

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of Regulations of the Secretary of State

The Secretary of State will hold a public hearing at 10:00 a.m., on January 28, 1999, at the Department of Transportation, 1263 South Stewart Street, Third Floor, Carson City, Nevada 89712 and The Department of Transportation, 123 East Washington Avenue, Las Vegas, Nevada 89125. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations pertaining to chapter 239 of the Nevada Administrative Code.

The following information is provided pursuant to the requirement of NRS 233B.060:

1. The need for and the purpose of the proposed regulation or amendment.

The purpose of the proposed regulation is to facilitate commerce by means of reliable electronic messages, to allow the electronic submission of documents to public agencies; and to establish regulations regarding the authentication and reliability of digital signatures.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.

The proposed regulation establishes standards for using electronic symbols to substitute or supplement a handwritten or facsimile signature; for authenticating digital signatures; and for licensing of businesses to verify such an electronic symbol.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be state separately and in each case must include:

- (a) both adverse and beneficial effects; and**
- (b) both immediate and long-term effects.**

(a) No business will be required to use an electronic symbol as a digital signature, so there is no adverse economic effect on businesses.

Businesses that choose to use electronic symbols as digital signatures will be able to participate in electronic commerce and therefore would enjoy a beneficial effect.

(b) As electronic commerce continues to expand, businesses that choose to use electronic symbols as digital signatures will experience both immediate and long term effects.

4. It is estimated that two additional staff will be required to administer this provision at a cost of 4100,000.00 annually.

5. A description of, and citation to, any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulation does not overlap or duplicate any state or local government regulation.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulation is not required by federal law.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The proposed regulation is not more stringent than federal regulation.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation establishes a new fee for licensing certification authorities and repositories.

Persons wishing to comment upon the proposed action of the secretary of state may appear at the public hearing or may address their comments, data, views or arguments, in written form, to Bill Reinhard, Secretary of state's Office, 101 North Carson Street, Suite 3, Carson city, Nevada 89701; (775) 684-5720. Written submissions must be received by the Secretary of state on or before Friday, January 22, 1999. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Secretary of State may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the office of the secretary of state, State Capitol Building, 101 South Carson, Suite B. Carson

City, Nevada 89701, the office of the secretary of state, 555 East Washington, Suite 5200, Las Vegas, Nevada 89101, and the Securities division of the secretary of state, 1105 Terminal Way, Suite 211, Reno, Nevada 89502. Also, copies will be available in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published by the Legislative Counsel bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.lwg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reasons for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Secretary of State
State Capitol Building
101 South Carson, Suite B
Carson City, Nevada 89701

Securities Division of the Secretary of State
1105 Terminal Way, Suite 211
Reno, Nevada 89502

Carson City Library
900 North Roop Street
Carson City, Nevada 89701

Churchill County Library
553 South Maine Street
Fallon, Nevada 89406

Clark County:
Las Vegas Library
833 Las Vegas Blvd., North
Las Vegas, Nevada 89101

Douglas County Library
Post Office Box 337
Minden, Nevada 89423
(1625 Library Lane)

Elko County Library
720 Court Street
Elko, Nevada 89801

Goldfield Public Library
Post Office Box 430
Goldfield, Nevada 89013
(Fourth & Crook Street)

Eureka Branch Library
Post Office Box 293
Eureka, Nevada 89316
(10190 Monroe Street)

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445

Secretary of State

555 East Washington,
Las Vegas, Nevada 89101

Battle Mountain Branch Library\
(Lander County)
Post Office Box 141
Battle Mountain, Nevada 89820

Lincoln County Library
93 Main Street
Post Office Box 330
Pioche, Nevada 89043

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447

Mineral County Library
Post Office Box 1390
Hawthorne, Nevada 899415
(First & A Street)

Tonopah Public Library
Post Office Box 449
Tonopah, Nevada 89049
(171 Central Street)

Pershing County Library
Post Office Box 781
Lovelock, Nevada 89419
(1125 Central Avenue)

Storey County Library
Post Office Box 14
Virginia City, Nevada 89440
(95 South R Street)

Washoe County Library
Post Office Box 2151
Reno, Nevada 89505
(301 South Center)

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Dated this 24th day of December, 1998.

LCB File No. R155-98

PROPOSED REGULATION OF THE SECRETARY OF STATE

**PROPOSED REGULATIONS
RELATING TO
NEVADA ELECTRONIC TRANSACTIONS ACT
(NRS 239.041 through 239.044 inclusive)**

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LCB File No. R155-98

PROPOSED REGULATION OF THE SECRETARY OF STATE

PROPOSED REGULATIONS RELATING TO NEVADA ELECTRONIC TRANSACTIONS ACT (NRS 239.041 through 239.044 inclusive)

SECTION 1: PURPOSE

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

- (1) To facilitate commerce by means of reliable electronic messages;
- (2) To allow the electronic submission of documents to public agencies;
- (3) To establish uniform regulations regarding the authentication and reliability of digital signatures; and
- (4) To implement legally the general import of relevant standards, such as X.509 of the international telecommunication union.

SECTION 2: DEFINITIONS

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

- (1) “Accept a certificate” means either:
 - (a) To manifest approval of a certificate, while knowing or having notice of its contents; or
 - (b) To apply to the secretary or a licensed certification authority for a certificate, without canceling or revoking the application by delivering notice of the cancellation or revocation to the secretary or the certification authority and obtaining a signed, written receipt from the secretary or the certification authority, if the secretary or the certification authority subsequently issues a certificate based on the application.
- (2) “Accept a digital signature” means to verify a digital signature or take an action in reliance on a digital signature.
- (3) “Asymmetric cryptosystem” means an algorithm or series of algorithms that provide a secure key pair.
- (4) “Certificate” means a computer-based record that:
 - (a) Identifies the secretary or the certification authority issuing it;
 - (b) Names or identifies its subscriber;
 - (c) Contains the subscriber's public key; and
 - (d) Is digitally signed by the secretary or the certification authority issuing it.

- (5) “Certification authority” means a person other than the secretary who issues a certificate.
- (6) “Certification authority disclosure record” means an on–line, publicly accessible record that concerns the licensed certification authority and is kept by the secretary.
- (7) “Certification practice statement” means a declaration of the practices that a certification authority employs in issuing certificates generally, or employed in issuing a material certificate.
- (8) “Certify” means to declare with reference to a certificate, with ample opportunity to reflect, and with a duty to apprise oneself of all material facts.
- (9) “Confirm” means to ascertain through appropriate inquiry and investigation.
- (10) “Correspond,” with reference to keys, means to belong to the same key pair.
- (11) “Digital signature” means a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine:
- (a) Whether the transformation was created using the private key that corresponds to the signer's public key; and
 - (b) Whether the initial message has been altered since the transformation was made.
- (12) “Electronic symbols” as used in NRS 239.042-.44, inclusive, means digital signature.
- (13) “Forge a digital signature” means either:
- (a) To create a digital signature without the authorization of the rightful holder of the private key; or
 - (b) To create a digital signature verifiable by a certificate listing as subscriber a person who either:
 - (i) Does not exist; or
 - (ii) Does not hold the private key corresponding to the public key listed in the certificate.
- (14) “Hold a private key” means to be authorized to utilize a private key.
- (15) “Incorporate by reference” means to make one message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated.
- (16) “Issue a certificate” means the acts of the secretary or a licensed certification authority in creating a certificate and notifying the subscriber listed in the certificate of the contents of the certificate.
- (17) “Key pair” means a private key and its corresponding public key in an asymmetric cryptosystem, keys which have the property that the public key can verify a digital signature that the private key creates.
- (18) “Licensed certification authority” means a certification authority to whom a license has been issued by the secretary and whose license is in effect.
- (19) “Message” means a digital representation of information.
- (20) “Notify” means to communicate a fact to another person in a manner reasonably likely under the circumstances to impart knowledge of the information to the other person.
- (21) “Operative personnel” means one or more natural persons acting as a certification authority or its agent, or in the employment of, or under contract with, a certification authority, and who have:

- (a) Managerial or policymaking responsibilities for the certification authority; or
- (b) Duties directly involving the issuance of certificates, creation of private keys, or administration of a certification authority's computing facilities.
- (22) "Person" means a human being or an organization capable of signing a document, either legally or as a matter of fact.
- (23) "Private key" means the key of a key pair used to create a digital signature.
- (24) "Public key" means the key of a key pair used to verify a digital signature.
- (25) "Publish" means to record or file in a repository.
- (26) "Qualified right to payment" means an award of damages against a licensed certification authority by a court having jurisdiction over the certification authority in a civil action for violation of this chapter.
- (27) "Recipient" means a person who has received a certificate and a digital signature verifiable with reference to a public key listed in the certificate and is in a position to rely on it.
- (28) "Recognized repository" means a repository recognized by the secretary.
- (29) "Recommended reliance limit" means the monetary amount recommended for reliance on a certificate.
- (30) "Repository" means a system for storing and retrieving certificates and other information relevant to digital signatures.
- (31) "Revoke a certificate" means to make a certificate ineffective permanently from a specified time forward. Revocation is effected by notation or inclusion in a set of revoked certificates and does not imply that a revoked certificate is destroyed or made illegible.
- (32) "Rightfully hold a private key" means the authority to utilize a private key:
- (a) That the holder or the holder's agents have not disclosed to a person in violation of this chapter; and
- (b) That the holder has not obtained through theft, deceit, eavesdropping, or other unlawful means.
- (33) "Secretary" means the secretary of state.
- (34) "Subscriber" means a person who:
- (a) Is the subject listed in a certificate;
- (b) Accepts the certificate; and
- (c) Holds a private key that corresponds to a public key listed in that certificate.
- (35) "Suitable guaranty" means either a surety bond executed by a surety authorized by the insurance commissioner to do business in this state or an irrevocable letter of credit issued by a financial institution authorized to do business in this state, which, in either event, satisfies all of the following requirements:
- (a) It is issued payable to the secretary for the benefit of persons holding qualified rights of payment against the licensed certification authority named as the principal of the bond or customer of the letter of credit;
- (b) It is in an amount specified by the secretary;
- (c) It states that it is issued for filing under this regulation;
- (d) It specifies a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority; and
- (e) It is in a form prescribed or approved by the secretary.

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

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

(37) "Time stamp" means either:

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

(b) The notation thus appended or attached.

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

(a) Are reasonably secure from intrusion and misuse;

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

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

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

(a) A licensed certification authority has issued;

(b) The subscriber listed in it has accepted;

(c) Has not been revoked or suspended; and

(d) Has not expired.

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

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

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

(41) "X.509" means the specific set of technical standards identified by that name that were adopted by the international telecommunication union formerly known as the international telegraph and telephone consultation committee. For purposes of these regulations, all references to X.509 shall be construed as referring to version 3. Compliance with only versions 1 or 2 shall not be construed as compliance with X.509.

SECTION 3: SECRETARY — DUTIES

The secretary must maintain a publicly accessible data base containing a certification authority disclosure record for each licensed certification authority and a list of all judgments filed with the secretary within the previous five years. The secretary must publish the contents of the data base in at least one recognized repository.

SECTION 4: SEVERABILITY

If any provision of this regulation or its application to any person or circumstance is held invalid, the remainder of the regulation or the application of the provision to other persons or circumstances is not affected.

**SECTION 5: CERTIFICATION AUTHORITIES — LICENSURE —
QUALIFICATIONS — REVOCATION AND SUSPENSION**

- (1) To obtain or retain a license, a certification authority must:
 - (a) Be the subscriber of a certificate published in a recognized repository;
 - (b) Knowingly employ as operative personnel only persons who have not been convicted within the past seven years of a felony and have never been convicted of a crime involving fraud, false statement, or deception. For purposes of this provision, a certification authority knowingly employs such a person if the certification authority knew of a conviction, or should have known based upon the background information required by the secretary;
 - (c) Employ as operative personnel only persons who have demonstrated knowledge and proficiency in following the requirements of this chapter;
 - (d) File with the secretary a suitable guaranty, unless the certification authority is a city or county that is self-insured or the department of information services;
 - (e) Use a trustworthy system, including a secure means for limiting access to its private key;
 - (f) Maintain an office in this state or have established a registered agent for service of process in this state; and
 - (g) Comply with all further licensing requirements established by the secretary.
- (2) The secretary must issue a license to a certification authority that:
 - (a) Is qualified under subsection (1) of this section;
 - (b) Applies in writing to the secretary for a license; and
 - (c) Pays the filing fee.
- (3) The secretary may revoke or suspend a certification authority's license, in accordance with the administrative procedure act, chapter 233B NRS, for failure to comply with this chapter or for failure to remain qualified under subsection (1) of this section. The secretary may order the summary suspension of a license pending proceedings for revocation or other action, which must be promptly instituted and determined, if the secretary includes within a written order a finding that the certification authority has either:
 - (a) Utilized its license in the commission of a violation of a state or federal criminal statute or of chapter 239 NRS; or
 - (b) Engaged in conduct giving rise to a serious risk of loss to public or private parties if the license is not immediately suspended.
- (4) Unless the parties provide otherwise by contract between themselves, the licensing requirements in this section do not affect the effectiveness, enforceability, or validity of any digital signature, except that section _____ through section _____ do not apply to a certificate, and associated digital signature, issued by an unlicensed certification authority.
- (5) A certification authority that has not obtained a license is not subject to the provisions of this chapter, except as specifically provided.

SECTION 6: APPLICATION FOR LICENSE AS A CERTIFICATION AUTHORITY

Any person desiring to be licensed as a certification authority must file an application pursuant to this chapter demonstrating compliance with the requirements of this chapter. To apply for a license, an applicant must submit all of the following:

- (1) A completed application form as prescribed by section 7;
- (2) The fee or fees provided by section 8;
- (3) A certificate that shows the applicant as subscriber and is published in a recognized repository;
- (4) A suitable guaranty, described by section 9, unless the applicant is a public agency as defined in NRS 239.041;
- (5) Demonstration of sufficient working capital, pursuant to section 10;
- (6) Documentation, in the form of an information systems audit report, establishing that the applicant has the use of a trustworthy system as defined by section 11. The audit required by this subsection shall be performed pursuant to section 12, except that it is not required to establish anything more than that the applicant has the use of a trustworthy system;
- (7) Materials establishing, to the satisfaction of the secretary that each person listed as operative personnel has qualified to act as operative personnel pursuant to section 14; and
- (8) A written certification practice statement as described in section 24.

SECTION 7: FORM

Each application for a license, or renewal of a license, as a certification authority shall be submitted on a form prescribed by the secretary. The completed form shall contain the following:

- (1) The name of the applicant;
- (2) The applicant's uniform business identifier number, if any;
- (3) The mailing address of the applicant, and a physical address if different;
- (4) The telephone number of the applicant;
- (5) The electronic mail address of the applicant;
- (6) The name and address of the applicant's registered agent in this state for service of process. Address information shall include a physical address, but may additionally provide a mailing address if different; and
- (7) The names of all operative personnel.

SECTION 8: FEES

Fees for services performed by the secretary are established in the following amounts:

- (1) For application for a license as a certification authority:
 - (a) For the applicant's first year doing business as a licensed certification authority in this state: one thousand four hundred dollars;

- (b) For the applicant's second year doing business as a licensed certification authority in this state: one thousand eight hundred dollars; and
 - (c) For the applicant's third or subsequent year doing business as a licensed certification authority in this state: two thousand eight hundred dollars.
- (2) For recognition as a repository, in addition to the license issuance or renewal fee paid pursuant to this section:
- (a) For the applicant's first year doing business as a recognized repository in this state: one thousand four hundred dollars;
 - (b) For the applicant's second year doing business as a recognized repository in this state: one thousand eight hundred dollars; and
 - (c) For the applicant's third or subsequent year doing business as a recognized repository in this state: two thousand eight hundred dollars.
- (3) For recognition of a foreign license, either:
- (a) Two thousand eight hundred dollars; or
 - (b) Upon certification by the issuer of the foreign license that the applicant has been licensed as a certification authority in that jurisdiction for less than three years, the fee that would be due under subsection (1) of this section for a Nevada license under the same circumstances. No applicant may file under this subsection (b) more than two times.
- (4) For qualification of operative personnel:
- (a) For administering and scoring the examination required by this chapter, fifty dollars per individual; and
 - (b) For qualifying operative personnel pursuant to this chapter, other than (or in addition to) administering and scoring the examination, twenty-five dollars per individual.

SECTION 9: SUITABLE GUARANTY

- (1) The suitable guaranty required for licensure as a certification authority may be in the form of either a surety bond executed by an insurer lawfully operating in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state.
- (2) The suitable guaranty must be in an amount of at least fifty thousand dollars.
- (3) As to form, the suitable guaranty must:
- (a) Identify the insurer issuing the suitable guaranty or financial institution upon which it is drawn, including name, mailing address, and physical address, and identify by number or copy its licensure or approval as a financial institution, or in the case of an insurer, as an insurer in this state;
 - (b) Identify the certification authority on behalf of which it is issued;
 - (c) Be issued payable to the secretary for the benefit of persons holding qualified rights of payment against the licensed certification authority named as principal of the bond or customer of the letter of credit;
 - (d) State that it is issued for filing under the Nevada Electronic Communication Act; and
 - (e) Specify a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority.

SECTION 10: SUFFICIENT WORKING CAPITAL

(1) A certification authority's working capital is sufficient for licensing purposes if, at the time it applies for a license or renewal, its current assets minus current liabilities exceeds twenty-five thousand dollars.

(2) A certification authority may demonstrate the sufficiency of its working capital only through a financial statement signed by a licensed certified public accountant, dated no more than sixty days prior to the date received by the secretary. A state agency shall be deemed to have sufficient working capital without documentation.

SECTION 11: TRUSTWORTHY SYSTEM

A system shall be regarded as trustworthy if it materially satisfies the Common Criteria (CC) Protection Profile (PP) for Commercial Security 2 (CS2), (CCPPCS), developed by the National Institute of Standards and Technology (NIST). The determination whether a departure from CCPPCS is material shall be governed by this chapter. For purposes of this chapter, CCPPCS shall be interpreted in a manner that is reasonable in the context in which a system is used and is consistent with other state and federal laws. Until such time as the referenced standard is adopted by NIST, the standard applicable for purposes of this chapter shall be the draft of CCPPCS dated _____.

SECTION 12: COMPLIANCE AUDITS

(1) A licensed certification authority shall obtain a compliance audit at least once every year. The auditor shall issue an opinion evaluating the degree to which the certification authority conforms to the requirements of this chapter. If the certification authority is also a recognized repository, the audit must include the repository.

(2) For purposes of the opinion required by this section, the auditor shall exercise reasonable professional judgment as to whether a condition that does not strictly comply with legal requirements is or is not material, taking into consideration the circumstances and context. Noncompliance as to any of the following shall be deemed material, in addition to any others the auditor may judge to be material:

(a) Any condition of noncompliance with statute or regulation that relates to the validity of a certificate;

(b) Any employee performing the functions of operative personnel who has not qualified pursuant to section 14;

(c) Any material indication that the certification authority has used any system other than a trustworthy system.

(3) An audit may be performed by any licensed certified public accountant, or, in the case of a public agency, by the Nevada state auditor. Any auditor, or group of auditors,

performing an audit pursuant to this section shall include at least one individual who has been issued a current and valid certificate as either a certified information systems auditor, by the information systems audit and control foundation, or as a certified information systems security professional, by the International Information Systems Security Certification Consortium. The names of all individuals possessing such certificates shall be disclosed in the audit report, or in a cover letter accompanying that report.

(4) The certification authority shall file a copy of the audit report with the secretary, prior to the date the certification authority must renew its license pursuant to section 16. At the certification authority's option, it shall be sufficient to file a portion of the report if that report summarizes all audit exceptions and conditions of noncompliance (including, but not limited to, those stated in subsection (2) of this section) stated in the full report, and bears the auditor's signature. The report may be filed electronically, if it is validly digitally signed by the auditor, using a licensed certification authority. The secretary shall publish the report, or summary, in the certification authority disclosure record it maintains for the certification authority.

SECTION 13: QUALIFICATIONS OF AUDITOR SIGNING REPORT OF OPINION — COMPLIANCE AUDITS UNDER STATE AUDITOR'S AUTHORITY

(1) (a) An auditor signing a report of opinion as to a compliance audit required by this chapter must be a certified public accountant, licensed under chapter 628 NRS or equivalent licensing statute of another jurisdiction.

(b) Auditors must either possess such computer security qualifications as are necessary to conduct the audit or employ, contract, or associate with firms or individuals who do.

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

SECTION 14: CERTIFICATION OF OPERATIVE PERSONNEL

The secretary shall not issue or renew a license as a certification authority unless the licensee documents that every individual employed or acting as operative personnel qualifies to act as operative personnel. This documentation shall include:

(1) Receipt of a completed form signed by the individual under penalty of perjury, stating:

(a) The name (including all other names used in the past), date of birth, and business address of the individual;

(b) That the individual has not been convicted within the past seven years of a felony and has never been convicted of a crime involving fraud, false statement, or deception in any jurisdiction; and

(c) If the individual has resided in any nation other than the United States during the previous five years, the name of that nation and the period of residency.

(2) A criminal background check supporting the declaration required by subsection (1) of this section. This requirement is excused as to any individual for whom documentation satisfying this paragraph was submitted within the previous two years, even if the individual has changed employment. This check must include both of the following:

(a) A criminal background check compiled by a private sector provider, documenting a background check reasonably sufficient to disclose any criminal convictions within the previous seven years in any state or federal jurisdiction in the United States, its territories, or possessions, and any other jurisdiction specified pursuant to subsection (1)(c) of this section. This background check must contain information that is current to within thirty days of its date of submission; and

(b) The certified results of a criminal background check performed by the Nevada Highway Patrol or law enforcement agency where the operative personnel reside and are employed for the previous seven years, dated not more than thirty days prior to submission or such other jurisdictions as the secretary may reasonably request.

(3) Satisfactory completion by the individual of a written examination demonstrating knowledge and proficiency in following the requirements of the Nevada Electronic Communication Act and these regulations. The secretary shall develop an open book written test covering the subject matter and provide it upon request, which may include electronic access. The secretary may update or modify the test from time to time. The secretary shall indicate at the top of the test the percentage or number of questions that must be answered correctly in order to constitute satisfactory completion. No individual may take the examination more than once within a period of thirty days. A certification by the secretary that an individual has successfully completed this examination shall be valid for two years and shall continue to satisfy the requirements of this subsection even if the individual changes employment.

(4) A licensed certification authority must remove a person from performing the functions of operative personnel immediately upon learning that the person has been convicted within the past seven years of a felony or has ever been convicted of a crime involving fraud, false statement, or deception, and must notify the secretary of this action within three business days.

SECTION 15: QUALIFICATION OF NEWLY DESIGNATED OPERATIVE PERSONNEL

No licensed certification authority may assign any individual to perform the functions of operative personnel if that individual has not been certified by the secretary pursuant to this chapter. Such certification may be obtained by application to the secretary at any time, without regard to the time at which the certification authority's license is subject to renewal.

SECTION 16: ISSUANCE OF LICENSE OR RENEWAL

The secretary shall, within a reasonable time, issue or renew a license as a certification authority if the applicant has:

- (1) Submitted all documentation required by this chapter; and
- (2) The secretary has determined that the applicant meets all requirements for licensure.
- (3) Issuance or renewal of a license shall be valid for a period of one year. Failure to receive a notice of the need to renew a license is an insufficient reason for failing to file the required application for renewal.

SECTION 17: FORM OF CERTIFICATES

(1) Certificates issued by the secretary or by licensed certification authorities shall follow the Basic Certificate Field Standards specified in standard X.509, part one, section 4.1. Certificate data extension fields are optional. If certificate extension fields are used, usage must conform to the required guidelines referenced in X.509 section 4.1.2.1, section 4.2, and may be displayed on the certificate.

(2) Any certificate issued by the secretary or by a licensed certification authority that is to be used as an acknowledgment, as provided in NRS chapter 240, shall include a certificate data extension field that specifies the reliance limit, if any, and a certificate data extension field that states that the certificate may be used as an acknowledgment.

SECTION 18: RECOGNITION OF FOREIGN LICENSES

(1) A certification authority licensed as such by a governmental entity other than the state of Nevada, may act as a licensed certification authority in Nevada only if, in addition to meeting any other requirements established by law for the transaction of business, it either:

- (a) Obtains a license as a certification authority from the secretary; or
- (b) Provides to the secretary a certified copy of a license issued by a governmental entity whose licensing or authorization requirements the secretary has found to be substantially similar to those of Nevada, together with the fee required by this chapter. A license recognized under this subsection shall be valid in Nevada only during the time it is valid in the issuing jurisdiction.

(2) The secretary may certify that the requirements of another jurisdiction are substantially similar to those of Nevada if, in order to obtain a license, the controlling law of the other jurisdiction requires that a licensed certification authority:

- (a) Issue certificates based upon a system of public key cryptography using a trustworthy system;
- (b) Provide a suitable guaranty in an amount of at least twenty–five thousand dollars;

(c) Employ as operative personnel only individuals who have demonstrated knowledge and proficiency in the requirements of the law regarding digital signatures, and who are free of felony criminal conviction for a minimum of seven years;

(d) Be subject to a legally established system of enforcement of licensure requirements.

(3) The secretary shall make available upon request, a list of those jurisdictions which the secretary has certified pursuant to subsection (2) of this section. If a jurisdiction is not included in the list, the secretary shall consider whether certification of such jurisdiction should be added, upon request of either the jurisdiction or a certification authority licensed by that jurisdiction and upon receipt of an English language copy of the applicable laws and regulations of that jurisdiction.

SECTION 19: LICENSED CERTIFICATION AUTHORITIES — REQUIREMENTS — DISCLOSURE — INQUIRY AND COMPENSATION

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

(a) To issue, suspend, or revoke a certificate;
(b) To publish or give notice of the issuance, suspension, or revocation of a certificate; or

(c) To create a private key.

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

SECTION 20: CERTIFICATE — ISSUANCE — CONFIRMATION OF INFORMATION — PUBLISHING — STANDARDS, STATEMENTS, PLANS, REQUIREMENTS MORE RIGOROUS THAN CHAPTER — REVOCATION, SUSPENSION — INVESTIGATION — NOTICE — PROCEDURE

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

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

(b) The secretary or a certification authority has confirmed that:

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

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

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

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

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

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

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

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

(2) For certificates issued by the secretary:

(a) If the subscriber accepts the issued certificate, the secretary will publish a signed copy of the certificate in the state repository. If the subscriber does not accept the certificate, the secretary will not publish it or will cancel its publication if the certificate has already been published.

(b) After issuing a certificate, the secretary will revoke it immediately upon confirming that it was not issued as required by this section. The secretary may also suspend a certificate that it has issued for a reasonable period not exceeding ninety-six hours as needed for an investigation to confirm grounds for revocation under this subsection. The secretary will give notice to the subscriber as soon as practicable after a decision to revoke or suspend under this subsection.

(3) For certificates issued by a licensed certification authority:

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

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

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

(4) The secretary may order the licensed certification authority to suspend or revoke a certificate that the certification authority issued, if, after giving any required notice and opportunity for the certification authority and subscriber to be heard in accordance with the administrative procedure act, chapter 233B NRS, the secretary determines that:

- (a) The certificate was issued without substantial compliance with this chapter; and
- (b) The noncompliance poses a significant risk to persons reasonably relying on the certificate.

Upon determining that an emergency requires an immediate remedy, and in accordance with the administrative procedure act, chapter 233B NRS, the secretary may issue an order suspending a certificate for a period not to exceed ninety–six hours.

SECTION 21: CERTIFICATION BY SECRETARY

- (1) By issuing a certificate, the secretary warrants to the subscriber named in the certificate that:
 - (a) The certificate contains no information known to the secretary to be false; and
 - (b) The certificate satisfies all material requirements of this chapter.
- (2) The secretary, by issuing a certificate, promises to the subscriber:
 - (a) To act promptly to suspend or revoke a certificate in accordance with sections 9 and 10; and
 - (b) To notify the subscriber within a reasonable time of any facts known to the secretary that significantly affect the validity or reliability of the certificate once it is issued.
- (3) By issuing and publishing a certificate, the secretary certifies to all who reasonably rely on the information contained in the certificate, or on a digital signature verifiable by the public key listed in the certificate, that:
 - (a) The information in the certificate and listed as confirmed by the secretary is accurate;
 - (b) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference within the certificate; and
 - (c) The subscriber has accepted the certificate.
- (4) The secretary has issued the certificate to the subscriber.

SECTION 22: LICENSED CERTIFICATION AUTHORITIES — WARRANTIES, OBLIGATIONS UPON ISSUANCE OF CERTIFICATE — NOTICE

- (1) By issuing a certificate, a licensed certification authority warrants to the subscriber named in the certificate that:
 - (a) The certificate contains no information known to the certification authority to be false;
 - (b) The certificate satisfies all material requirements of this chapter; and
 - (c) The certification authority has not exceeded any limits of its license in issuing the certificate.

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

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

(a) To act promptly to suspend or revoke a certificate in accordance with this chapter; and

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

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

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

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

(c) The subscriber has accepted the certificate; and

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

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

**SECTION 23: CERTIFICATION AUTHORITIES — PROHIBITED ACTIVITIES —
STATEMENT BY SECRETARY ADVISING OF CERTIFICATION
AUTHORITIES CREATING PROHIBITED RISKS — PROTEST —
HEARING — DISPOSITION — NOTICE — PROCEDURE**

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

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

(3) In the manner provided by the administrative procedure act, chapter 233B NRS, the secretary may issue orders and obtain injunctions or other civil relief to prevent or restrain a certification authority from violating this section, regardless of whether the certification

authority is licensed. This section does not create a right of action in a person other than the secretary.

SECTION 24: CERTIFICATION PRACTICE STATEMENTS

Each licensed certification authority must file with the secretary a certification practice statement. This statement must declare the practices the certification authority uses in issuing, suspending, and revoking certificates. Additionally, it must set forth the following:

- (1) If certificates are issued by class, the necessary criteria for each class of certificate, including the methods of subscriber identification applicable to each class;
- (2) Disclosure of any warnings, liability limitations, warranty disclaimers, and indemnity and hold harmless provisions, if any, upon which the certification authority intends to rely;
- (3) Disclosure of any and all disclaimers and limitations on obligations, losses, or damages, if any, to be asserted by the certification authority;
- (4) A written description of all representations required by the certification authority of the subscriber for the subscriber's responsibility to protect the private key; and
- (5) Disclosure of any mandatory dispute resolution process, if any, including any choice of forum and choice of law provisions.

SECTION 25: CERTIFICATION AUTHORITY DISCLOSURE RECORDS

(1) The secretary shall compile and maintain certification authority disclosure records for each certification authority that has been issued a current and valid Nevada certification authority license. The secretary shall publish them in the secretary's repository and any other recognized repository the secretary deems appropriate. Each certification authority disclosure record shall include, at a minimum, the following:

- (a) The name, mailing address, telephone number, and electronic mail address of the issuer or surety of the certification authority's suitable guaranty, and the expiration date of the guaranty;
- (b) A copy of the certification practice statement filed with the secretary pursuant to this chapter;
- (c) A copy of the most recent audit report, or summary thereof, filed with the secretary pursuant to this chapter;
- (d) Information as to the current status of the certification authority's Nevada license, including disclosure of any license revocation or suspension. If a suspension or revocation is currently subject to a pending administrative or judicial review, the record shall so note;
- (e) Whether the certification authority operates a recognized repository, and, information sufficient to locate or identify any repository it either operates or utilizes;
- (f) A list of all judgments filed with the secretary pursuant to this chapter, within the previous five years; and

- (g) Any other information specified by this chapter.
- (2) The secretary shall update a certification authority disclosure record upon becoming aware that any item of information contained within it has changed or is not accurate.
- (3) In compiling and maintaining certification authority disclosure records, the secretary shall utilize the records of the secretary's office and is not obligated to conduct any affirmative investigation or review beyond the face of those records.

**SECTION 26: LICENSED CERTIFICATION AUTHORITIES — ENFORCEMENT —
SUSPENSION OR REVOCATION — PENALTIES — COSTS —
PROCEDURE — INJUNCTIONS**

- (1) The secretary may investigate the activities of the a licensed certification authority material to its compliance with this chapter and issue orders to a certification authority to further its investigation and secure compliance with this chapter.
- (2) The secretary may suspend or revoke the license of a certification authority for its failure to comply with an order of the secretary.
- (3) The secretary may by order impose and collect a civil monetary penalty against a licensed certification authority for a violation of this chapter in an amount not to exceed ten thousand dollars per incident, or ninety percent of the recommended reliance limit of a material certificate, whichever is less. In case of a violation continuing for more than one day, each day is considered a separate incident.
- (4) The secretary may order a certification authority, which it has found to be in violation of this chapter, to pay the costs incurred by the secretary in prosecuting and adjudicating proceedings relative to the order, and enforcing it.
- (5) The secretary must exercise authority under this section in accordance with the administrative procedure act, chapter 233B NRS, and a licensed certification authority may obtain judicial review of the secretary's actions as prescribed by chapter 233B NRS. The secretary may also seek injunctive relief to compel compliance with an order.

**SECTION 27: SUSPENSION OR REVOCATION OF A CERTIFICATE BY THE
SECRETARY**

- (1) The secretary may order a licensed certification authority to suspend or revoke a certificate that the certification authority issued, if, after giving any required notice and opportunity for the certification authority and the subscriber to be heard in accordance with chapter 233B NRS, the secretary determines that:
 - (a) The certificate was issued without substantial compliance with this chapter; and
 - (b) The noncompliance poses a significant risk to persons reasonably relying on the certificate.

(2) The secretary may issue an order suspending a certificate for a period not to exceed ninety-six hours upon determining that an emergency requires an immediate remedy. The secretary shall issue an order including such a finding, and mail it to the licensed certification authority at the mailing address listed in its application.

(3) The secretary may issue an order suspending a certificate for a period not to exceed ninety-six hours, unless the certificate provides otherwise. If, upon request by the secretary, the person requesting suspension fails to provide a statement under oath or affirmation regarding his identity or authorization to request suspension, the secretary shall not issue an order suspending the certificate unless he is satisfied that discretion to enter the order should be exercised because the circumstances provide a sufficient basis for confidence of the person's identity and authority.

SECTION 28: REVOCATION OR SUSPENSION OF LICENSE

(1) The secretary may revoke or suspend a license, pursuant to chapter 233B NRS, for failure to comply with any requirement of the NECA or this chapter, for failure to remain qualified for a license pursuant to the NECA or this chapter, or for failure to comply with a lawful order of the secretary.

(2) The secretary shall inform a licensed certification authority by written order, by mail directed to the mailing address or electronic mail address listed on the licensee's application, of a decision to revoke or suspend the license. The notification shall state when the revocation or suspension shall be effective, which shall not be less than thirty days following the issuance of the order except in the case of a summary suspension pursuant to this chapter.

(3) If the licensee files an application for an adjudicative hearing, pursuant to this chapter, prior to the effective date of revocation or suspension, the suspension or revocation shall not take effect until so ordered by the presiding officer, except in the case of a summary suspension pursuant to this chapter.

SECTION 29: SUSPENSION OF CERTIFICATE — EVIDENCE — INVESTIGATION — NOTICE — TERMINATION — LIMITATION OR PRECLUSION BY CONTRACT — MISREPRESENTATION — PENALTY — CONTRACTS FOR REGIONAL ENFORCEMENT BY AGENCIES

(1) Unless the certification authority and the subscriber agree otherwise, the licensed certification authority that issued a certificate must suspend the certificate for a period not to exceed ninety-six hours:

(a) Upon request by a person whom the certification authority reasonably believes to be:

- (i) The subscriber named in the certificate;
- (ii) A person duly authorized to act for that subscriber; or
- (iii) A person acting on behalf of the unavailable subscriber; or

(b) By order of the secretary under this chapter.

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

(2) Unless the certificate provides otherwise, the secretary may suspend a certificate issued by a licensed certification authority for a period not to exceed ninety-six hours, if:

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

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

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

(3) Immediately upon suspension of a certificate by a licensed certification authority, a licensed certification authority must give notice of the suspension according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the suspension in all the repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under this chapter, the licensed certification authority must also publish the notice in a recognized repository. If a certificate is suspended by the secretary, the secretary must give notice as required in this subsection for a licensed certification authority, provided that the person requesting suspension pays in advance any fee required by a repository for publication of the notice of suspension.

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

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

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

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

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

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

**SECTION 30: REVOCATION OF CERTIFICATE — CONFIRMATION — NOTICE
— RELEASE FROM SECURITY DUTY — DISCHARGE OF
WARRANTIES**

- (1) The certification authority must revoke a certificate that it issued after:
- (a) Receiving a request for revocation by the subscriber named in the certificate; and
 - (b) Confirming that the person requesting revocation is the subscriber, or is an agent of the subscriber with authority to request the revocation.
- (2) A licensed certification authority must confirm a request for revocation and revoke a certificate within one business day after receiving both a subscriber's written request and evidence reasonably sufficient to confirm the identity and any agency of the person requesting the revocation.
- (3) A licensed certification authority must revoke a certificate that it issued:
- (a) Upon receiving a certified copy of the subscriber's death certificate, or upon confirming by other evidence that the subscriber is dead; or
 - (b) Upon presentation of documents effecting a dissolution of the subscriber, or upon confirming by other evidence that the subscriber has been dissolved or has ceased to exist, except that if the subscriber is dissolved and is reinstated or restored before revocation is completed, the certification authority is not required to revoke the certificate.
- (4) A licensed certification authority may revoke one or more certificates that it issued if the certificates are or become unreliable, regardless of whether the subscriber consents to the revocation and notwithstanding a provision to the contrary in a contract between the subscriber and certification authority.
- (5) Immediately upon revocation of a certificate by a licensed certification authority, the licensed certification authority must give notice of the revocation according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the revocation in all repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under this chapter, then the licensed certification authority must also publish the notice in a recognized repository.
- (6) A subscriber ceases to certify, as provided in section _____, and has no further duty to keep the private key secure, as required by section 40, in relation to the certificate whose revocation the subscriber has requested, beginning at the earlier of either:
- (a) When notice of the revocation is published as required in subsection (5) of this section; or
 - (b) One business day after the subscriber requests revocation in writing, supplies to the issuing certification authority information reasonably sufficient to confirm the request, and pays any contractually required fee.
- (7) Upon notification as required by subsection (5) of this section, a licensed certification authority is discharged of its warranties based on issuance of the revoked

certificate, as to transactions occurring after the notification, and ceases to certify as provided in this chapter in relation to the revoked certificate.

SECTION 31: CIVIL PENALTIES

The secretary may, by order, impose and collect a civil monetary penalty against a licensed certification authority for a violation of the NECA or this chapter as provided by this chapter.

SECTION 32: CRITERIA FOR DETERMINING PENALTY AMOUNTS

In determining the appropriate penalty amount against a licensed certification authority for violation of this chapter, the secretary may consider the nature of the violation and the extent or magnitude of the severity of the violation, including:

- (1) The damages arising from the violation including:
 - (a) The financial impact of the violation to any subscriber, relying party, or any other person;
 - (b) The amount of money obtained, or profit derived, by the certification authority as a result of the violation;
 - (c) The costs incurred by the state in enforcement, including reasonable investigative costs;
 - (d) The nonfinancial consequences of the violation, including harm to any subscriber, relying party, or other person;
- (2) The nature of the violation, including whether it was continuing in nature, involved criminal conduct, or tended to significantly impair the reliability of any certificate or key pair;
- (3) The presence of any aggravating circumstances, including whether the violator:
 - (a) Intentionally committed the violation with knowledge that the conduct constituted a violation;
 - (b) Attempted to conceal the violation;
 - (c) Was untruthful or uncooperative in dealing with the secretary or the secretary's staff;
 - (d) Had committed prior violations found by the secretary;
 - (e) Incurred no other sanction as a result of the violation;
- (4) The presence of any mitigating circumstances, including whether the violator:
 - (a) Had taken any prior action to correct the violation or mitigate its consequences;
 - (b) Had previously paid any damages to any party resulting from the violation;
 - (c) Acted without intention to commit a violation; or

(d) Acted reasonably in light of any other mitigating factors deemed relevant by the secretary.

SECTION 33: CERTIFICATE — EXPIRATION

- (1) A certificate must indicate the date on which it expires.
- (2) When a certificate expires, the subscriber and certification authority cease to certify as provided in this chapter and the certification authority is discharged of its duties based on issuance, in relation to the expired certificate.

SECTION 34: RECOMMENDED RELIANCE LIMIT — LIABILITY — DAMAGES

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

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

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

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

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

(ii) Failure to comply with this chapter in issuing the certificate;

(c) Not liable for:

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

(ii) Damages for pain or suffering.

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

(4) Consequential or incidental damages may be liquidated, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable.

A licensed certification authority may liquidate, limit, alter, or exclude consequential or incidental damages as provided in this subsection by agreement or by notifying any person who will rely on a certificate of the liquidation, limitation, alteration, or exclusion before the person relies on the certificate.

**SECTION 35: DISCONTINUATION OF CERTIFICATION AUTHORITY SERVICES
— DUTIES OF AUTHORITY — CONTINUATION OF GUARANTY —
PROCESS TO MAINTAIN AND UPDATE RECORDS — COSTS**

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

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

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

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

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

SECTION 36: RECOVERY AGAINST SUITABLE GUARANTY

(1) To recover a qualified right to payment against a surety or issuer of a suitable guaranty, pursuant to this chapter, the claimant must:

(a) File a signed notice of the claim with the secretary stating the name and address of the claimant, the amount claimed, the grounds for the qualified right to payment, the date of the occurrence of the violation forming the basis of the claim; and

(b) Append to the notice a certified copy of the judgment on which the qualified right to payment is based, except as provided in subsection (2) of this section.

(2) If the notice pursuant to subsection (1)(a) of this section is filed prior to entry of judgment, the secretary shall hold such notice on file, without further action, until the claimant files a copy of the judgment. If the secretary determines that the litigation identified in the notice has been finally resolved without a judgment providing the claimant with a qualified right to payment, the secretary may expunge the notice from his records. The secretary shall not expunge a notice until three years have elapsed since it was first filed.

(3) The secretary shall reject a notice for filing if the date of the occurrence of the violation is more than three years prior to the filing of the notice.

(4) If a notice and judgment are filed pursuant to subsection (1) of this section, the secretary shall provide the notice and judgment to the surety or issuer.

SECTION 37: COLLECTION BASED ON SUITABLE GUARANTY — PROCEEDS — ATTORNEYS' FEES — COSTS — NOTICE — RECOVERY OF QUALIFIED RIGHT OF PAYMENT

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

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

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

(2) In addition to recovering the amount of a qualified right to payment, a claimant may recover from the proceeds of the guaranty, until depleted, the attorneys' fees, reasonable in amount, and court costs incurred by the claimant in collecting the claim, provided that the total liability on the suitable guaranty to all persons making qualified rights of payment or recovering attorneys' fees during its term must not exceed the amount of the suitable guaranty.

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

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

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

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

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

SECTION 38: SUBSCRIBERS — REPRESENTATIONS AND DUTIES UPON ACCEPTANCE OF CERTIFICATE

(1) By accepting a certificate issued by the secretary or by a licensed certification authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that:

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

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

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

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

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

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

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

(4) By accepting a certificate issued by the secretary, a subscriber undertakes to indemnify the secretary for loss or damage caused by issuance or publication of a certificate in reliance on:

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

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

(5) By accepting a certificate issued by a licensed certification authority, a subscriber undertakes to indemnify the certification authority for loss or damage caused by issuance or publication of a certificate in reliance on:

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

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

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

SECTION 39: UNIT OF GOVERNMENT AS SUBSCRIBER — UNIT OF STATE GOVERNMENT PROHIBITED FROM BEING CERTIFICATION AUTHORITY — EXCEPTIONS — CITY OR COUNTY AS CERTIFICATION AUTHORITY

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

(2) A city or county may become a licensed certification authority under this chapter for purposes of providing services to local government, if authorized by ordinance adopted by the city or county legislative authority.

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

SECTION 40: PRIVATE KEY — CONTROL — PUBLIC DISCLOSURE EXEMPTION

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

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

(3) A private key in the possession of a state agency or local agency, as those terms are defined by NRS 239.041, is exempt from public inspection and copying under chapter 239 NRS.

SECTION 41: CERTIFICATE AS ACKNOWLEDGMENT — REQUIREMENTS — EXCEPTION — RESPONSIBILITY OF CERTIFICATION AUTHORITY

(1) Unless otherwise provided by law or contract, if so provided in the certificate issued by the secretary or by a licensed certification authority, a digital signature verified by reference to the public key listed in a valid certificate satisfies the requirements for an acknowledgment under NRS chapter 240 if words of an express acknowledgment appear with the digital signature regardless of whether the signer personally appeared before either the certification authority or some other person authorized to take acknowledgments under NRS chapter 240 when the digital signature was created, if that digital signature is:

(a) Verifiable by that certificate; and

(b) Affixed when that certificate was valid.

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

SECTION 42: RECOGNITION OF REPOSITORIES — APPLICATION — DISCONTINUANCE — PROCEDURE

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

- (a) Is a licensed certification authority;
- (b) Includes, or will include, a data base containing:
 - (i) Certificates published in the repository;
 - (ii) Notices of suspended or revoked certificates published by licensed certification authorities or other persons suspending or revoking certificates;
 - (iii) Certification authority disclosure records for licensed certification authorities;
 - (iv) All orders or advisory statements published by the secretary in regulating certification authorities; and
 - (v) Other information adopted by regulation by the secretary;
- (c) Operates by means of a trustworthy system, that may include additional or different attributes than those applicable to a certification authority that does not operate as a recognized repository;
- (d) Contains no significant amount of information that is known or likely to be untrue, inaccurate, or not reasonably reliable;
- (e) Contains certificates published by certification authorities that conform to legally binding requirements that the secretary finds to be substantially similar to, or more stringent toward the certification authorities, than those of this state; and
- (f) Keeps an archive of certificates that have been suspended or revoked, or that have expired, within at least the past three years.

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

(3) A repository may discontinue its recognition by filing thirty days' written notice with the secretary. In addition the secretary may discontinue recognition of a repository in accordance with the administrative procedure act, chapter 233B NRS, if the secretary concludes that the repository no longer satisfies the conditions for recognition listed in this chapter.

SECTION 43: RECOGNITION OF REPOSITORIES

The secretary shall recognize a repository upon determining that it satisfies all requirements set forth in this chapter, and upon payment of the required fee and upon receipt and review of a completed form, provided by the secretary, containing the following:

- (1) The name of the licensed certification authority, or applicant for licensure as a certification authority, requesting recognition of a repository;
- (2) The applicant's uniform business identifier number, if any;
- (3) The mailing address of the applicant, and a physical address if different;
- (4) The telephone number of the applicant;
- (5) The electronic mail address of the applicant;
- (6) A description of the data base and system architecture demonstrating that it satisfies the requirements of this chapter; and
- (7) Electronic mail address.

SECTION 44: TRUSTWORTHY SYSTEM FOR RECOGNIZED REPOSITORIES

A system shall be regarded as trustworthy for purposes of operating a recognized repository if it satisfies the requirements of this chapter, and additionally it:

- (1) Provides on-line access to the repository upon a continuous basis with reasonable allowance for scheduled maintenance;
- (2) Possesses the capacity to process transactions in a manner reasonably adequate for anticipated volume; and
- (3) Provides for the periodic storage of data at a location other than the principal system utilized for the repository.

SECTION 45: REVOCATION OF RECOGNITION OF A REPOSITORY

(1) This section describes the secretary's procedure for revoking the recognition of a repository, without also revoking the license of the certification authority that operates the repository. Because a valid license as a certification authority is a statutory requirement for recognition of a repository, the secretary shall automatically revoke the recognition of any repository operated by a certification authority whose license is revoked, expired, or otherwise inoperative.

(2) The secretary may revoke recognition of a repository, pursuant to chapter 233B NRS, for failure to comply with any requirement of this chapter, or for failure to comply with a lawful order of the secretary.

(3) The secretary shall inform a licensed certification authority that operates a recognized repository by written order, by mail directed to the mailing address listed on the licensee's application and by electronic mail, of a decision to revoke recognition of the repository. The notification shall state when the revocation shall be effective, which shall not be less than thirty days following the issuance of the order.

(4) If the certification authority files an application for an adjudicative hearing, pursuant to this chapter, prior to the effective date of revocation, the revocation shall not take effect until so ordered by the presiding officer.

SECTION 46: CONTRACT FOR SECRETARY OF STATE REPOSITORY PUBLICATION

The secretary may either directly operate, or contract for the operation of, a repository described in this chapter. If the secretary contracts for the operation of the repository, with other than DOIT, the contractor must be a licensed certification authority and must agree to operate the repository according to all requirements of this chapter. The contract may be rescinded for any reason that would form a basis for revoking recognition of a repository or for failure to meet the requirements of this chapter in addition to any other legally recognized reason for rescission.

SECTION 47: PUBLICATION IN THE SECRETARY OF STATE REPOSITORY

The secretary shall maintain, either directly or under contract, a repository for the purpose of publishing any information required by this chapter. Information published in the secretary's repository shall include:

- (1) The certification authority disclosure record for each certification authority licensed in Nevada;
 - (2) A list of all judgments filed with the secretary within the previous five years pursuant to this chapter;
 - (3) Any advisory statements published by the secretary regarding the activities of a licensed or unlicensed certification authority, together with any protest filed by the certification authority named in the statement and any final decision of the secretary regarding the issues raised in the statement, all as provided by this chapter;
 - (4) Any information published in the secretary's repository pursuant to this chapter;
- and
- (5) Any other information necessary or appropriate for publication in the secretary's repository pursuant to this chapter.

SECTION 48: PROCEDURE UPON DISCONTINUANCE OF BUSINESS AS REPOSITORY

A licensed certification authority that discontinues providing services as a recognized repository shall republish the records published in the repository in another recognized repository. If no other repository is available or willing to republish that information, the certification authority shall publish it in the secretary's repository.

SECTION 49: PROCEDURE UPON DISCONTINUANCE OF BUSINESS

A licensed certification authority that discontinues providing certification authority services without making other arrangements for preservation of the certification authority's records shall either:

- (1) Revoke all valid certificates and return all records concerning them to the appropriate subscriber; or
- (2) Submit such records to another licensed certification authority or authorities designated by the secretary.

SECTION 50: REPOSITORIES — LIABILITY — EXEMPTIONS — LIQUIDATION, LIMITATION, ALTERATION, OR EXCLUSION OF DAMAGES

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

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

- (a) Not liable for failure to record publication of a suspension or revocation, unless the repository has received notice of publication and one business day has elapsed since the notice was received;
- (b) Not liable under subsection (1) of this section in excess of the amount specified in the certificate as the recommended reliance limit;
- (c) Not liable under subsection (1) of this section for:
 - (i) Punitive or exemplary damages; or
 - (ii) Damages for pain or suffering;
- (d) Not liable for misrepresentation in a certificate published by a licensed certification authority;
- (e) Not liable for accurately recording or reporting information that the certification authority, or court clerk, or the secretary has published as required or permitted in this chapter, including information about suspension or revocation of a certificate;
- (f) Not liable for reporting information about a certification authority, a certificate, or a subscriber, if the information is published as required or permitted in this chapter, or is published by order of the secretary in the performance of the licensing and regulatory duties of that office under this chapter.

(3) Consequential or incidental damages may be liquidated, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. A recognized repository may liquidate, limit, alter, or exclude damages as provided in this

subsection by agreement, or by notifying any person who will rely on a digital signature verified by the public key listed in a suspended or revoked certificate of the liquidation, limitation, alteration, or exclusion before the person relies on the certificate.

SECTION 51: ALTERATION OF CHAPTER BY AGREEMENT — EXCEPTIONS

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

- (1) A person may not disclaim responsibility for lack of good faith, but parties may by agreement determine the standards by which the duty of good faith is to be measured if the standards are not manifestly unreasonable; and
- (2) As otherwise provided in this chapter.

SECTION 52: ADJUDICATIVE PROCEEDINGS — APPEARANCE AND PRACTICE BEFORE THE SECRETARY — WHO MAY APPEAR

No person may appear in a representative capacity before the secretary or the designated administrative law judge other than the following:

- (1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Nevada.
- (2) A bona fide officer, authorized manager, partner, or full-time employee of a firm, association, partnership, LLC, or corporation who appears for such firm, association, partnership, corporation, or company.
- (3) An individual appearing pro se.
- (4) Such interpreters for persons with a limited understanding of the English language or hearing impaired persons as provided for in chapter 1 NRS.
- (5) Such other persons as may be permitted by the secretary upon a showing by a party to the hearing of such a necessity or such a hardship as would make it unduly burdensome upon him to have a representative as set forth under subsections (1) and (2) of this section.

SECTION 53: APPLICATION FOR ADJUDICATIVE PROCEEDINGS

Decisions and actions of the secretary pursuant to this chapter may be reviewed by filing an application of an adjudicative proceeding. An adjudicative proceeding shall be commenced when required by chapter 233B NRS, and may be commenced in the secretary's discretion upon such other occasions as may be permitted by statute. An application for an adjudicative proceeding may be on a form provided by the secretary for that purpose or in another paper or electronic writing signed by the applicant or the applicant's representative. The application for an adjudicative proceeding should specify the issue to be adjudicated in the proceeding.

SECTION 54: ADJUDICATING DISPUTES — PRESUMPTIONS

In adjudicating a dispute involving a digital signature, it is rebuttably presumed that:

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

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

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

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

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

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

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

(i) Breached a duty as a subscriber; or

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

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

SECTION 55: BRIEF ADJUDICATIVE PROCEEDING REGARDING CERTIFICATE SUSPENSION

(1) The secretary may use brief adjudicative proceedings where not violative of law, where in the judgment of the secretary protection of the public interest does not require the secretary to give notice and an opportunity to participate to persons other than the parties, and the issue and interests involved in the controversy do not warrant the use of the procedures of this chapter.

(2) The secretary finds that prompt review of the suspension of a certificate pursuant to this chapter by the secretary or a state or local agency under contract with the secretary is appropriate for a brief adjudicative proceeding.

(3) If any person affected by the suspension requests administrative review, the secretary shall immediately notify, by the most rapid means reasonably calculated to inform the recipient of the proceeding, the subscriber, the certification authority, and any other affected party who has requested notification or has requested the review, of the intent to conduct a

proceeding pursuant to this section. Conduct of that review shall be in accordance with this chapter.

(4) The suspension of a certificate by order of the secretary pursuant to this chapter shall lapse ninety–six hours after the suspension.

(5) The secretary may, in his discretion, conduct a full adjudicative proceeding if any affected party requests a full review of the suspension of a certificate pursuant to this chapter. If a full adjudicative proceeding is held, the suspension lapses ninety–six hours after the suspension, but the review need not be completed within that time.

(6) If, by final order, the secretary determines that the suspension was in error, the certificate shall be deemed valid retroactively to the time of suspension.

SECTION 56: APPOINTMENT OF ADMINISTRATIVE LAW JUDGE — DESIGNATION OF PROCEDURAL RULES

(1) The secretary hereby appoints the office of administrative hearings and the administrative law judges employed by that office to preside at all hearings that result from the commencement of adjudicative proceedings unless the secretary, by his own order, declares his intent to preside at a specific proceeding or the proceeding is an appeal of an initial order issued by an administrative law judge.

(2) All hearings shall be conducted in compliance with this chapter, and with chapter 233B NRS. The secretary adopts chapter 233B NRS as the applicable rules of procedure, except where this chapter provides different, additional or conflicting procedures.

SECTION 57: PLEADINGS IN DIGITAL FORM

(1) Unless the presiding officer directs otherwise, any party may file any pleading or other document in an adjudicative proceeding under this chapter in electronic form. If a pleading or document filed electronically requires a signature, that pleading or document shall be signed digitally, pursuant to a valid certificate issued by a licensed certification authority. The certification authority that issued the certificate shall not be a party to the adjudicative proceeding.

(2) Service of electronic pleadings or documents by electronic transmission is effective upon receipt, except that if sent after 5:00 p.m. on a business day or at any time on a weekend or state holiday, service is effective as of 8:00 a.m. on the following business day.

SECTION 58: STAY OF SUMMARY SUSPENSION

(1) Upon summary suspension of a license by the secretary pursuant to this chapter, an affected certification authority may petition the secretary for a stay of suspension

pursuant to this chapter. Such petition must be received by the secretary within the time specified in this chapter.

(2) Within seven days of receipt of a petition for stay, a hearing shall be held before an administrative law judge, or if an administrative law judge is not available during this period, before an individual designated by the secretary. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be conducted under section 55, brief adjudicative proceedings. The agency record for the hearing shall consist of the information upon which the summary suspension was based and may be supplemented by any information obtained by the secretary subsequent to the date of the suspension order. The certification authority shall have the burden of demonstrating by a preponderance of the evidence that:

(a) The certification authority is likely to prevail upon the merits at hearing;

(b) Without relief, the certification authority will suffer parties to the proceedings; and

(c) The threat to the public safety or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order granting or denying a stay shall be effective immediately upon service unless another date is specified in the order.

SECTION 59: REVIEW OF ORDERS REGARDING STAY

(1) Any party may petition the secretary for review of an initial order granting or denying a motion for a stay of suspension. A petition for review must be in writing and received by the secretary within twenty-one days of service of the initial order. If neither party has requested review within twenty-one days of service, the initial order shall be deemed the final order of the secretary for purposes of NRS chapter 233B.

(2) If the secretary receives a timely petition for review, he shall consider the petition promptly. Consideration on review shall be limited to the record of the hearing on stay.

(3) The secretary's order on the petition for review shall be effective upon service unless another date is specified in the order and is final pursuant to NRS 233B. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

SECTION 60: CRIMINAL PROSECUTION NOT PRECLUDED — REMEDIES NOT EXCLUSIVE — INJUNCTIVE RELIEF AVAILABILITY

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

SECTION 61: INFORMATION AVAILABILITY

(1) The following information, when in the possession of the secretary, the department of information services, or the state auditor for purposes of this chapter, shall not be made available for public disclosure, inspection, or copying, unless the request is made under an order of a court of competent jurisdiction based upon an express written finding that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records:

(a) A trade secret, as defined by NRS chapter 600A; and
(b) Information regarding design, security, or programming of a computer system used for purposes of licensing or operating a certification authority or repository under this chapter.

(2) The state auditor, or an authorized agent, must be given access to all information referred to in subsection (1) of this section for the purpose of conducting audits under this chapter or under other law, but shall not make that information available for public inspection or copying except as provided in subsection (1) of this section.

SECTION 62: RECORDKEEPING AND RETENTION

(1) Every licensed certification authority shall make, keep, and preserve the following records:

(a) Such records as are necessary to demonstrate compliance with this chapter; and

(b) All notices of suspension of certificates pursuant to this chapter.

(2) Every licensed certification authority shall maintain a data base file which shall contain records of the identity of the subscriber named in each certificate issued by the certification authority, which identity is to include all the facts represented in the certificate, the date of issuance of the certificate, and number of the certificate.

(3) Every licensed certification authority shall maintain a data base file of every time-stamp issued by the certification authority, to include sufficient information so that the identity of the subscriber and the item being time stamped can be identified.

(4) Every licensed certification authority shall retain in a trustworthy fashion the following records for the following periods:

(a) All records identified in subsections (2) and (3) of this section for a period of at least ten years after the date a certificate is revoked or expired, or after a time-stamp is affixed; and

(b) All other records required to be retained under this section shall be retained for at least five years.

(5) Records may be kept in the form of paper-based documents, retrievable computer-based documents, or any form of reproduction approved by the state archivist for essential records pursuant to chapter 239 NRS. Such records shall be indexed, stored, preserved and reproduced so as to be accurate, complete, and accessible to an auditor. Certificate extension data, referenced in X.509 section 4.2, is not required to be part of any publicly accessible record.

SECTION 63: TECHNICAL ASSISTANCE PROGRAM

(1) This section describes the secretary's technical assistance program for licensed certification authorities, including recognized repositories. This section implements this chapter, by providing for the dissemination of information to licensed certification authorities regarding the requirements of the Nevada Electronic Communication Act and this chapter. It is not intended as a method of providing general business advice to certification authorities, or technical information to the general public, although any member of the public may receive written materials described in this section upon request.

(2) The technical assistance program shall consist of the following:

(a) Technical assistance visits: The secretary, in his discretion, may conduct a technical assistance visit, either by the request or the consent of a licensed certification authority. The secretary is not required to conduct a technical assistance visit.

(b) Printed information: The secretary shall develop, and make available upon request, printed information outlining the requirements of the NECA and this chapter. This information should not be regarded as a comprehensive guide to conducting business as a certification authority.

(c) Information and assistance by telephone: A licensed certification authority or applicant for licensing or recognition, may contact the secretary's office by telephone during normal business hours. The secretary's office shall provide information regarding the licensing and recognition requirements of the NECA and this chapter, but no representation or conclusion offered shall be binding upon the secretary.

(d) Training meetings: The secretary may, in his discretion, conduct meetings for the purpose of providing training regarding requirements for licensure or recognition.

(e) List of organizations providing technical assistance: The secretary shall compile, and make available upon request, a list of organizations, including private companies, that provide technical assistance to certification authorities. The secretary shall compile this list from information submitted by the organizations and shall not constitute an endorsement by the secretary of any organization.

(3) If the secretary determines, during or within a reasonable time after a technical assistance visit, that the licensed certification authority has violated any statute or regulation, the secretary shall notify the certification authority in writing and specify a reasonable period of time to correct the violation before any civil penalty may be imposed. The notification shall include a copy of the specific statute or regulation violated. After the expiration of a reasonable time period conveyed to the certification authority, the secretary may revisit the

certification authority and issue civil penalties with regard to any uncorrected violations, for which notice was provided.