF THIS SECTION.

13 (2) THE CERTIFICATION AUTHORITY NAMED IN A STATEMENT AS
14 CREATING SUCH A RISK MAY PROTEST THE PUBLICATION OF THE STATEMENT BY
15 FILING A BRIEF WRITTEN DEFENSE. UPON RECEIPT OF SUCH A PROTEST, THE
16 SECRETARY SHALL:

17 (I) PUBLISH THE WRITTEN DEFENSE ALONG WITH THE
18 SECRETARY'S STATEMENT;

19 (II) PUBLISH NOTICE THAT A HEARING HAS BEEN SCHEDULED TO
20 DETERMINE THE FACTS AND TO DECIDE THE MATTER; AND

21 (III) PROMPTLY GIVE THE PROTESTING CERTIFICATION
22 AUTHORITY NOTICE AND A HEARING AS PROVIDED IN TITLE 10, SUBTITLE 2 OF THE
23 STATE GOVERNMENT ARTICLE.

24 (3) (I) FOLLOWING THE HEARING, THE SECRETARY SHALL:

25 1. RESCIND THE ADVISORY STATEMENT IF ITS
26 PUBLICATION WAS UNWARRANTED UNDER THIS SECTION;

27 2. CANCEL THE ADVISORY STATEMENT IF ITS PUBLICATION
28 IS NO LONGER WARRANTED;

29 3. CONTINUE OR AMEND THE ADVISORY STATEMENT IF IT
30 REMAINS WARRANTED; OR

31 4. TAKE FURTHER LEGAL ACTION TO ELIMINATE OR
32 REDUCE A RISK PROHIBITED BY SUBSECTION (A) OF THIS SECTION.

33 (II) THE SECRETARY SHALL PUBLISH THE DECISION IN ONE OR
34 MORE RECOGNIZED REPOSITORIES.

35 (C) (1) AS PROVIDED IN TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
36 ARTICLE, THE SECRETARY MAY ISSUE ORDERS AND OBTAIN INJUNCTIONS OR
37 OTHER CIVIL RELIEF TO PREVENT OR RESTRAIN A CERTIFICATION AUTHORITY
38 FROM VIOLATING THIS SECTION, REGARDLESS OF WHETHER THE CERTIFICATION
39 AUTHORITY IS LICENSED.

13

1 (2) THIS SECTION DOES NOT CREATE A RIGHT OF ACTION IN ANY
2 PERSON OTHER THAN THE SECRETARY.

3 SUBTITLE 3. DUTIES OF CERTIFICATION AUTHORITIES AND SUBSCRIBERS.

4 20-301.

5 (A) A LICENSED CERTIFICATION AUTHORITY OR SUBSCRIBER SHALL USE
6 ONLY A TRUSTWORTHY SYSTEM:

7 (1) TO ISSUE, SUSPEND, OR REVOKE A CERTIFICATE;

8 (2) TO PUBLISH OR GIVE NOTICE OF THE ISSUANCE, SUSPENSION, OR
9 REVOCATION OF A CERTIFICATE; AND

10 (3) TO CREATE A PRIVATE KEY.

11 (B) (1) A LICENSED CERTIFICATION AUTHORITY SHALL DISCLOSE ANY
12 MATERIAL CERTIFICATION PRACTICE STATEMENT AND ANY FACT MATERIAL TO
13 EITHER THE RELIABILITY OF A CERTIFICATE WHICH IT HAS ISSUED OR ITS ABILITY
14 TO PERFORM ITS SERVICE.

15 (2) A CERTIFICATION AUTHORITY MAY REQUIRE A SIGNED, WRITTEN,
16 AND REASONABLY SPECIFIC INQUIRY FROM AN IDENTIFIED PERSON, AND PAYMENT
17 OF REASONABLE COMPENSATION, AS CONDITIONS PRECEDENT TO EFFECTING A
18 DISCLOSURE REQUIRED IN THIS SUBSECTION.

19 20-302.

20 (A) A LICENSED CERTIFICATION AUTHORITY MAY ISSUE A CERTIFICATE TO
21 A SUBSCRIBER ONLY AFTER ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

22 (1) THE CERTIFICATION AUTHORITY HAS RECEIVED A REQUEST FOR
23 ISSUANCE SIGNED BY THE PROSPECTIVE SUBSCRIBER; AND

24 (2) THE CERTIFICATION AUTHORITY HAS CONFIRMED THAT:

25 (I) THE PROSPECTIVE SUBSCRIBER IS THE PERSON TO BE LISTED
26 IN THE CERTIFICATE TO BE ISSUED;

27 (II) IF THE PROSPECTIVE SUBSCRIBER IS ACTING THROUGH ONE
28 OR MORE AGENTS, THE SUBSCRIBER AUTHORIZED THE AGENT OR AGENTS TO
29 HAVE CUSTODY OF THE SUBSCRIBER'S PRIVATE KEY AND TO REQUEST ISSUANCE
30 OF A CERTIFICATE LISTING THE CORRESPONDING PUBLIC KEY;

31 (III) THE INFORMATION IN THE CERTIFICATE TO BE ISSUED IS
32 ACCURATE AFTER DUE DILIGENCE;

33 (IV) THE PROSPECTIVE SUBSCRIBER RIGHTFULLY HOLDS THE
34 PRIVATE KEY CORRESPONDING TO THE PUBLIC KEY TO BE LISTED IN THE
35 CERTIFICATE;

36 (V) THE PROSPECTIVE SUBSCRIBER HOLDS A PRIVATE KEY
37 CAPABLE OF CREATING A DIGITAL SIGNATURE; AND

14

1 (VI) THE PUBLIC KEY TO BE LISTED IN THE CERTIFICATE CAN BE
2 USED TO VERIFY A DIGITAL SIGNATURE AFFIXED BY THE PRIVATE KEY HELD BY
3 THE PROSPECTIVE SUBSCRIBER.

4 (B) THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION MAY NOT BE
5 WAIVED OR DISCLAIMED BY THE LICENSED CERTIFICATION AUTHORITY OR THE
6 SUBSCRIBER.

7 (C) (1) IF THE SUBSCRIBER ACCEPTS THE ISSUED CERTIFICATE, THE
8 CERTIFICATION AUTHORITY SHALL PUBLISH A SIGNED COPY OF THE CERTIFICATE
9 IN A RECOGNIZED REPOSITORY AGREED ON BY THE CERTIFICATION AUTHORITY
10 AND THE SUBSCRIBER NAMED IN THE CERTIFICATE, UNLESS THE CONTRACT
11 BETWEEN THE CERTIFICATION AUTHORITY AND THE SUBSCRIBER PROVIDES
12 OTHERWISE.

13 (2) IF THE SUBSCRIBER DOES NOT ACCEPT THE CERTIFICATE, A
14 LICENSED CERTIFICATION AUTHORITY:

15 (I) MAY NOT PUBLISH THE CERTIFICATE; OR

16 (II) SHALL CANCEL ITS PUBLICATION IF THE CERTIFICATE HAS
17 ALREADY BEEN PUBLISHED.

18 (D) NOTHING IN THIS SECTION PRECLUDES A LICENSED CERTIFICATION
19 AUTHORITY FROM CONFORMING TO STANDARDS, CERTIFICATION PRACTICE
20 STATEMENTS, SECURITY PLANS, OR CONTRACTUAL REQUIREMENTS MORE
21 RIGOROUS THAN, BUT CONSISTENT WITH, THIS TITLE.

22 (E) (1) A LICENSED CERTIFICATION AUTHORITY WHICH HAS ISSUED A
23 CERTIFICATE:

24 (I) SHALL REVOKE A CERTIFICATE IMMEDIATELY UPON
25 CONFIRMING THAT IT WAS NOT ISSUED AS REQUIRED BY THIS SECTION; OR

26 (II) MAY SUSPEND, FOR A REASONABLE PERIOD OF TIME NOT TO
27 EXCEED 48 HOURS, A CERTIFICATE WHICH IT HAS ISSUED IN ORDER TO CONDUCT
28 AN INVESTIGATION TO CONFIRM GROUNDS FOR REVOCATION.

29 (2) THE CERTIFICATION AUTHORITY SHALL GIVE NOTICE OF THE
30 REVOCATION OR SUSPENSION TO THE SUBSCRIBER AS SOON AS PRACTICABLE.

31 (F) (1) THE SECRETARY MAY ORDER THE LICENSED CERTIFICATION
32 AUTHORITY TO SUSPEND OR REVOKE A CERTIFICATE WHICH THE CERTIFICATION
33 AUTHORITY ISSUED IF, AFTER GIVING THE CERTIFICATION AUTHORITY AND
34 SUBSCRIBER ANY REQUIRED NOTICE AND OPPORTUNITY FOR A HEARING IN
35 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE,
36 THE SECRETARY DETERMINES THAT:

37 (I) THE CERTIFICATE WAS ISSUED WITHOUT SUBSTANTIAL
38 COMPLIANCE WITH THIS SECTION; AND

39 (II) THE NONCOMPLIANCE POSES A SIGNIFICANT RISK TO PERSONS
40 REASONABLY RELYING ON THE CERTIFICATE.

15

1 (2) THE SECRETARY MAY SUSPEND A CERTIFICATE FOR A REASONABLE
2 PERIOD OF TIME NOT TO EXCEED 48 HOURS UPON DETERMINING THAT AN
3 EMERGENCY REQUIRES AN IMMEDIATE REMEDY AND IN ACCORDANCE WITH TITLE
4 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

5 20-303.

6 (A) (1) BY ISSUING A CERTIFICATE, A LICENSED CERTIFICATION
7 AUTHORITY WARRANTS TO THE SUBSCRIBER NAMED IN THE CERTIFICATE THAT:

8 (I) THE CERTIFICATE CONTAINS NO INFORMATION KNOWN TO
9 THE CERTIFICATION AUTHORITY TO BE FALSE;

10 (II) THE CERTIFICATE SATISFIES ALL MATERIAL REQUIREMENTS
11 OF THIS TITLE; AND

12 (III) THE CERTIFICATION AUTHORITY HAS NOT EXCEEDED ANY
13 LIMITS OF ITS LICENSE IN ISSUING THE CERTIFICATE.

14 (2) THE CERTIFICATION AUTHORITY MAY NOT DISCLAIM OR LIMIT THE
15 WARRANTIES OF THIS SUBSECTION.

16 (B) UNLESS THE SUBSCRIBER AND CERTIFICATION AUTHORITY OTHERWISE
17 AGREE, A CERTIFICATION AUTHORITY, BY ISSUING A CERTIFICATE, SHALL:

18 (1) ACT PROMPTLY TO SUSPEND OR REVOKE A CERTIFICATE IN
19 ACCORDANCE WITH §§ 20-306 AND 20-307 OF THIS SUBTITLE; AND

20 (2) NOTIFY THE SUBSCRIBER WITHIN A REASONABLE TIME OF ANY
21 FACTS KNOWN TO THE CERTIFICATION AUTHORITY WHICH SIGNIFICANTLY AFFECT
22 THE VALIDITY OR RELIABILITY OF THE CERTIFICATE ONCE IT IS ISSUED.

23 (C) BY ISSUING A CERTIFICATE, A LICENSED CERTIFICATION AUTHORITY
24 CERTIFIES TO ALL WHO REASONABLY RELY ON THE INFORMATION CONTAINED IN
25 THE CERTIFICATE THAT:

26 (1) THE INFORMATION IN THE CERTIFICATE AND LISTED AS
27 CONFIRMED BY THE CERTIFICATION AUTHORITY IS ACCURATE;

28 (2) ALL FORESEEABLE INFORMATION MATERIAL TO THE RELIABILITY
29 OF THE CERTIFICATE IS STATED OR INCORPORATED BY REFERENCE WITHIN THE
30 CERTIFICATE;

31 (3) THE SUBSCRIBER HAS ACCEPTED THE CERTIFICATE; AND

32 (4) THE LICENSED CERTIFICATION AUTHORITY HAS COMPLIED WITH
33 ALL APPLICABLE LAWS OF THIS STATE GOVERNING ISSUANCE OF THE CERTIFICATE.

34 (D) BY PUBLISHING A CERTIFICATE, A LICENSED CERTIFICATION AUTHORITY
35 CERTIFIES TO THE REPOSITORY IN WHICH THE CERTIFICATE IS PUBLISHED AND TO
36 ALL WHO REASONABLY RELY ON THE INFORMATION CONTAINED IN THE
37 CERTIFICATE THAT THE CERTIFICATION AUTHORITY HAS ISSUED THE CERTIFICATE
38 TO THE SUBSCRIBER.

16

1 20-304.

2 (A) BY ACCEPTING A CERTIFICATE ISSUED BY A LICENSED CERTIFICATION
3 AUTHORITY, THE SUBSCRIBER LISTED IN THE CERTIFICATE CERTIFIES TO ALL WHO
4 REASONABLY RELY ON THE INFORMATION CONTAINED IN THE CERTIFICATE THAT:

5 (1) THE SUBSCRIBER RIGHTFULLY HOLDS THE PRIVATE KEY
6 CORRESPONDING TO THE PUBLIC KEY LISTED IN THE CERTIFICATE;

7 (2) ALL REPRESENTATIONS MADE BY THE SUBSCRIBER TO THE
8 CERTIFICATION AUTHORITY AND MATERIAL TO INFORMATION LISTED IN THE
9 CERTIFICATE ARE TRUE; AND

10 (3) ALL MATERIAL REPRESENTATIONS MADE BY THE SUBSCRIBER TO A
11 CERTIFICATION AUTHORITY OR MADE IN THE CERTIFICATE AND NOT CONFIRMED
12 BY THE CERTIFICATION AUTHORITY IN ISSUING THE CERTIFICATE ARE TRUE.

13 (B) AN AGENT, REQUESTING ON BEHALF OF A PRINCIPAL THAT A
14 CERTIFICATE BE ISSUED NAMING THE PRINCIPAL AS SUBSCRIBER, CERTIFIES THAT
15 THE AGENT:

16 (1) HOLDS ALL AUTHORITY LEGALLY REQUIRED TO APPLY FOR
17 ISSUANCE OF A CERTIFICATE NAMING THE PRINCIPAL AS SUBSCRIBER; AND

18 (2) HAS AUTHORITY TO SIGN DIGITALLY ON BEHALF OF THE
19 PRINCIPAL, AND, IF THAT AUTHORITY IS LIMITED IN ANY WAY, THAT ADEQUATE
20 SAFEGUARDS EXIST TO PREVENT A DIGITAL SIGNATURE EXCEEDING THE BOUNDS
21 OF THE AGENT'S AUTHORITY.

22 (C) A PERSON MAY NOT DISCLAIM OR CONTRACTUALLY LIMIT THE
23 APPLICATION OF THIS SECTION, NOR OBTAIN INDEMNITY FOR ITS EFFECTS, IF THE
24 DISCLAIMER, LIMITATION, OR INDEMNITY RESTRICTS LIABILITY FOR
25 MISREPRESENTATION AS AGAINST PERSONS REASONABLY RELYING ON THE
26 CERTIFICATE.

27 (D) (1) BY ACCEPTING A CERTIFICATE, A SUBSCRIBER UNDERTAKES TO
28 INDEMNIFY THE ISSUING CERTIFICATION AUTHORITY FOR ANY LOSS OR DAMAGE
29 CAUSED BY ISSUANCE OR PUBLICATION OF A CERTIFICATE IN RELIANCE ON A
30 FALSE AND MATERIAL REPRESENTATION OF FACT BY THE SUBSCRIBER, OR THE
31 FAILURE BY THE SUBSCRIBER TO DISCLOSE A MATERIAL FACT IF THE
32 REPRESENTATION OR FAILURE TO DISCLOSE WAS MADE EITHER WITH INTENT TO
33 DECEIVE THE CERTIFICATION AUTHORITY OR A PERSON RELYING ON THE
34 CERTIFICATE OR WAS MADE WITH NEGLIGENCE.

35 (2) IF THE CERTIFICATION AUTHORITY ISSUED THE CERTIFICATE AT
36 THE REQUEST OF AN AGENT OF THE SUBSCRIBER, THE AGENT PERSONALLY
37 UNDERTAKES TO INDEMNIFY THE CERTIFICATION AUTHORITY UNDER PARAGRAPH
38 (1) OF THIS SUBSECTION AS IF THE AGENT WAS AN ACCEPTING SUBSCRIBER IN HIS
39 OWN RIGHT. THE INDEMNITY PROVIDED UNDER PARAGRAPH (1) OF THIS
40 SUBSECTION MAY NOT BE DISCLAIMED OR CONTRACTUALLY LIMITED IN SCOPE,
41 HOWEVER, A CONTRACT MAY PROVIDE CONSISTENT, ADDITIONAL TERMS
42 REGARDING THE INDEMNIFICATION.

17

1 (E) IN OBTAINING INFORMATION OF THE SUBSCRIBER MATERIAL TO
2 ISSUANCE OF A CERTIFICATE, THE CERTIFICATION AUTHORITY MAY REQUIRE THE
3 SUBSCRIBER TO CERTIFY THE ACCURACY OF RELEVANT INFORMATION UNDER
4 OATH OR AFFIRMATION OF TRUTHFULNESS AND UNDER PENALTY OF CRIMINAL
5 PROHIBITIONS AGAINST FALSE, SWORN STATEMENTS.

6 20-305.

7 (A) BY ACCEPTING A CERTIFICATE ISSUED BY A LICENSED CERTIFICATION
8 AUTHORITY, THE SUBSCRIBER IDENTIFIED IN THE CERTIFICATE ASSUMES A DUTY
9 TO EXERCISE REASONABLE CARE TO RETAIN CONTROL OF THE PRIVATE KEY AND
10 PREVENT ITS DISCLOSURE TO ANY PERSON NOT AUTHORIZED TO CREATE THE
11 SUBSCRIBER'S DIGITAL SIGNATURE.

12 (B) A PRIVATE KEY IS THE PERSONAL PROPERTY OF THE SUBSCRIBER WHO
13 RIGHTFULLY HOLDS IT.

14 (C) IF A CERTIFICATION AUTHORITY HOLDS THE PRIVATE KEY
15 CORRESPONDING TO A PUBLIC KEY LISTED IN A CERTIFICATE WHICH IT HAS
16 ISSUED, THE CERTIFICATION AUTHORITY HOLDS THE PRIVATE KEY AS A
17 FIDUCIARY OF THE SUBSCRIBER NAMED IN THE CERTIFICATE, AND MAY USE THAT
18 PRIVATE KEY ONLY WITH THE SUBSCRIBER'S PRIOR, WRITTEN APPROVAL, UNLESS
19 THE SUBSCRIBER EXPRESSLY GRANTS THE PRIVATE KEY TO THE CERTIFICATION
20 AUTHORITY AND EXPRESSLY PERMITS THE CERTIFICATION AUTHORITY TO HOLD
21 THE PRIVATE KEY ACCORDING TO OTHER TERMS.

22 20-306.

23 (A) (1) UNLESS THE CERTIFICATION AUTHORITY AND THE SUBSCRIBER
24 AGREE OTHERWISE, THE LICENSED CERTIFICATION AUTHORITY WHICH ISSUED A
25 CERTIFICATE WHICH IS NOT A TRANSACTIONAL CERTIFICATE SHALL SUSPEND THE
26 CERTIFICATE FOR A PERIOD NOT EXCEEDING 48 HOURS:

27 (I) ON REQUEST BY A PERSON IDENTIFYING THE PERSON AS THE
28 SUBSCRIBER NAMED IN THE CERTIFICATE, OR AS A PERSON IN A POSITION LIKELY
29 TO KNOW OF A COMPROMISE OF THE SECURITY OF A SUBSCRIBER'S PRIVATE KEY,
30 SUCH AS AN AGENT, BUSINESS ASSOCIATE, EMPLOYEE, OR MEMBER OF THE
31 IMMEDIATE FAMILY OF THE SUBSCRIBER; OR

32 (II) BY ORDER OF THE SECRETARY UNDER § 20-302(E) OF THIS
33 SUBTITLE.

34 (2) THE CERTIFICATION AUTHORITY NEED NOT CONFIRM THE
35 IDENTITY OR AGENCY OF THE PERSON REQUESTING SUSPENSION UNDER
36 PARAGRAPH (1) OF THIS SUBSECTION.

37 (B) (1) UNLESS THE CERTIFICATE PROVIDES OTHERWISE OR THE
38 CERTIFICATE IS A TRANSACTIONAL CERTIFICATE, THE SECRETARY, A COURT
39 CLERK, OR A COUNTY CLERK MAY SUSPEND A CERTIFICATE ISSUED BY A LICENSED
40 CERTIFICATION AUTHORITY FOR A PERIOD OF 48 HOURS, IF:

41 (I) A PERSON REQUESTS SUSPENSION AND IDENTIFIES THE
42 PERSON AS THE SUBSCRIBER NAMED IN THE CERTIFICATE OR AS AN AGENT,

18

1 BUSINESS ASSOCIATE, EMPLOYEE, OR MEMBER OF THE IMMEDIATE FAMILY OF THE
2 SUBSCRIBER; AND

3 (II) THE REQUESTER REPRESENTS THAT THE CERTIFICATION
4 AUTHORITY WHICH ISSUED THE CERTIFICATE IS UNAVAILABLE.

5 (2) THE SECRETARY, COURT CLERK, OR COUNTY CLERK MAY:

6 (I) REQUIRE THE PERSON REQUESTING SUSPENSION UNDER
7 PARAGRAPH (1) OF THIS SUBSECTION TO PROVIDE EVIDENCE, INCLUDING A
8 STATEMENT UNDER OATH OR AFFIRMATION, REGARDING ANY INFORMATION
9 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

10 (II) SUSPEND OR DECLINE TO SUSPEND THE CERTIFICATE IN ITS
11 DISCRETION.

12 (3) THE SECRETARY, ATTORNEY GENERAL, OR COUNTY ATTORNEY
13 MAY INVESTIGATE SUSPENSIONS BY THE SECRETARY, A COURT CLERK, OR A
14 COUNTY CLERK FOR POSSIBLE WRONGDOING BY PERSONS REQUESTING
15 SUSPENSION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

16 (C) (1) IMMEDIATELY UPON SUSPENSION OF A CERTIFICATE BY A
17 LICENSED CERTIFICATION AUTHORITY, THE LICENSED CERTIFICATION AUTHORITY
18 SHALL PUBLISH NOTICE, SIGNED BY THE LICENSED CERTIFICATION AUTHORITY, OF
19 THE SUSPENSION IN ANY REPOSITORIES SPECIFIED IN THE CERTIFICATE FOR
20 PUBLICATION OF NOTICE OF SUSPENSION. IF ANY REPOSITORY SPECIFIED IN THE
21 CERTIFICATE NO LONGER EXISTS OR REFUSES TO ACCEPT PUBLICATION, OR IS NO
22 LONGER RECOGNIZED UNDER § 20-501 OF THIS TITLE, THE LICENSED
23 CERTIFICATION AUTHORITY SHALL PUBLISH THE NOTICE IN ANY RECOGNIZED
24 REPOSITORY.

25 (2) IF A CERTIFICATE IS SUSPENDED BY THE SECRETARY, A COURT
26 CLERK, OR A COUNTY CLERK, THE SECRETARY OR CLERK SHALL GIVE NOTICE AS
27 REQUIRED IN PARAGRAPH (1) OF THIS SUBSECTION FOR A LICENSED
28 CERTIFICATION AUTHORITY, PROVIDED THAT THE PERSON REQUESTING
29 SUSPENSION PAYS IN ADVANCE ANY FEE REQUIRED BY A REPOSITORY FOR
30 PUBLICATION OF THE NOTICE OF SUSPENSION.

31 (D) A CERTIFICATION AUTHORITY SHALL TERMINATE A SUSPENSION
32 INITIATED BY REQUEST ONLY:

33 (1) IF THE SUBSCRIBER NAMED IN THE SUSPENDED CERTIFICATE
34 REQUESTS TERMINATION OF THE SUSPENSION AND THE CERTIFICATION
35 AUTHORITY HAS CONFIRMED THAT THE PERSON REQUESTING SUSPENSION IS THE
36 SUBSCRIBER OR AN AGENT OF THE SUBSCRIBER AUTHORIZED TO TERMINATE THE
37 SUSPENSION; OR

38 (2) WHEN THE CERTIFICATION AUTHORITY DISCOVERS AND CONFIRMS
39 THAT THE REQUEST FOR THE SUSPENSION WAS MADE WITHOUT AUTHORIZATION
40 BY THE SUBSCRIBER, PROVIDED THAT THIS SUBSECTION DOES NOT REQUIRE THE
41 CERTIFICATION AUTHORITY TO CONFIRM A REQUEST FOR SUSPENSION.

19

1 (E) THE CONTRACT BETWEEN A SUBSCRIBER AND A LICENSED
2 CERTIFICATION AUTHORITY MAY LIMIT OR PRECLUDE REQUESTED SUSPENSION BY
3 THE CERTIFICATION AUTHORITY, OR MAY PROVIDE OTHERWISE FOR
4 TERMINATION OF A RELATED SUSPENSION. HOWEVER, IF THE CONTRACT LIMITS OR
5 PRECLUDES SUSPENSION BY THE SECRETARY, A COURT CLERK, OR A COUNTY
6 CLERK WHEN THE ISSUING CERTIFICATION AUTHORITY IS UNAVAILABLE, THE
7 LIMITATION OR PRECLUSION SHALL BE EFFECTIVE ONLY IF NOTICE OF THE
8 LIMITATION OR PRECLUSION IS PUBLISHED IN THE CERTIFICATE.

9 (F) A PERSON MAY NOT KNOWINGLY OR INTENTIONALLY MISREPRESENT TO
10 A CERTIFICATION AUTHORITY THE PERSON'S IDENTITY OR AUTHORIZATION IN
11 REQUESTING SUSPENSION OF A CERTIFICATE. VIOLATION OF THIS SUBSECTION IS A
12 MISDEMEANOR.

13 (G) WHILE THE CERTIFICATE IS SUSPENDED, THE SUBSCRIBER IS RELEASED
14 FROM THE DUTY TO KEEP THE PRIVATE KEY SECURE UNDER § 20-305(A) OF THIS
15 SUBTITLE.

16 20-307.

17 (A) A LICENSED CERTIFICATION AUTHORITY SHALL REVOKE A CERTIFICATE
18 WHICH IT ISSUED, BUT WHICH IS NOT A TRANSACTIONAL CERTIFICATE, AFTER:

19 (1) RECEIVING A REQUEST FOR REVOCATION BY THE SUBSCRIBER
20 NAMED IN THE CERTIFICATE ; AND

21 (2) CONFIRMING THAT THE PERSON REQUESTING REVOCATION IS
22 THAT SUBSCRIBER, OR IS AN AGENT OF THAT SUBSCRIBER WITH AUTHORITY TO
23 REQUEST THE REVOCATION.

24 (B) A LICENSED CERTIFICATION AUTHORITY SHALL CONFIRM A REQUEST
25 FOR REVOCATION AND REVOKE A CERTIFICATE WITHIN 1 BUSINESS DAY AFTER
26 RECEIVING BOTH A SUBSCRIBER'S WRITTEN REQUEST AND EVIDENCE REASONABLY
27 SUFFICIENT TO CONFIRM THE IDENTITY AND ANY AGENCY OF THE PERSON
28 REQUESTING THE SUSPENSION.

29 (C) A LICENSED CERTIFICATION AUTHORITY SHALL REVOKE A CERTIFICATE
30 WHICH IT ISSUED:

31 (1) ON RECEIVING A CERTIFIED COPY OF THE SUBSCRIBER'S DEATH
32 CERTIFICATE, OR UPON CONFIRMING BY OTHER EVIDENCE THAT THE SUBSCRIBER
33 IS DEAD; OR

34 (2) ON PRESENTATION OF DOCUMENTS EFFECTING A DISSOLUTION OF
35 THE SUBSCRIBER, OR ON CONFIRMING BY OTHER EVIDENCE THAT THE SUBSCRIBER
36 HAS BEEN DISSOLVED OR HAS CEASED TO EXIST.

37 (D) A LICENSED CERTIFICATION AUTHORITY MAY REVOKE ONE OR MORE
38 CERTIFICATES WHICH IT ISSUED IF THE CERTIFICATES ARE OR BECOME
39 UNRELIABLE, REGARDLESS OF WHETHER THE SUBSCRIBER CONSENTS TO THE
40 REVOCATION.

1 (E) IMMEDIATELY ON REVOCATION OF A CERTIFICATE BY A LICENSED
2 CERTIFICATION AUTHORITY, THE LICENSED CERTIFICATION AUTHORITY SHALL
3 PUBLISH SIGNED NOTICE OF THE REVOCATION IN ANY REPOSITORY SPECIFIED IN
4 THE CERTIFICATE FOR PUBLICATION OF NOTICE OF REVOCATION. IF ANY
5 REPOSITORY SPECIFIED IN THE CERTIFICATE NO LONGER EXISTS OR REFUSES TO
6 ACCEPT PUBLICATION, OR IS NO LONGER RECOGNIZED UNDER § 20-501 OF THIS
7 TITLE, THE LICENSED CERTIFICATION AUTHORITY SHALL PUBLISH THE NOTICE IN
8 ANY RECOGNIZED REPOSITORY.

9 (F) A SUBSCRIBER CEASES TO CERTIFY THE INFORMATION, AS PROVIDED IN
10 § 20-304 OF THIS SUBTITLE, AND HAS NO FURTHER DUTY TO KEEP THE PRIVATE KEY
11 SECURE, AS REQUIRED BY § 20-305 OF THIS SUBTITLE, IN RELATION TO A
12 CERTIFICATE WHOSE REVOCATION THE SUBSCRIBER HAS REQUESTED, BEGINNING
13 WITH THE EARLIER OF EITHER:

14 (1) WHEN NOTICE OF THE REVOCATION IS PUBLISHED AS REQUIRED IN
15 SUBSECTION (E) OF THIS SECTION; OR

16 (2) 2 BUSINESS DAYS AFTER THE SUBSCRIBER REQUESTS REVOCATION
17 IN WRITING, SUPPLIES TO THE ISSUING CERTIFICATION AUTHORITY INFORMATION
18 REASONABLY SUFFICIENT TO CONFIRM THE REQUEST, AND PAYS ANY
19 CONTRACTUALLY REQUIRED FEE.

20 (G) ON NOTIFICATION AS REQUIRED BY SUBSECTION (E) OF THIS SECTION, A
21 LICENSED CERTIFICATION AUTHORITY IS DISCHARGED OF ITS WARRANTIES BASED
22 ON ISSUANCE OF THE REVOKED CERTIFICATE AND CEASES TO CERTIFY THE
23 INFORMATION, AS PROVIDED IN § 20-303 OF THIS SUBTITLE, IN RELATION TO THE
24 REVOKED CERTIFICATE.

25 20-308.

26 (A) A CERTIFICATE SHALL INDICATE THE DATE ON WHICH IT EXPIRES.

27 (B) WHEN A CERTIFICATE EXPIRES, THE SUBSCRIBER AND CERTIFICATION
28 AUTHORITY CEASE TO CERTIFY THE INFORMATION IN THE CERTIFICATE AS
29 PROVIDED IN THIS TITLE AND THE CERTIFICATION AUTHORITY IS DISCHARGED OF
30 ITS DUTIES BASED ON ISSUANCE OF THAT CERTIFICATE.

31 20-309.

32 (A) BY SPECIFYING A RECOMMENDED RELIANCE LIMIT IN A CERTIFICATE,
33 THE ISSUING CERTIFICATION AUTHORITY AND THE ACCEPTING SUBSCRIBER
34 RECOMMEND THAT PERSONS RELY ON THE CERTIFICATE ONLY TO THE EXTENT
35 THAT THE TOTAL AMOUNT AT RISK DOES NOT EXCEED THE RECOMMENDED
36 RELIANCE LIMIT.

37 (B) UNLESS A LICENSED CERTIFICATION AUTHORITY WAIVES APPLICATION
38 OF THIS SUBSECTION, A LICENSED CERTIFICATION AUTHORITY IS:

39 (1) NOT LIABLE FOR ANY LOSS CAUSED BY RELIANCE ON A FALSE OR
40 FORGED DIGITAL SIGNATURE OF A SUBSCRIBER, IF, WITH RESPECT TO THE FALSE
41 OR FORGED DIGITAL SIGNATURE, THE CERTIFICATION AUTHORITY COMPLIED
42 WITH ALL MATERIAL REQUIREMENTS OF THIS TITLE;

21

1 (2) NOT LIABLE IN EXCESS OF THE AMOUNT SPECIFIED IN THE
2 CERTIFICATE AS ITS RECOMMENDED RELIANCE LIMIT FOR EITHER:

3 (I) A LOSS CAUSED BY RELIANCE ON A MISREPRESENTATION IN
4 THE CERTIFICATE OF ANY FACT THAT THE LICENSED CERTIFICATION AUTHORITY
5 IS REQUIRED TO CONFIRM; OR

6 (II) FAILURE TO COMPLY WITH § 20-302 OF THIS SUBTITLE IN
7 ISSUING THE CERTIFICATE; AND

8 (3) LIABLE ONLY FOR DIRECT, COMPENSATORY DAMAGES IN ANY
9 ACTION TO RECOVER A LOSS DUE TO RELIANCE ON THE CERTIFICATE, WHICH
10 DAMAGES DO NOT INCLUDE:

11 (I) PUNITIVE OR EXEMPLARY DAMAGES;

12 (II) DAMAGES FOR LOST PROFITS, SAVINGS, OR OPPORTUNITY; OR

13 (III) DAMAGES FOR PAIN OR SUFFERING.

14 20-310.

15 (A) (1) NOTWITHSTANDING ANY PROVISION IN THE SUITABLE GUARANTY
16 TO THE CONTRARY:

17 (I) IF THE SUITABLE GUARANTY IS A SURETY BOND, A PERSON
18 MAY RECOVER FROM THE SURETY THE FULL AMOUNT OF A QUALIFIED RIGHT TO
19 PAYMENT AGAINST THE PRINCIPAL NAMED IN THE BOND, OR, IF THERE IS MORE
20 THAN ONE QUALIFIED RIGHT TO PAYMENT DURING THE TERM OF THE BOND, A
21 RATABLE SHARE, UP TO A MAXIMUM TOTAL LIABILITY OF THE SURETY EQUAL TO
22 THE AMOUNT OF THE BOND; OR

23 (II) IF THE SUITABLE GUARANTY IS A LETTER OF CREDIT, A
24 PERSON MAY RECOVER FROM THE ISSUING FINANCIAL INSTITUTION THE FULL
25 AMOUNT OF A QUALIFIED RIGHT TO PAYMENT AGAINST THE CUSTOMER NAMED IN
26 THE LETTER OF CREDIT, OR, IF THERE IS MORE THAN ONE QUALIFIED RIGHT TO
27 PAYMENT DURING THE TERM OF THE LETTER OF CREDIT, A RATABLE SHARE, UP TO
28 A MAXIMUM TOTAL LIABILITY OF THE ISSUER EQUAL TO THE AMOUNT OF THE
29 CREDIT.

30 (2) CLAIMANTS MAY RECOVER SUCCESSIVELY ON THE SAME SUITABLE
31 GUARANTY, PROVIDED THAT THE TOTAL LIABILITY ON THE SUITABLE GUARANTY
32 TO ALL PERSONS MAKING CLAIMS BASED UPON QUALIFIED RIGHTS OF PAYMENT
33 DURING THE TERM OF THE SUITABLE GUARANTY MAY NOT EXCEED THE AMOUNT
34 OF THE SUITABLE GUARANTY.

35 (B) IN ADDITION TO RECOVERING THE AMOUNT OF A QUALIFIED RIGHT TO
36 PAYMENT, A CLAIMANT MAY RECOVER FROM THE PROCEEDS OF THE GUARANTY,
37 UNTIL DEPLETED, REASONABLE ATTORNEY FEES AND COURT COSTS INCURRED BY
38 THE CLAIMANT IN COLLECTING THE CLAIM, PROVIDED THAT THE TOTAL LIABILITY
39 ON THE SUITABLE GUARANTY TO ALL PERSONS MAKING CLAIMS BASED UPON
40 QUALIFIED RIGHTS OF PAYMENT OR RECOVERING ATTORNEY FEES AND COURT

22

1 COSTS DURING THE TERM OF THE SUITABLE GUARANTY MAY NOT EXCEED THE
2 AMOUNT OF THE SUITABLE GUARANTY.

3 (C) TO RECOVER A QUALIFIED RIGHT TO PAYMENT AGAINST A SURETY OR
4 ISSUER OF A SUITABLE GUARANTY, THE CLAIMANT SHALL FILE WRITTEN NOTICE
5 OF THE CLAIM WITH THE SECRETARY STATING THE NAME AND ADDRESS OF THE
6 CLAIMANT, THE AMOUNT CLAIMED, AND THE GROUNDS FOR THE QUALIFIED RIGHT
7 TO PAYMENT, AND ANY OTHER INFORMATION REQUIRED BY REGULATION OF THE
8 SECRETARY.

9 (D) RECOVERY OF A QUALIFIED RIGHT TO PAYMENT FROM THE PROCEEDS
10 OF THE SUITABLE GUARANTY SHALL BE FOREVER BARRED UNLESS:

11 (1) THE CLAIMANT SUBSTANTIALLY COMPLIES WITH SUBSECTION (C)
12 OF THIS SECTION; AND

13 (2) NOTICE OF THE CLAIM IS FILED WITHIN 2 YEARS AFTER THE
14 OCCURRENCE OF THE VIOLATION OF THIS TITLE WHICH IS THE BASIS FOR THE
15 CLAIM.

16 SUBTITLE 4. EFFECT OF A DIGITAL SIGNATURE.

17 20-401.

18 (A) WHERE A RULE OF LAW REQUIRES A SIGNATURE, OR PROVIDES FOR
19 CERTAIN CONSEQUENCES IN THE ABSENCE OF A SIGNATURE, THAT RULE IS
20 SATISFIED BY A DIGITAL SIGNATURE IF:

21 (1) THAT DIGITAL SIGNATURE IS VERIFIED BY REFERENCE TO THE
22 PUBLIC KEY LISTED IN A VALID CERTIFICATE ISSUED BY A LICENSED
23 CERTIFICATION AUTHORITY;

24 (2) THAT DIGITAL SIGNATURE WAS AFFIXED BY THE SIGNER WITH THE
25 INTENTION OF SIGNING THE MESSAGE; AND

26 (3) THE RECIPIENT HAS NO KNOWLEDGE OR NOTICE THAT THE SIGNER
27 EITHER:

28 (I) BREACHED A DUTY AS A SUBSCRIBER; OR

29 (II) DOES NOT RIGHTFULLY HOLD THE PRIVATE KEY USED TO
30 AFFIX THE DIGITAL SIGNATURE.

31 (B) NOTHING IN THIS TITLE PRECLUDES ANY SYMBOL FROM BEING VALID AS
32 A SIGNATURE UNDER OTHER APPLICABLE LAW, INCLUDING UNIFORM
33 COMMERCIAL CODE, SUBSECTION 70A-1-201(39).

34 (C) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE COMPTROLLER
35 OF THE STATE TO PRESCRIBE THE FORM OF TAX RETURNS OR OTHER DOCUMENTS
36 FILED WITH THE COMPTROLLER.

23

1 20-402.

2 (A) UNLESS OTHERWISE PROVIDED BY LAW OR CONTRACT, THE RECIPIENT
3 OF A DIGITAL SIGNATURE ASSUMES THE RISK THAT A DIGITAL SIGNATURE IS
4 FORGED, IF RELIANCE ON THE DIGITAL SIGNATURE IS NOT REASONABLE UNDER
5 THE CIRCUMSTANCES.

6 (B) IF THE RECIPIENT DETERMINES NOT TO RELY ON A DIGITAL SIGNATURE
7 UNDER THIS SECTION, THE RECIPIENT SHALL PROMPTLY NOTIFY THE SIGNER OF
8 THE RECIPIENTS DETERMINATION NOT TO RELY ON THE DIGITAL SIGNATURE.

9 20-403.

10 (A) A MESSAGE IS AS VALID, ENFORCEABLE, AND EFFECTIVE AS IF IT HAD
11 BEEN WRITTEN ON PAPER, IF:

12 (1) IT BEARS IN ITS ENTIRETY A DIGITAL SIGNATURE; AND

13 (2) THE DIGITAL SIGNATURE IS VERIFIED BY THE PUBLIC KEY LISTED
14 IN A CERTIFICATE WHICH:

15 (I) WAS ISSUED BY A LICENSED CERTIFICATION AUTHORITY; AND

16 (II) WAS VALID AT THE TIME THE DIGITAL SIGNATURE WAS
17 CREATED.

18 (B) NOTHING IN THIS TITLE PRECLUDES ANY MESSAGE, DOCUMENT, OR
19 RECORD FROM BEING CONSIDERED WRITTEN OR IN WRITING UNDER OTHER
20 APPLICABLE STATE LAW.

21 20-404.

22 A COPY OF A DIGITALLY SIGNED MESSAGE IS AS EFFECTIVE, VALID, AND
23 ENFORCEABLE AS THE ORIGINAL OF THE MESSAGE, UNLESS IT IS EVIDENT THAT
24 THE SIGNER DESIGNATED AN INSTANCE OF THE DIGITALLY SIGNED MESSAGE TO BE
25 A UNIQUE ORIGINAL, IN WHICH CASE ONLY THAT INSTANCE CONSTITUTES THE
26 VALID, EFFECTIVE, AND ENFORCEABLE MESSAGE.

27 20-405.

28 UNLESS OTHERWISE PROVIDED BY LAW OR CONTRACT, A CERTIFICATE
29 ISSUED BY A LICENSED CERTIFICATION AUTHORITY IS AN ACKNOWLEDGMENT OF A
30 DIGITAL SIGNATURE VERIFIED BY REFERENCE TO THE PUBLIC KEY LISTED IN THE
31 CERTIFICATE, REGARDLESS OF WHETHER WORDS OF AN EXPRESS
32 ACKNOWLEDGMENT APPEAR WITH THE DIGITAL SIGNATURE OR WHETHER THE
33 SIGNER PHYSICALLY APPEARED BEFORE THE CERTIFICATION AUTHORITY WHEN
34 THE DIGITAL SIGNATURE WAS CREATED, IF THAT DIGITAL SIGNATURE IS:

35 (1) VERIFIABLE BY THAT CERTIFICATE; AND

36 (2) AFFIXED WHEN THAT CERTIFICATE WAS VALID.

24

1 20-406.

2 IN ADJUDICATING A DISPUTE INVOLVING A DIGITAL SIGNATURE, A COURT OF
3 THIS STATE SHALL PRESUME THAT:

4 (1) A CERTIFICATE DIGITALLY SIGNED BY A LICENSED CERTIFICATION
5 AUTHORITY AND EITHER PUBLISHED IN A RECOGNIZED REPOSITORY OR MADE
6 AVAILABLE BY THE ISSUING CERTIFICATION AUTHORITY OR BY THE SUBSCRIBER
7 LISTED IN THE CERTIFICATE IS ISSUED BY THE CERTIFICATION AUTHORITY WHICH
8 DIGITALLY SIGNED THE CERTIFICATE AND IS ACCEPTED BY THE SUBSCRIBER
9 LISTED IN THE CERTIFICATE;

10 (2) THE INFORMATION LISTED IN A VALID CERTIFICATE, AS DEFINED IN
11 § 20-102 OF THIS TITLE AND CONFIRMED BY A LICENSED CERTIFICATION
12 AUTHORITY ISSUING THE CERTIFICATE IS ACCURATE;

13 (3) IF A DIGITAL SIGNATURE IS VERIFIED BY THE PUBLIC KEY LISTED
14 IN A VALID CERTIFICATE ISSUED BY A LICENSED CERTIFICATION AUTHORITY:

15 (I) THAT THE DIGITAL SIGNATURE IS THE DIGITAL SIGNATURE
16 OF THE SUBSCRIBER LISTED IN THAT CERTIFICATE;

17 (II) THAT THE DIGITAL SIGNATURE WAS AFFIXED BY THE SIGNER
18 WITH THE INTENTION OF SIGNING THE MESSAGE; AND

19 (III) THE RECIPIENT OF THAT DIGITAL SIGNATURE HAS NO
20 KNOWLEDGE OR NOTICE THAT THE SIGNER:

21 1. BREACHED A DUTY AS A SUBSCRIBER; OR

22 2. DOES NOT RIGHTFULLY HOLD THE PRIVATE KEY USED
23 TO AFFIX THE DIGITAL SIGNATURE; AND

24 (4) A DIGITAL SIGNATURE WAS CREATED BEFORE IT WAS TIME
25 STAMPED BY A DISINTERESTED PERSON UTILIZING A TRUSTWORTHY SYSTEM.

26 SUBTITLE 5. STATE SERVICES AND RECOGNIZED REPOSITORIES.

27 20-501.

28 (A) A REPOSITORY MAY APPLY TO THE SECRETARY FOR RECOGNITION BY
29 FILING A WRITTEN REQUEST AND PROVIDING EVIDENCE TO THE SECRETARY THAT
30 THE REPOSITORY MEETS THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.
31 THE SECRETARY SHALL DETERMINE WHETHER TO GRANT OR DENY THE REQUEST
32 IN THE MANNER PROVIDED FOR ADJUDICATIVE PROCEEDINGS IN TITLE 10,
33 SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

34 (B) THE SECRETARY SHALL RECOGNIZE A REPOSITORY, AFTER FINDING
35 THAT THE REPOSITORY:

36 (1) IS OPERATED UNDER THE DIRECTION OF A LICENSED
37 CERTIFICATION AUTHORITY;

38 (2) INCLUDES A DATABASE CONTAINING:

25

1 (I) CERTIFICATES PUBLISHED IN THE REPOSITORY;

2 (II) NOTICES OF SUSPENDED OR REVOKED CERTIFICATES
3 PUBLISHED BY LICENSED CERTIFICATION AUTHORITIES OR OTHER PERSONS
4 SUSPENDING OR REVOKING CERTIFICATES AS PROVIDED IN §§ 20-306 AND 20-307 OF
5 THIS TITLE;

6 (III) CERTIFICATION AUTHORITY DISCLOSURE RECORDS FOR
7 LICENSED CERTIFICATION AUTHORITIES;

8 (IV) ALL ORDERS OR ADVISORY STATEMENTS PUBLISHED BY THE
9 SECRETARY IN REGULATING CERTIFICATION AUTHORITIES; AND

10 (V) OTHER INFORMATION AS DETERMINED BY REGULATION OF
11 THE SECRETARY;

12 (3) OPERATES BY MEANS OF A TRUSTWORTHY SYSTEM;

13 (4) CONTAINS NO SIGNIFICANT AMOUNT OF INFORMATION WHICH THE
14 SECRETARY FINDS IS KNOWN OR LIKELY TO BE UNTRUE, INACCURATE, OR NOT
15 REASONABLY RELIABLE;

16 (5) CONTAINS CERTIFICATES PUBLISHED BY CERTIFICATION
17 AUTHORITIES REQUIRED TO CONFORM TO RULES OF PRACTICE WHICH THE
18 SECRETARY FINDS TO BE SUBSTANTIALLY SIMILAR TO, OR MORE STRINGENT
19 TOWARD THE CERTIFICATION AUTHORITIES, THAN THOSE OF THIS STATE;

20 (6) KEEPS AN ARCHIVE OF CERTIFICATES THAT HAVE BEEN
21 SUSPENDED OR REVOKED, OR THAT HAVE EXPIRED WITHIN AT LEAST THE PAST 3
22 YEARS; AND

23 (7) COMPLIES WITH OTHER REQUIREMENTS PRESCRIBED BY
24 REGULATION OF THE SECRETARY.

25 (C) THE SECRETARY'S RECOGNITION OF A REPOSITORY MAY BE
26 DISCONTINUED ON THE REPOSITORY'S WRITTEN REQUEST FOR DISCONTINUANCE
27 FILED WITH THE SECRETARY AT LEAST 30 DAYS BEFORE DISCONTINUANCE.

28 (D) THE SECRETARY MAY DISCONTINUE RECOGNITION OF A REPOSITORY:

29 (1) ON PASSAGE OF AN EXPIRATION DATE SPECIFIED BY THE
30 SECRETARY IN GRANTING RECOGNITION; OR

31 (2) IN ACCORDANCE WITH THE PROCEDURES FOR ADJUDICATIVE
32 PROCEEDINGS PRESCRIBED BY TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
33 ARTICLE, IF THE SECRETARY CONCLUDES THAT THE REPOSITORY NO LONGER
34 SATISFIES THE CONDITIONS FOR RECOGNITION LISTED IN THIS SECTION OR IN THE
35 REGULATIONS OF THE SECRETARY.

36 20-502.

37 (A) NOTWITHSTANDING ANY DISCLAIMER BY THE REPOSITORY OR ANY
38 CONTRACT TO THE CONTRARY BETWEEN THE REPOSITORY, A CERTIFICATION
39 AUTHORITY, OR A SUBSCRIBER, A REPOSITORY IS LIABLE FOR A LOSS INCURRED BY

26

1 A PERSON REASONABLY RELYING ON A DIGITAL SIGNATURE VERIFIED BY THE
2 PUBLIC KEY LISTED IN A SUSPENDED OR REVOKED CERTIFICATE IF:

3 (1) THE LOSS WAS INCURRED MORE THAN 1 BUSINESS DAY AFTER
4 RECEIPT BY THE REPOSITORY OF A REQUEST TO PUBLISH NOTICE OF THE
5 SUSPENSION OR REVOCATION; AND

6 (2) THE REPOSITORY HAD FAILED TO PUBLISH THE NOTICE OF
7 SUSPENSION OR REVOCATION WHEN THE PERSON RELIED ON THE DIGITAL
8 SIGNATURE.

9 (B) UNLESS WAIVED, A RECOGNIZED REPOSITORY OR THE OWNER OR
10 OPERATOR OF A RECOGNIZED REPOSITORY IS:

11 (1) NOT LIABLE:

12 (I) FOR FAILURE TO PUBLISH NOTICE OF A SUSPENSION OR
13 REVOCATION, UNLESS THE REPOSITORY HAS RECEIVED NOTICE OF PUBLICATION
14 AND 1 BUSINESS DAY HAS ELAPSED SINCE THE NOTICE WAS RECEIVED;

15 (II) FOR ANY DAMAGES PURSUANT TO SUBSECTION (A) OF THIS
16 SECTION IN EXCESS OF THE AMOUNT SPECIFIED IN THE CERTIFICATE AS THE
17 RECOMMENDED RELIANCE LIMIT;

18 (III) FOR MISREPRESENTATION IN A CERTIFICATE PUBLISHED BY A
19 LICENSED CERTIFICATION AUTHORITY;

20 (IV) FOR ACCURATELY RECORDING OR REPORTING INFORMATION
21 WHICH A LICENSED CERTIFICATION AUTHORITY, THE SECRETARY, A COUNTY
22 CLERK, OR COURT CLERK HAS PUBLISHED AS PROVIDED IN THIS TITLE, INCLUDING
23 INFORMATION ABOUT SUSPENSION OR REVOCATION OF A CERTIFICATE; OR

24 (V) FOR REPORTING INFORMATION ABOUT A CERTIFICATION
25 AUTHORITY, A CERTIFICATE, OR A SUBSCRIBER, IF SUCH INFORMATION IS
26 PUBLISHED AS PROVIDED IN THIS TITLE OR A REGULATION OF THE SECRETARY OR
27 IS PUBLISHED BY ORDER OF THE SECRETARY IN THE PERFORMANCE OF THE
28 SECRETARY'S LICENSING AND REGULATORY DUTIES UNDER THIS TITLE; AND

29 (2) LIABLE UNDER SUBSECTION (A) OF THIS SECTION ONLY FOR DIRECT
30 COMPENSATORY DAMAGES, WHICH DO NOT INCLUDE:

31 (I) PUNITIVE OR EXEMPLARY DAMAGES;

32 (II) DAMAGES FOR LOST PROFITS, SAVINGS, OR OPPORTUNITY; OR

33 (III) DAMAGES FOR PAIN OR SUFFERING.

34 20-503.

35 %THE FOLLOWING GOVERNMENTAL ENTITY RECORDS ARE EXEMPT FROM THE
36 PROVISIONS OF TITLE 10, SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE:

27

1 (1) RECORDS CONTAINING INFORMATION THAT WOULD DISCLOSE, OR
2 MIGHT LEAD TO THE DISCLOSURE OF PRIVATE KEYS, ASYMMETRIC
3 CRYPTOSYSTEMS, OR ALGORITHMS; OR

4 (2) RECORDS, THE DISCLOSURE OF WHICH MIGHT JEOPARDIZE THE
5 SECURITY OF AN ISSUED CERTIFICATE OR A CERTIFICATE TO BE ISSUED.

6 SUBTITLE 6. MISCELLANEOUS PROVISIONS.

7 20-601.

8 (A) (1) IN THIS SECTION, "WRITING" MEANS ANY HANDWRITING,
9 TYPEWRITING, PRINTING, ELECTRONIC STORAGE OR TRANSMISSION, OR ANY
10 OTHER METHOD OF RECORDING INFORMATION OR FIXING INFORMATION IN A
11 FORM CAPABLE OF BEING PRESERVED.

12 (2) IN THIS SECTION, "WRITING" INCLUDES PRINTING, ELECTRONIC
13 STORAGE OR TRANSMISSION, OR ANY OTHER METHOD OF RECORDING VALUABLE
14 INFORMATION INCLUDING FORMS SUCH AS:

15 (I) CHECKS, TOKENS, STAMPS, SEALS, CREDIT CARDS, BADGES,
16 TRADEMARKS, MONEY, AND ANY OTHER SYMBOLS OF VALUE, RIGHT, PRIVILEGE,
17 OR IDENTIFICATION;

18 (II) A SECURITY, REVENUE STAMP, OR ANY OTHER INSTRUMENT
19 OR WRITING ISSUED BY A GOVERNMENT OR ANY AGENCY; OR

20 (III) A CHECK, AN ISSUE OF STOCKS, BONDS, OR ANY OTHER
21 INSTRUMENT OR WRITING REPRESENTING AN INTEREST IN OR CLAIM AGAINST
22 PROPERTY, OR A PECUNIARY INTEREST IN OR CLAIM AGAINST ANY PERSON OR
23 ENTERPRISE.

24 (B) A PERSON IS GUILTY OF FORGERY IF, WITH PURPOSE TO DEFRAUD
25 ANYONE, OR WITH KNOWLEDGE THAT THE PERSON IS FACILITATING A FRAUD TO
26 BE PERPETRATED BY ANYONE, THE PERSON:

27 (1) ALTERS ANY WRITING OF ANOTHER PERSON WITHOUT THAT
28 PERSON'S AUTHORITY;

29 (2) UTTERS ANY ALTERED WRITING; OR

30 (3) MAKES, COMPLETES, EXECUTES, AUTHENTICATES, ISSUES,
31 TRANSFERS, PUBLISHES, OR UTTERS ANY WRITING SO THAT THE WRITING OR THE
32 MAKING, COMPLETION, EXECUTION, AUTHENTICATION, ISSUANCE, TRANSFERENCE,
33 PUBLICATION, OR UTTERANCE PURPORTS TO BE THE ACT OF ANOTHER, WHETHER
34 THE PERSON IS EXISTENT OR NONEXISTENT, OR PURPORTS TO HAVE BEEN
35 EXECUTED AT A TIME OR PLACE OR IN A NUMBERED SEQUENCE OTHER THAN WAS
36 IN FACT THE CASE, OR TO BE A COPY OF AN ORIGINAL WHEN NO SUCH ORIGINAL
37 EXISTED.

38 (C) FORGERY IS A FELONY OF THE THIRD DEGREE.

28

1 20-602.

2 THIS TITLE MAY BE CITED AS THE MARYLAND DIGITAL SIGNATURE ACT.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

4 October 1, 1997.