

**REVISED PROPOSED REGULATION OF THE
SECRETARY OF STATE**

LCB File No. R155-98

October 13, 1999

EXPLANATION – Matter in *italics* is new; matter in brackets **[]** is material to be omitted.

AUTHORITY: §§1-45, 47-92, 94-96 and 98-104, NRS 720.150; §§46, 93 and 97, NRS 720.150 and 720.180.

Section 1. Chapter 720 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 104, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 720.020 to 720.130, inclusive, and sections 3 to 36, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Accept a certificate” means to manifest approval of a certificate by using the certificate or otherwise, with knowledge or notice of its contents.*

Sec. 4. *“Certification practice statement” means a declaration that complies with the requirements of section 65 of this regulation.*

Sec. 5. *“Certify” means, with reference to a certificate, to declare with ample opportunity to reflect after apprising oneself of all material facts.*

Sec. 6. *“Confirm” means to ascertain through appropriate inquiry and investigation.*

Sec. 7. *“Disclosure record” means a publicly accessible record maintained by the secretary of state concerning a licensee that is available on line through the Internet.*

Sec. 8. *“Electronic” means an electrical, digital, magnetic, optical, electromagnetic or similar form of technology.*

Sec. 9. *“Electronic message” means a record that is generated, communicated, received or stored by electronic means for use in an information system or transmission between separate information systems.*

Sec. 10. *“Foreign license” means a license to conduct business as a certification authority issued by a governmental entity outside of this state.*

Sec. 11. *“Hearing officer” means the secretary of state or a hearing officer designated by the secretary of state.*

Sec. 12. *“Incorporate by reference” means to make a message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated.*

Sec. 13. *“Issue a certificate” means the creation of a certificate and notification of the subscriber identified in the certificate of the contents of the certificate.*

Sec. 14. *“License” means a license to conduct business as a certification authority issued by the secretary of state.*

Sec. 15. *“Licensee” means a certification authority who holds a license.*

Sec. 16. *“Notify” means to communicate a fact to a person in a manner reasonably likely under the circumstances to impart knowledge of the information to that person.*

Sec. 17. *“Official public business” means any legally authorized transaction or communication between a public agency and any other person.*

Sec. 18. *“Operative personnel” means one or more natural persons acting as a certification authority or his agent, or in the employment of or under contract with a certification authority, who have:*

- 1. Duties directly involving the issuance of certificates or the creation of private keys;*
- 2. Responsibility for the secure operation of the system of computer hardware and software used by the certification authority to conduct business as a certification authority or to operate a recognized repository;*
- 3. Direct responsibility, other than general supervisory authority, for the establishment or adoption of policies regarding the operation and security of the certification authority; or*
- 4. Such other duties or responsibilities as the secretary of state determines to be significant to the operation of a certification authority.*

Sec. 19. *“Person” means a natural person, any organization that is capable of signing a document, either legally or as a matter of fact, a government, a governmental agency or a political subdivision of a government.*

Sec. 20. *“Public agency” has the meaning ascribed to it in NRS 720.170.*

Sec. 21. *“Publish” means to make information publicly available.*

Sec. 22. *“Qualified right to payment” means an award of damages entered by a court that has jurisdiction over a licensee for acts by the licensee within the scope of his activities as a certification authority.*

Sec. 23. *“Recipient” means a person who:*

- 1. Has received a certificate and a digital signature that is verifiable with reference to the public key set forth in the certificate; and*
- 2. Is in a position to rely on the digital signature.*

Sec. 24. *“Recognized certification authority” means the secretary of state, a licensee or a certification authority whose foreign license is recognized by the secretary of state pursuant to section 54 of this regulation.*

Sec. 25. *“Recognized repository” means the state repository or a repository designated by the secretary of state pursuant to section 78 of this regulation.*

Sec. 26. *“Recommended limit of reliance” means the monetary amount that a certification authority recommends is the maximum amount upon which a certificate may be relied.*

Sec. 27. *“Repository” means a system for storing and retrieving certificates and other information relevant to digital signatures.*

Sec. 28. *“Revoke a certificate” means to make a certificate ineffective permanently from a specified time forward through means of a notation on the certificate or the inclusion of the certificate in a set of revoked certificates.*

Sec. 29. *“Rightfully hold a private key” means to hold a private key that:*

- 1. Has not been disclosed by the holder of the key or his agents to any person who is not authorized to use the key; and*
- 2. Has not been obtained by the holder of the key through theft, deceit, eavesdropping or other unlawful means.*

Sec. 30. *“State repository” means a repository operated pursuant to section 83 of this regulation.*

Sec. 31. *“Suitable guaranty” means a guaranty that satisfies the requirements of section 47 of this regulation.*

Sec. 32. *“Suspend a certificate” means to make a certificate ineffective temporarily for a specified time forward.*

Sec. 33. *“Time stamp” means:*

1. A notation that:

(a) Is digitally signed by a certification authority;

(b) Is appended or attached to a message, digital signature or certificate; and

(c) Indicates at least:

(1) The date and time the notation was appended or attached; and

(2) The identity of the person appending or attaching the notation; or

2. To append or attach such a notation to a message, digital signature or certificate.

Sec. 34. *“Transactional certificate” means a certificate that is effective only for a specific transaction or series of transactions specified or incorporated by reference in the certificate.*

Sec. 35. *“Trustworthy system” means a system of computer hardware and software that complies with the requirements of section 48 of this regulation.*

Sec. 36. *“Valid certificate” means a certificate that:*

1. Has been issued by a recognized certification authority;

2. Has been accepted by the subscriber identified in the certificate;

3. Has not been suspended or revoked; and

4. Has not expired.

Sec. 37. *The purposes of this chapter are to:*

1. Ensure that electronic messages with digital signatures are not denied legal recognition solely because they are in electronic form;

2. Facilitate commerce by means of reliable electronic messages;

3. *Establish procedures for the use of digital signatures for official public business;*
4. *Provide persons who engage in commerce or official public business with reasonable assurance of the integrity and authenticity of electronic messages with digital signatures and that those messages will not be repudiated;*
5. *Provide a mechanism for the licensing of certification authorities and the recognition of repositories;*
6. *Minimize the incidence of forged digital signatures and fraud in electronic commerce;*
7. *Provide for the legal implementation of technical standards relating to electronic messages with digital signatures; and*
8. *Coordinate, with other states and jurisdictions, the establishment of uniform provisions regarding the authentication and reliability of electronic messages.*

Sec. 38. *The provisions of this chapter:*

1. *Must be construed in a manner that:*
 - (a) *Is commercially reasonable under the circumstances; and*
 - (b) *Carries out the purposes of this chapter.*
2. *Must not be construed in such a manner as to:*
 - (a) *Require the secretary of state to conduct any business or take any other action as a certification authority;*
 - (b) *Preclude a licensee from conforming to any standards or requirements that are more stringent than, but nevertheless consistent with, those provisions; or*
 - (c) *Authorize the award of any punitive or exemplary damages.*

Sec. 39. 1. Except as otherwise provided by a specific provision of this chapter, the provisions of this chapter regarding the issuance, acceptance, publication and use of a certificate

may be varied by agreement between the certification authority who issues the certificate and the subscriber identified in the certificate.

2. The remedies provided pursuant to this chapter are not exclusive and are in addition to any other remedies provided by law, including, without limitation, any criminal prosecution pursuant to the laws of this state or of the United States. Injunctive relief must not be denied to a person regarding any conduct governed by the provisions of this chapter solely because the conduct is or may be subject to criminal prosecution.

Sec. 40. *The provisions of this chapter are hereby declared to be severable. If any of the provisions of this chapter is held invalid, or if the application of any of those provisions to any person, thing or circumstance is held invalid, that invalidity does not affect any other provision of this chapter that can be given effect without the invalid provision or application.*

Sec. 41. *The secretary of state hereby adopts by reference:*

1. The technical standards designated as X.509, version 3, as adopted by the International Telecommunication Union. A copy of those standards may be obtained from the Office of the Secretary of State, 101 North Carson Street, Suite 3, Carson City, Nevada 89701-4786, for the price of \$22.50.

2. The provisions of the Protection Profile for Commercial Security 2, Augmented Controlled Access Protection, version 0.1, as developed by the National Institute of Standards and Technology. A copy of those provisions may be obtained from the Office of the Secretary of State, 101 North Carson Street, Suite 3, Carson City, Nevada 89701-4786, for the price of \$9.50.

Sec. 42. *1. To qualify for a license, a certification authority must:*

(a) Use a secure method for limiting access to his private key;

(b) Maintain an office or registered agent for service of process in this state; and

(c) Comply with the provisions of this chapter and chapter 720 of NRS.

2. The issuance or renewal of a license is valid for 1 year unless the license is suspended, revoked or otherwise terminated at an earlier date. The secretary of state may notify a licensee before his license is due to expire, but any failure to do so does not excuse a licensee from failing to renew the license within that period.

Sec. 43. *1. Except as otherwise provided in this section, the secretary of state will not issue a license to any governmental entity.*

2. The secretary of state may issue a license to the department of information technology. For the purposes of this chapter, the department of information technology is not required to:

(a) Obtain or submit a suitable guaranty; or

(b) Pay any of the amounts otherwise required pursuant to section 46, 93 or 97 of this regulation.

3. If the department of information technology obtains a license, the department may issue a certificate only:

(a) For a subscriber who is a public agency; or

(b) For the conduct of official public business by any other person.

Sec. 44. *Except as otherwise provided in section 43 of this regulation, the secretary of state may issue a license to or renew the license of a certification authority who meets the qualifications for a license set forth in section 42 of this regulation and submits to the secretary of state:*

1. A completed application that complies with the requirements of section 45 of this regulation;

2. *The amounts required pursuant to sections 46 and 93 of this regulation;*
3. *Proof of his identity;*
4. *A suitable guaranty;*
5. *A report of an audit of the policies, practices, procedures, facilities and computer hardware and software of the applicant which:*
 - (a) *Establishes that the applicant operates a trustworthy system; and*
 - (b) *Was obtained pursuant to an audit performed in compliance with the requirements of sections 50 and 51 of this regulation, except that the audit and report required for the initial issuance of a license is not required to include any matters other than compliance with the requirements of paragraph (a);*
6. *The documentation required pursuant to section 52 of this regulation; and*
7. *A certification practice statement that complies with the requirements of section 65 of this regulation.*

Sec. 45. *An application for the issuance or renewal of a license must be on a form prescribed by the secretary of state and include:*

1. *The name of the applicant;*
2. *The mailing address and, if different, the physical address of the applicant;*
3. *The telephone number of the applicant;*
4. *The electronic mail address of the applicant;*
5. *The name and address of the registered agent in this state for service of process upon the applicant, including the physical address and, if different, the mailing address; and*
6. *The names of all operative personnel of the applicant.*

Sec. 46. The secretary of state will charge, in addition to any other amounts required pursuant to this chapter, the following licensing fees:

- 1. For the issuance or renewal of a license, \$1,000.*
- 2. For the recognition of a foreign license, \$1,000.*
- 3. For the designation of a repository as a recognized repository, \$1,000.*

Sec. 47. 1. To qualify as a suitable guaranty, a guaranty must:

(a) Consist of:

(1) A surety bond executed by a surety company authorized to do business in this state;

or

(2) An irrevocable letter of credit issued by a financial institution authorized to do business in this state;

(b) Be for \$50,000 or such greater amount as the secretary of state deems appropriate;

(c) Be in a form that is prescribed or approved by the secretary of state;

(d) Identify the surety company or financial institution by name, mailing address and physical address, and include the number or a copy of the document authorizing the surety company or financial institution to do business in this state;

(e) Identify the certification authority for whom the guaranty is issued;

(f) Be payable to the secretary of state for the benefit of any person in favor of whom a qualified right to payment is entered against the certification authority; and

(g) Specify that the guaranty is:

(1) Issued for filing pursuant to the provisions of this chapter and subject to the conditions set forth in those provisions; and

(2) Effective for not less than the term of the license of the certification authority.

2. A suitable guaranty may specify that the total annual liability of the surety company or financial institution to all persons making claims against the guaranty is limited to the face amount of the guaranty.

Sec. 48. *A licensee shall maintain such policies, practices, procedures and facilities as are necessary to ensure that his system of computer hardware and software:*

- 1. Is reasonably secure from intrusion and misuse;*
- 2. Provides a reasonable level of availability, reliability and correct operation;*
- 3. Is reasonably suited to performing its intended functions; and*
- 4. Is in material compliance with the provisions of the Protection Profile for Commercial Security 2, Augmented Controlled Access Protection, version 0.1, as adopted by reference pursuant to section 41 of this regulation. The secretary of state will determine whether compliance is material:*

- (a) In accordance with the provisions of this chapter; and*
- (b) In a manner that is consistent with state and federal law and reasonable for the context in which the system is used.*

Sec. 49. *A licensee shall use only a trustworthy system to:*

- 1. Issue, suspend or revoke a certificate; and*
- 2. Publish in a recognized repository or otherwise give notice of the issuance, suspension or revocation of a certificate.*

Sec. 50. *1. A licensee shall obtain an audit at least once each year to receive an opinion as to whether the licensee is in material compliance with the requirements of this chapter. If the secretary of state has designated a repository operated by the licensee as a recognized repository, the audit must include the operation of the recognized repository.*

2. The auditor shall exercise reasonable professional judgment in determining whether a condition that is not in strict compliance with the requirements of this chapter is material, taking into consideration the particular circumstances and context. In addition to any other conditions the auditor determines to be material, the auditor shall consider as material:

(a) Any condition relating to the validity of a certificate that does not comply with the requirements of this chapter.

(b) Noncompliance with the requirements of section 53 of this regulation.

(c) Noncompliance with the provisions of this chapter regarding the use of a trustworthy system.

3. The licensee must file a copy of the audit report with the secretary of state before his license may be renewed. The report may be filed electronically if the electronic message complies with the requirements of this chapter. The licensee is not required to file the complete audit report if he files a summary of the report that:

(a) States the target of evaluation of the audit;

(b) Describes all audit exceptions and conditions of noncompliance included in the complete report, including, without limitation, any conditions described in subsection 2; and

(c) Bears the signature of the auditor.

Sec. 51. *Each audit required pursuant to section 50 of this regulation must be performed by a certified public accountant who:*

1. Is certified pursuant to chapter 628 of NRS or a similar law of another jurisdiction; and

2. Holds or, for the purpose of the audit, employs, contracts with or associates with a person who holds a current certification as:

(a) A certified information systems auditor issued by the Information Systems Audit and Control Association; or

(b) A certified information systems security professional issued by the International Information Systems Security Certification Consortium.

The audit report or a letter accompanying that report must disclose the name of each person who possesses the certification required pursuant to this section.

Sec. 52. *An applicant for the issuance or renewal of a license must submit to the secretary of state such documentation as the secretary of state requires to ensure that all operative personnel of the applicant are qualified to act in that capacity. The documentation must include, for each person who acts in that capacity:*

1. A declaration, executed by the person under penalty of perjury, that:

(a) Specifies his name, including all names by which he has been known in the past, his date of birth and his business address; and

(b) Specifies each country, other than the United States, in which the person resided during the past 5 years and states the period of that residency.

2. A written review of the criminal history of the person which indicates that the person has not been convicted in any jurisdiction during the past 7 years of any felony and has never been convicted in any jurisdiction of a crime involving fraud, deception or a false statement, unless the requirements of this subsection have been satisfied for a particular person within the past 2 years by the current or a previous applicant. The review must include reports of the criminal history of the person that are:

(a) Compiled and certified by:

(1) The central repository for Nevada records of criminal history or the local law enforcement agency for the area where the person resided and was employed for the previous 7 years; and

(2) The local law enforcement agency for such other jurisdictions as the secretary of state requires;

(b) Dated not more than 30 days before the date of their submission to the secretary of state; and

(c) Reasonably sufficient to disclose any criminal convictions during the previous 7 years in any jurisdiction in the United States and its territories and possessions, and in any other jurisdiction specified pursuant to paragraph (b) of subsection 1.

Sec. 53. 1. *A licensee shall not allow any person to undertake any of the responsibilities or duties of his operative personnel if the licensee knows or, based upon the documentation described in section 52 of this regulation, should know that the person has been convicted in any jurisdiction during the past 7 years of any felony or has ever been convicted in any jurisdiction of a crime involving fraud, deception or a false statement.*

2. If a licensee discovers that a person who has undertaken any of the responsibilities or duties of his operative personnel has been convicted as described in subsection 1, the licensee shall:

(a) Immediately remove the person from that position; and

(b) Within 3 business days after making that discovery, notify the secretary of state of his action to remove the person from that position.

Sec. 54. 1. *The secretary of state may recognize a foreign license, in whole or in part, if:*

(a) The certification authority who holds the foreign license, in addition to complying with any other legal requirements for the transaction of business in this state, submits to the secretary of state:

(1) An application for the recognition of his foreign license;

(2) A certified copy of his foreign license; and

(3) The amounts required pursuant to sections 46 and 93 of this regulation; and

(b) The secretary of state determines that the governmental entity that issued the foreign license imposes requirements substantially similar to the requirements of this chapter.

2. The secretary of state will determine that the requirements of a governmental entity are substantially similar to the requirements of this chapter if, in addition to any other factors the secretary of state deems to be material, the governmental entity requires that a certification authority must, as a condition to holding the foreign license:

(a) Issue certificates:

(1) Based upon an asymmetric cryptosystem; and

(2) Using a trustworthy system;

(b) Provide a guaranty which is substantially similar to a suitable guaranty in an amount of not less than \$25,000;

(c) Employ as operative personnel only persons who have not been convicted of a felony within the past 7 years and have never been convicted of a crime involving fraud, deception or a false statement; and

(d) Comply with a legally established system for the enforcement of the requirements of that governmental entity regarding digital signatures.

3. The secretary of state will:

(a) Make available, upon request, a list of the governmental entities that the secretary of state has determined meet the requirements of subsection 2; and

(b) Consider a governmental entity for addition to that list upon:

(1) The request of the governmental entity or a certification authority licensed by the governmental entity; and

(2) The receipt of a copy of the licensing requirements of the governmental entity, together with an English translation if it is in a foreign language.

4. The recognition of a foreign license pursuant to this section is valid:

(a) Until the foreign license expires or otherwise becomes invalid; or

(b) For 1 year,

whichever period is less.

5. The provisions of this section do not prohibit a certification authority who holds a foreign license from obtaining a license pursuant to the other provisions of this chapter.

Sec. 55. 1. *A certification authority may issue a certificate to a subscriber only after the certification authority has:*

(a) Received a request for the issuance of a certificate signed by the prospective subscriber; and

(b) Confirmed, which must include requiring a subscriber and his agent or agents to certify the accuracy of relevant information under penalty of perjury, that:

(1) The prospective subscriber is the person to be identified in the requested certificate;

(2) The prospective subscriber rightfully holds a private key which:

(I) Is capable of creating a digital signature; and

(II) Corresponds to the public key to be set forth in the requested certificate;

(3) The public key to be set forth in the requested certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber;

(4) The information to be included in the requested certificate is accurate;

(5) The requested certificate provides sufficient information to locate or identify one or more repositories in which the certificate will be stored and, if the certificate is suspended or revoked, notice of the suspension or revocation will be published; and

(6) If the prospective subscriber is acting through one or more agents, the prospective subscriber has:

(I) Authorized the agent or agents to have custody of his private key, to request the issuance of a certificate setting forth the corresponding public key and to sign digitally on behalf of the prospective subscriber; and

(II) Ensured that adequate safeguards exist to prevent the creation of a digital signature that exceeds any limitations on the authority of the agent or agents.

2. A certification authority shall, when seeking to obtain any other information material to the issuance of a certificate, require the subscriber and his agent or agents to certify the accuracy of relevant information under penalty of perjury.

3. The provisions of this section may not be waived, disclaimed or otherwise limited by agreement.

Sec. 56. 1. *When carrying out the provisions of section 55 of this regulation requiring a certification authority to confirm that a prospective subscriber is the person to be identified in a requested certificate, a certification authority shall make such an inquiry into the identity of the prospective subscriber as is reasonable based upon:*

(a) Any representations the certification authority will make regarding the reliability of the certificate, including any recommended limit of reliance;

(b) Any recommendations the certification authority will make regarding the use or application of the certificate; and

(c) Whether the certificate will be a transactional certificate.

2. If the prospective subscriber appears before the certification authority and presents a current:

(a) Identifying document issued by or under the authority of the United States or another country; or

(b) Driver's license or other identifying document issued by a state of the United States, which is reviewed and accepted by a notary public or any operative personnel of the certification authority, there is a rebuttable presumption that the certification authority has confirmed that the prospective subscriber is the person to be identified in the requested certificate.

Sec. 57. A certificate:

1. Must indicate the date upon which the certificate expires.

2. May include, without limitation, any disclaimers and limitations on obligations, losses or damages to be asserted by the certification authority who issues the certificate.

3. Must comply with the standards for basic certificate fields specified in section 4.1 of the technical standards designated as X.509, version 3, as adopted by reference pursuant to section 41 of this regulation, except that fields are not required for extensions of data. If fields are used for extensions of data:

(a) The use must conform to the guidelines specified in sections 4.1.2.1 and 4.2 of the technical standards designated as X.509, version 3, as adopted by reference pursuant to section 41 of this regulation; and

(b) The fields may be displayed on the certificate.

Sec. 58. *Except as otherwise provided in section 64 of this regulation, if the secretary of state:*

1. Issues a certificate, the secretary of state:

(a) Warrants to the subscriber named in the certificate that the certificate:

(1) Contains no information known by the secretary of state to be false; and

(2) Satisfies all material requirements of this chapter.

(b) Promises to the subscriber named in the certificate:

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

and

(2) To notify the subscriber within a reasonable time of any facts known to the secretary of state that significantly affect the validity or reliability of the certificate after issuance.

2. Issues and publishes a certificate, the secretary of state certifies to all persons who reasonably rely on the information contained in the certificate or on a digital signature verifiable by the public key set forth in the certificate that:

(a) The secretary of state has issued the certificate to the subscriber;

(b) The subscriber has accepted the certificate;

(c) The information in the certificate identified as confirmed by the secretary of state was accurate when the certificate was issued; and

(d) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference in the certificate.

Sec. 59. 1. *Except as otherwise provided in sections 58 and 64 of this regulation, a certification authority:*

(a) By issuing a certificate:

(1) Warrants to the subscriber named in the certificate that:

(I) The certificate contains no information known by the certification authority to be false;

(II) The certificate satisfies all material requirements of this chapter; and

(III) The certification authority has not exceeded any limitations on his authority in issuing the certificate.

(2) Promises to the subscriber named in the certificate, unless the certification authority and subscriber agree otherwise:

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

(II) 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 after issuance.

(3) Certifies to all persons who reasonably rely on the information contained in the certificate or on a digital signature verifiable by the public key set forth in the certificate that:

(I) The subscriber has accepted the certificate;

(II) The information in the certificate identified as confirmed by the certification authority was accurate when the certificate was issued;

(III) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference in the certificate; and

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

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

2. Except as otherwise provided in this section, the provisions of this section may not be waived, disclaimed or otherwise limited by agreement.

Sec. 60. *1. Except as otherwise provided in section 64 of this regulation, by requesting the issuance of a certificate as an agent of the subscriber to be identified in the certificate, the person requesting the certificate certifies to all persons who reasonably rely on the information contained in the certificate that he has the legal authority to:*

(a) Apply for the issuance of the certificate; and

(b) Sign digitally on behalf of the subscriber and that, if this authority is limited in any way, adequate safeguards exist to prevent the creation of a digital signature that exceeds the limitations on his authority.

2. No person may waive, disclaim or otherwise limit by agreement or obtain indemnity from the provisions of this section in such a manner as to limit his liability for any misrepresentation of fact to any person who reasonably relies on a certificate.

Sec. 61. *1. Except as otherwise provided in section 64 of this regulation, by accepting a certificate, the subscriber identified in the certificate certifies to all persons who reasonably rely on the information contained in the certificate that:*

(a) The subscriber rightfully holds the private key that corresponds to the public key set forth in the certificate;

(b) All representations made by the subscriber to the certification authority who issued the certificate which are material to the information set forth in the certificate are true; and

(c) All material representations included in the certificate and not confirmed by the certification authority are true.

2. No person may waive, disclaim or otherwise limit by agreement or obtain indemnity from the provisions of this section in such a manner as to limit his liability for any misrepresentation of fact to any person who reasonably relies on a certificate.

Sec. 62. *1. Except as otherwise provided in section 64 of this regulation, by accepting a certificate, the subscriber identified in the certificate and any agent of the subscriber who requested the issuance of the certificate promise to indemnify the certification authority who issued the certificate for any loss or other damage resulting from the issuance or publication of the certificate in reliance upon any:*

(a) Misrepresentation of a material fact by the subscriber or his agent; or

(b) Failure by the subscriber or his agent to disclose a material fact, if the misrepresentation or failure to disclose was negligent or intended to deceive the certification authority or a person relying on the certificate.

2. The provisions of this section may not be waived, disclaimed or otherwise limited by agreement, but consistent, additional terms may be provided by agreement.

Sec. 63. *1. Except as otherwise provided in subsection 2, by accepting a certificate, the subscriber identified in the certificate promises to exercise reasonable care to retain control of*

the corresponding private key and prevent its disclosure to any person who is not authorized to create the digital signature of the subscriber until:

(a) The expiration of the certificate;

(b) Notice of the revocation of the certificate is published pursuant to section 73 of this regulation; or

(c) One business day after the subscriber has submitted to the certification authority who issued the certificate a written request for the revocation of the certificate and such evidence as is reasonably sufficient to confirm that the person requesting the revocation is the subscriber or an agent of the subscriber who is authorized to make the request, whichever occurs first.

2. By accepting a transactional certificate, the subscriber identified in the certificate promises to exercise reasonable care to retain control of the corresponding private key and prevent its disclosure to any person who is not authorized to create the digital signature of the subscriber until:

(a) The expiration of the certificate; or

(b) Notice of the revocation of the certificate is published pursuant to section 73 of this regulation,

whichever occurs first.

3. The provisions of subsections 1 and 2 may not be waived, disclaimed or otherwise limited by agreement.

4. A private key is the personal property of the subscriber who rightfully holds the private key.

Sec. 64. 1. Upon giving notice of the revocation of a certificate as required pursuant to section 73 of this regulation, the certification authority who issued the certificate is discharged from any liability or other responsibility, with regard to any transactions occurring after the notice is given, for any promise, warranty or certification provided pursuant to section 58 or 59 of this regulation regarding the certificate.

2. When a certificate expires, the certification authority who issued the certificate, the subscriber identified in the certificate and the agents of that subscriber are discharged from any liability or other responsibility, with regard to any transactions occurring after the expiration occurs, for any promise, warranty or certification provided pursuant to section 58, 59, 60, 61 or 62 of this regulation regarding the certificate.

Sec. 65. A licensee shall file with the secretary of state and publish a certification practice statement that includes, without limitation:

1. A description of the policies, practices and procedures of the licensee for the creation, issuance, distribution, management, storage, suspension, revocation and renewal of certificates;

2. If certificates are issued by class, the necessary criteria for each class, including the methods for identifying subscribers applicable to each class;

3. A written description of all representations required by the licensee from a subscriber regarding the responsibility of the subscriber to protect his private key; and

4. A disclosure of any:

(a) Warnings, limitations on liability, disclaimers of warranty and provisions for indemnity and holding harmless upon which the licensee intends to rely;

(b) Disclaimers and limitations on obligations, losses or damages to be asserted by the licensee; and

(c) Mandatory procedures for the resolution of disputes, including any provisions regarding the choice of forum or applicable law.

Sec. 66. 1. *The secretary of state will publish a disclosure record for each licensee that includes, without limitation:*

(a) The name, mailing address, telephone number and electronic mail address of the surety company or financial institution that issued the suitable guaranty for the licensee, and the date of expiration of the suitable guaranty;

(b) A copy of the most recent certification practice statement filed with the secretary of state by the licensee pursuant to this chapter;

(c) A copy of the summary or report of the most recent audit of the licensee filed with the secretary of state pursuant to this chapter;

(d) Information regarding the current status of the license, including a disclosure of any suspension or revocation and, if a suspension or revocation is currently pending proceedings for administrative or judicial review, a statement of that fact;

(e) A statement of whether a repository operated by the licensee has been designated as a recognized repository and information sufficient to locate or identify any repository the licensee operates or otherwise uses;

(f) A list of all judgments regarding the licensee filed with the secretary of state pursuant to section 75 of this regulation within the past 5 years; and

(g) Any other information required by this chapter.

2. The secretary of state will update a disclosure record when he discovers that any information contained in the disclosure record has changed or is no longer accurate.

3. In carrying out this section, the secretary of state will rely on records received by his office and is not obligated to conduct any investigation or other inquiry regarding the information contained in those records.

Sec. 67. 1. If the secretary of state issues a certificate and:

(a) The subscriber accepts the certificate, the secretary of state will publish a signed copy of the certificate in a recognized repository.

(b) The subscriber does not accept the certificate, the secretary of state will not publish the certificate or, if the secretary of state has already published the certificate, will cancel that publication.

2. If a licensee issues a certificate and:

(a) The subscriber accepts the certificate, the licensee shall, except as otherwise provided by agreement between the licensee and subscriber:

(1) Publish the certificate in compliance with any applicable policies for the publication of certificates contained in the certification practice statement of the licensee; or

(2) If the licensee has not included in his certification practice statement any applicable policies for the publication of certificates, publish a signed copy of the certificate in a recognized repository agreed upon by the licensee and subscriber.

(b) The subscriber does not accept the certificate, the licensee shall not publish the certificate or, if the licensee has already published the certificate, shall cancel that publication.

Sec. 68. 1. *If a certification authority confirms that a certificate he has issued was not issued in accordance with the requirements of section 55 of this regulation, the certification authority shall immediately revoke the certificate.*

2. A certification authority may suspend a certificate he has issued for such a period, not to exceed 5 business days, as is necessary for him to conduct an investigation to confirm any grounds for revocation of the certificate pursuant to subsection 1.

3. A certification authority shall notify the subscriber as soon as practicable after the certification authority determines to suspend or revoke a certificate pursuant to this section.

Sec. 69. 1. *The secretary of state may:*

(a) Order a certification authority to revoke a certificate the certification authority has issued if, after providing the certification authority and subscriber with notice of the proposed order and an opportunity to be heard on the matter, the secretary of state determines that:

(1) The certificate was issued without substantial compliance with the provisions of this chapter; and

(2) The noncompliance poses a significant risk to persons who may reasonably rely on the certificate.

(b) Without a prior hearing, order a certification authority to suspend, for not more than 5 business days, a certificate the certification authority has issued if the secretary of state determines that an emergency requires an immediate remedy. The secretary of state will give the certification authority such notice of the order as is practicable. If the certification authority is a licensee, the secretary of state will mail a copy of the order, together with a summary of the facts upon which he based his determination, to the licensee at the mailing address or electronic mail address of the licensee specified on the application for the license.

After issuing the order, the secretary of state will proceed as quickly as feasible to complete the proceedings in the manner otherwise provided pursuant to the provisions of chapter 233B of NRS.

2. A certification authority shall comply with any order issued by the secretary of state pursuant to this section within 24 hours after the certification authority receives the order.

Sec. 70. *1. Except as otherwise provided in this section, a certification authority shall, within 24 hours after the receipt of all information he requires pursuant to this subsection, suspend a certificate he has issued, for not more than 5 business days, if the suspension is requested by a person whom the certification authority reasonably believes to be an appropriate person. The certification authority is not required to confirm that the person requesting the suspension is an appropriate person, but may require the person to provide evidence, which may include a statement given under oath or affirmation, that the person is an appropriate person.*

2. A person who requests the suspension of a certificate pursuant to subsection 1 shall not misrepresent his identity or authority to request the suspension.

3. The subscriber identified in a certificate may agree with the certification authority who issues the certificate to limit or preclude the suspension of the certificate pursuant to subsection 1, except that such an agreement is effective only if notice of the agreement is published in the certificate or in the certification practice statement of the certification authority.

4. A certification authority may not suspend a transactional certificate pursuant to this section.

5. *As used in this section, “appropriate person” means the subscriber named in a certificate or a person authorized to act on his behalf.*

Sec. 71. *Except as otherwise agreed by a subscriber and certification authority, the certification authority shall terminate the suspension of a certificate pursuant to section 70 of this regulation if:*

1. *The termination is requested by a person who the certification authority confirms is the subscriber named in the suspended certificate or an agent of the subscriber who is authorized to request the termination; or*

2. *The certification authority discovers and confirms that the request for suspension was made without the authorization of the subscriber. This subsection does not require a certification authority to confirm a request for the suspension of a certificate pursuant to section 70 of this regulation.*

Sec. 72. 1. *Except as otherwise provided in subsection 2, a certification authority shall revoke a certificate he has issued:*

(a) *Within 1 business day after he receives:*

(1) *A written request for the revocation from the subscriber named in the certificate or an agent of the subscriber who is authorized to request the revocation; and*

(2) *Such evidence as is reasonably sufficient to confirm that the person requesting the revocation is the subscriber or an agent of the subscriber who is authorized to make the request;*

(b) *Upon receiving a certified copy of the death certificate of the subscriber or confirming by other evidence that the subscriber is dead; or*

(c) Upon receiving documents effecting the dissolution of the subscriber or confirming by other evidence that the subscriber has been dissolved or otherwise ceases to exist, except that the certification authority is not required to revoke the certificate if he ascertains, before completing the revocation of the certificate, that the dissolution has been rescinded or that the existence of the subscriber has otherwise been restored.

2. A certification authority may not revoke a transactional certificate pursuant to subsection 1.

3. A certification authority may revoke a certificate he has issued if the certificate is or becomes unreliable, regardless of whether the subscriber consents to the revocation and notwithstanding any agreement to the contrary between the certification authority and subscriber.

Sec. 73. *1. Immediately upon the suspension or revocation of a certificate pursuant to this chapter, the certification authority who issued the certificate shall, except as otherwise provided in subsection 2, give notice of the suspension or revocation in such a manner as is specified in the certificate. If the certificate specifies that the notice must be given in one or more repositories, the certification authority shall publish a signed notice of the suspension or revocation:*

(a) In each of the specified repositories that will accept publication; and

(b) In a recognized repository if:

(1) Any of the specified repositories refuse to accept publication or have ceased to exist;

or

(2) None of the specified repositories is a recognized repository.

2. The secretary of state will not give notice of a suspension requested pursuant to section 70 of this regulation unless the person requesting the suspension pays in advance any fee for publication required by each repository where the notice is to be published.

Sec. 74. *1. A licensee who intends to discontinue providing services as a certification authority shall:*

(a) Before discontinuing those services, notify the subscribers identified in all valid certificates issued by the licensee;

(b) Take such commercially reasonable efforts as are necessary to minimize disruption to those subscribers and to persons who rely on those certificates; and

(c) Make reasonable arrangements for the preservation of his records relating to his services as a certification authority. If the licensee is unable to make other reasonable arrangements for the preservation of those records, the licensee shall:

(1) Revoke all valid certificates he has issued and return all his records regarding those certificates to the appropriate subscribers; or

(2) Submit those records to such other licensees as the secretary of state designates for that purpose.

2. The secretary of state will not release a suitable guaranty filed by a licensee who discontinues providing services as a certification authority until the expiration of the term for which the guaranty was issued.

Sec. 75. *1. To recover a qualified right to payment from a suitable guaranty filed with the secretary of state pursuant to this chapter, a claimant must submit to the secretary of state:*

(a) Within 3 years after the occurrence of the acts upon which the qualified right to payment is based, a signed notice of the claim that sets forth:

- (1) The name and address of the claimant;*
 - (2) The amount of the claim;*
 - (3) The grounds for the qualified right to payment;*
 - (4) The date of occurrence of the acts upon which the qualified right to payment is based; and*
 - (5) Any other relevant information required by the secretary of state; and*
- (b) A certified copy of the judgment upon which the qualified right to payment is based.*
- 2. If the notice required pursuant to subsection 1 is filed before the entry of a judgment, the secretary of state will maintain the notice on file, without taking further action, until the claimant files the required copy of the judgment. If the secretary of state determines that the litigation identified in the notice has been resolved without a judgment, the secretary of state may expunge the notice from his records, except that the secretary of state will not expunge such a notice until at least 3 years after the date the notice was filed.*
 - 3. The secretary of state will not accept a notice submitted pursuant to subsection 1 that is submitted more than 3 years after the occurrence of the acts upon which the qualified right to payment is based.*
 - 4. Upon compliance of a claimant with subsection 1, the secretary of state will forward the notice and judgment to the surety company or financial institution that issued the suitable guaranty.*

Sec. 76. *1. Except as otherwise provided in subsection 2, a claimant who complies with section 75 of this regulation may recover from a suitable guaranty:*

- (a) If the guaranty is:*
 - (1) A surety bond:*

(I) The full amount of the qualified right to payment if notice of only one qualified right to payment is submitted during the term of the bond; or

(II) A pro rata share of the amount of the bond if notice of more than one qualified right to payment is submitted during the term of the bond; or

(2) A letter of credit, the amount allowed pursuant to the terms of the letter.

(b) In addition to the amount of the qualified right to payment, court costs and reasonable attorneys' fees incurred by the claimant to collect the claim.

(c) Successive claims for the enforcement of separate qualified rights to payment.

2. The total liability of a surety company or financial institution issuing a suitable guaranty must not, during the term of the guaranty, exceed the amount of the guaranty.

Sec. 77. 1. *Except as otherwise provided in this chapter, a recognized certification authority is not liable for:*

(a) Any damages incurred by a person who relies on a certificate issued by the certification authority, or on any representation contained in the certificate which the certification authority is required to confirm, that exceed any recommended limit of reliance clearly specified in the certificate and in the last certification practice statement filed by the certification authority with the secretary of state pursuant to this chapter before the reliance occurred.

(b) Any loss caused by the failure of the certification authority to comply with any provision of this chapter regarding the issuance of a certificate, in excess of any recommended limit of reliance specified in the certificate.

(c) Any loss caused by the reliance of a person on a false or forged digital signature of a subscriber identified in a certificate issued by the certification authority if the certification

authority complied with all the material requirements of this chapter regarding the certificate. This subsection does not relieve a certification authority from liability for any failure to act in good faith or for the breach of any promise, warranty or certification provided pursuant to section 58 or 59 of this regulation.

(d) Any punitive or exemplary damages resulting from the reliance of a person on a certificate issued by the certification authority.

(e) Any damages for pain and suffering resulting from the reliance of a person on a certificate issued by the certification authority.

2. A recognized certification authority may waive any of the provisions of subsection 1.

3. A recognized certification authority may liquidate, limit, alter or exclude liability for any consequential or incidental damages resulting from the reliance of a person on a certificate issued by the certification authority by:

(a) Agreement with the person who incurs the loss; or

(b) Notification of the person who incurs the loss, before he relies on the certificate, of the liquidation, limitation, alteration or exclusion, if the liquidation, limitation, alteration or exclusion is not unconscionable.

Sec. 78. 1. The secretary of state may designate a repository as a recognized repository after he:

(a) Receives:

(1) An application for such a designation submitted by a licensee;

(2) Such evidence as he deems sufficient to determine that the licensee and repository meet the requirements of this chapter; and

(3) Except as otherwise provided in section 43 of this regulation, the amounts required pursuant to sections 46 and 93 of this regulation; and

(b) Determines, if the repository will publish certificates that are not issued by recognized certification authorities, that the certification authorities issuing those certificates conform to legally binding requirements that the secretary of state determines to be substantially similar to or more stringent than the requirements of this chapter.

2. The designation of a repository as a recognized repository is valid for 1 year unless the designation is revoked or otherwise terminated at an earlier date.

3. The operator of a recognized repository may discontinue its designation as such by:

(a) Filing a notice of discontinuance with the secretary of state at least 30 days before the date of discontinuance; and

(b) Complying with section 82 of this regulation.

Sec. 79. *An application for designation as a recognized repository must be on a form prescribed by the secretary of state and include:*

- 1. The name of the licensee or applicant for a license who will operate the repository;*
- 2. The mailing address and, if different, the physical address of the applicant;*
- 3. The telephone number of the applicant;*
- 4. The electronic mail address of the applicant;*
- 5. The electronic mail address of the repository; and*
- 6. A description of the computer hardware, software and data base of the repository that demonstrates compliance with the requirements of this chapter.*

Sec. 80. *A recognized repository:*

- 1. Must be operated by a licensee;*

2. Must operate by means of a trustworthy system that:

(a) Provides access to the repository on line through the Internet on a continuous basis, except for such periods as are reasonably required for scheduled maintenance;

(b) Has the capacity to process transactions in a reasonably adequate manner for the anticipated volume of transactions; and

(c) Provides for the periodic reproduction and secure storage of data, in accordance with NRS 239.051, in a location other than the location of the principal system of the repository;

3. Must include a data base that contains:

(a) Certificates that are published in the repository;

(b) Notices of suspended or revoked certificates that are published by recognized certification authorities;

(c) A record of certificates that have expired or been suspended or revoked pursuant to this chapter; and

(d) Any other information required by the secretary of state; and

4. Must not contain a significant amount of information that is known or reasonably likely to be untrue, inaccurate or unreliable.

Sec. 81. 1. *The designation of a repository as a recognized repository shall be deemed revoked immediately upon the expiration or revocation of the license of the licensee who operates the repository.*

2. The secretary of state may, in accordance with subsection 3 and without revoking the license of the licensee who operates a recognized repository, revoke the designation of the repository as a recognized repository if the secretary of state determines that the licensee or repository is not in compliance with all the provisions of this chapter.

3. The secretary of state will inform a licensee who operates a recognized repository of his determination to revoke that designation by mailing a written notice to the mailing address and electronic mail address of the licensee specified on the application for the designation of the repository as a recognized repository. The notice must state the date when the revocation becomes effective, which must not occur until at least 30 days after the mailing of the notice. If the licensee files an application for a hearing on the matter before the effective date specified in the notice, the revocation does not become effective until so ordered by the hearing officer.

Sec. 82. If a repository of a licensee ceases to operate as a recognized repository, the licensee shall publish the information maintained in the repository in another recognized repository.

Sec. 83. 1. The secretary of state may operate or contract for the operation of a state repository. If the secretary of state contracts for the operation of the repository by an entity other than the department of information technology, the contractor must be a licensee and agree to operate the repository in compliance with the provisions of this chapter. The secretary of state may rescind a contract for the operation of the state repository for:

(a) Any ground that would be sufficient for the revocation of the designation of the repository as a recognized repository; or

(b) Any other legally recognized ground for rescission.

2. If a state repository is operated pursuant to subsection 1, the repository must include:

(a) A disclosure record for each licensee;

(b) A list of all judgments filed with the secretary of state pursuant to section 75 of this regulation within the past 5 years;

(c) Each advisory statement published by the secretary of state pursuant to section 92 of this regulation; and

(d) Any other information the secretary of state deems appropriate for inclusion in the state repository.

Sec. 84. 1. *Except as otherwise provided in this section, a licensee who operates a recognized repository shall agree to pay for any loss incurred by a person who reasonably relies on a digital signature that is verified by the public key set forth in a suspended or revoked certificate, if the reliance occurs:*

(a) More than 1 business day after the licensee receives from a recognized certification authority a request to publish notice of the suspension or revocation; and

(b) Before the licensee has published the notice in the recognized repository it operates.

2. *Subsection 1 does not require a licensee to agree to pay any:*

(a) Punitive or exemplary damages or damages for pain or suffering; or

(b) Amount in excess of any limitations on obligations, losses or damages listed in the suspended or revoked certificate.

3. *A licensee may liquidate, limit, alter or exclude liability for any consequential or incidental damages resulting from the requirements of subsection 1 by:*

(a) Agreement with the person who incurs the loss; or

(b) Notification of the person who incurs the loss, before he relies on the digital signature, of the liquidation, limitation, alteration or exclusion, if the liquidation, limitation, alteration or exclusion is not unconscionable.

Sec. 85. 1. *A licensee shall:*

(a) Create and retain such records as are necessary for the licensee to demonstrate compliance with this chapter.

(b) Retain each notice of the suspension or revocation of a certificate given by the licensee pursuant to section 73 of this regulation.

(c) Create and retain a data base that contains a record of the identity of each subscriber named in a certificate issued by the licensee, which must include the number and date of issuance of the certificate and each fact represented in the certificate.

(d) Create and retain a data base that contains a record of each time stamp the licensee appends or attaches to a message, digital signature or certificate, which must include sufficient information to identify the relevant subscriber and message, digital signature or certificate.

2. The records required pursuant to:

(a) Paragraphs (a) and (b) of subsection 1 must be retained for not less than 5 years.

(b) Paragraph (c) of subsection 1 must be retained for not less than 10 years after the date the certificate expires or is revoked.

(c) Paragraph (d) of subsection 1 must be retained for not less than 10 years after the date the time stamp is appended or attached.

3. The records required pursuant to subsection 1 must be:

(a) Set forth on paper, retrievable from a computer or created and retained in any other form authorized by the state library and archives administrator pursuant to NRS 378.255 or 378.280 for the retention of records; and

(b) Indexed, stored, preserved and reproduced in such a manner as to remain accurate, complete and accessible to an auditor.

4. This section does not require the inclusion of:

(a) Any of the extensions of data specified in section 4.2 of the technical standards designated as X.509, version 3, as adopted by reference pursuant to section 41 of this regulation; or

(b) Any information that would compromise the security of the licensee, in any record that is publicly accessible.

Sec. 86. *1. Except as otherwise provided in subsection 2 or required by a court order, any:*

(a) Trade secret, as that term is defined in NRS 600A.030;

(b) Information regarding the design, security or programming of a computer system used for the licensing or operation of a certification authority or repository pursuant to this chapter; or

(c) Information that identifies a private key held by a subscriber, which is in the possession of the secretary of state or department of information technology for the purposes of this chapter, or an auditor conducting an audit pursuant to section 50 of this regulation, shall be deemed confidential and must not be made available for public disclosure, inspection or copying.

2. For the purposes of an audit conducted pursuant to section 50 of this regulation, a licensee shall provide the auditor with any information in his possession that is relevant to the audit, including any information that is deemed confidential pursuant to subsection 1.

Sec. 87. *1. Except as otherwise provided by a specific statute, regulation or contract:*

(a) An electronic message that bears in its entirety a digital signature which is verified by the public key set forth in a certificate that was a valid certificate when the digital signature was created, is as valid, enforceable and effective as a record set forth on paper.

(b) An electronic message that is digitally signed shall be deemed to be an original of the message.

(c) A digital signature may be accepted in any manner that is reasonable under the circumstances.

2. Except as otherwise provided by a specific statute or regulation:

(a) An electronic message that bears a digital signature does not constitute an instrument pursuant to chapter 104 of NRS unless all the parties to the transaction agree, including any financial institutions affected by the transaction.

(b) In any action for the adjudication of a dispute involving a digital signature, issues regarding jurisdiction, venue and choice of law must be determined in the same manner as if all transactions had been effected through documents set forth on paper.

Sec. 88. 1. *Except as otherwise provided by a specific statute or regulation, a public agency shall not accept a digital signature as a substitute for a handwritten or facsimile signature unless the digital signature is verified by a valid certificate.*

2. *Except as otherwise provided in subsection 3 or by a specific statute or regulation, a public agency shall not use a digital signature to conduct official public business unless the digital signature is verifiable with reference to a public key set forth in a valid certificate that identifies the public agency as the subscriber. A public agency may become the subscriber of a certificate issued by a recognized certification authority to conduct through electronic*

messages any official public business for which any statute or regulation requires the signature of an officer, employee or other agent of the public agency.

3. Subsection 2 does not apply to the use of a digital signature for internal procedures of a public agency unless otherwise required by a specific statute, regulation or court rule, or by the office of financial management, training and controls of the department of administration.

4. A private key held by a public agency or any person on behalf of a public agency, and any information that identifies such a private key are confidential.

Sec. 89. 1. Except as otherwise provided by a specific statute, regulation or contract, a digital signature that is verifiable with reference to the public key set forth in a valid certificate shall be deemed to satisfy the requirements for an acknowledgment, regardless of whether the person who executed the digital signature appeared before the certification authority or a person who is authorized to take acknowledgments in this state, if:

(a) The digitally signed message includes a statement that the digital signature is intended as an acknowledgment;

(b) The digital signature is verified by the public key set forth in the certificate;

(c) The certificate was a valid certificate when the digital signature was affixed; and

(d) The certificate provides that the digital signature satisfies the requirements for an acknowledgment.

2. If a certificate provides that a digital signature satisfies the requirements for an acknowledgment, the certification authority who issued the certificate is liable for the digital signature to the same extent as if the certification authority was a notary public who had acknowledged the signature, except that his liability must not exceed any recommended limit of

reliance set forth in the certificate. No certification authority may waive, disclaim or otherwise limit by agreement the provisions of this subsection.

3. As used in this section, “acknowledgment” has the meaning ascribed to it in NRS 240.002.

Sec. 90. 1. Except as otherwise provided by a specific statute, regulation or contract, if reliance on a digital signature is not reasonable under the circumstances, the recipient of the digital signature assumes the risk that the digital signature was forged.

2. Any determination of whether it is reasonable to rely upon a certificate or a digital signature verifiable with reference to the public key set forth in a certificate must include, without limitation, an evaluation of:

(a) The facts known to the relying person or of which he has notice, including all the facts stated or incorporated by reference in the certificate;

(b) The value or relative importance of the digitally signed message, if known;

(c) The course of dealing between the relying person and the subscriber, and any available indicia of reliability or unreliability other than the digital signature; and

(d) The usage of the trade, particularly trade conducted by trustworthy systems or other computer systems.

Sec. 91. 1. A certification authority, a subscriber and a recipient of a digital signature shall use good faith in the use of a digital signature and in conducting any activities governed by the provisions of this chapter.

2. *The provisions of subsection 1 may not be waived, disclaimed or otherwise limited by agreement, except that the parties to an agreement may establish the standards by which their*

good faith with regard to one another will be measured if those standards are not manifestly unreasonable.

Sec. 92. *1. A certification authority shall not conduct any activities as a certification authority in any manner that creates an unreasonable risk of loss to any subscriber of the certification authority, any person relying on a certificate issued by the certification authority or any repository.*

2. If the secretary of state determines that the activities of a certification authority create a risk of loss to any subscriber of the certification authority, any person relying on a certificate issued by the certification authority or any repository, the secretary of state may publish a brief statement generally advising subscribers, persons who rely on digital signatures and repositories about those activities.

Sec. 93. *1. The secretary of state may conduct such an investigation of an applicant as he determines is necessary to determine the qualifications of the applicant and whether the applicant is in compliance with the provisions of this chapter and chapter 720 of NRS. Except as otherwise provided in section 43 of this regulation or unless waived by the secretary of state, all fees and other costs incurred by the secretary of state to conduct the investigation must be paid by the applicant.*

2. Before commencing the investigation of an applicant, the secretary of state may require the applicant to deposit such an amount as the secretary of state estimates will be necessary to pay the fees and other costs of that investigation. Upon taking final action on the application, the secretary of state will provide the applicant with an itemized statement of the fees and other costs incurred and refund any unexpended portion of the amount deposited.

3. As used in this section, “applicant” means a person who submits an application pursuant to section 44, 54 or 78 of this regulation.

Sec. 94. *The secretary of state may:*

1. As a condition to the issuance and retention of a license, impose any restrictions on the operation of the licensee as he deems appropriate; and

2. Maintain in his file for the licensee a written record of the basis for imposing the restrictions.

Sec. 95. To determine compliance with this chapter and chapter 720 of NRS, the secretary of state may:

1. Without prior notice, examine in any manner that is reasonable under the circumstances the records of a licensee, whether maintained within or outside of this state. The licensee shall make his records available to the secretary of state in legible form.

2. Copy any records of a licensee or require the licensee to provide the secretary of state with copies of any of his records, to such an extent and in such a manner as is reasonable under the circumstances.

Sec. 96. 1. The secretary of state may conduct any investigation, whether within or outside of this state, as he determines is necessary to ascertain whether a person has violated or is about to violate this chapter or chapter 720 of NRS, or to aid in the enforcement of this chapter or chapter 720 of NRS.

2. To carry out subsection 1, the secretary of state or any employee designated by the secretary of state may conduct hearings, administer oaths and affirmations, render findings of fact and conclusions of law, subpoena witnesses, compel their attendance, take evidence and require the production, by subpoena or otherwise, of books, papers, correspondence, memoranda,

agreements or other documents or records which the secretary of state determines to be relevant or material to the investigation. A person whom the secretary of state does not consider to be the subject of an investigation is entitled to reimbursement at the rate of 25 cents per page for copies of documents which he is required by subpoena to produce. The secretary of state may require or permit a person to file a statement, under oath or otherwise as the secretary of state determines, as to the facts and circumstances concerning the matter to be investigated.

3. If the activities constituting an alleged violation for which the information is sought would be a violation of this chapter or chapter 720 of NRS had the activities occurred in this state, the secretary of state may issue and apply to enforce subpoenas in this state at the request of a comparable licensing agency of another state.

4. If a person does not testify or produce any documents as required by a subpoena issued pursuant to this section, the secretary of state may apply to the court for an order compelling compliance. A request for such an order may be addressed to:

(a) The district court in and for the county where service may be obtained on the person refusing to testify or produce, if the person is subject to service of process in this state; or

(b) A court of another state having jurisdiction over the person refusing to testify or produce, if the person is not subject to service of process in this state.

5. Not later than the time the secretary of state requests an order for compliance, he shall:

(a) Send notice of the request by certified mail, return receipt requested, to the respondent at the last known address of the respondent; or

(b) Take other steps reasonably calculated to give the respondent actual notice.

Sec. 97. 1. Except as otherwise provided in section 43 of this regulation, a licensee shall pay all proper costs incurred by the secretary of state to conduct an investigation of the licensee pursuant to section 96 of this regulation.

2. The secretary of state may require the licensee to deposit such an amount as the secretary of state estimates will be necessary to pay those costs. The licensee shall remit:

(a) The deposit within 15 days after the secretary of state provides the licensee with a statement of that estimate; and

(b) Any other balance due for the investigation within 45 days after the secretary of state provides the licensee with a bill for that amount.

The secretary of state may issue an order for the denial, suspension or revocation of the license of a licensee who fails to comply with the provisions of this subsection.

3. For the purposes of this section, “proper costs” includes, without limitation:

(a) Not less than \$500 for the compensation of employees of the secretary of state for time spent:

(1) Traveling to and from the site of the investigation;

(2) Conducting the investigation; and

(3) Preparing a report of the investigation,

at a rate of \$50 per hour for each employee;

(b) The per diem allowance and travel expenses of the employees of the secretary of state conducting the investigation, as provided for state officers and employees generally; and

(c) The cost of supplies, materials, photocopying and postage incurred in conducting the investigation.

Sec. 98. 1. *Except as otherwise provided in this section, the secretary of state may, as appropriate, issue an order denying, suspending or revoking a license, limiting any of the activities as a certification authority in this state of a licensee or an applicant for a license or imposing a civil penalty on a licensee if the secretary of state determines that the order is in the public interest and that the licensee or applicant for a license has:*

(a) Filed with the secretary of state an application for a license which, on the effective date of the application or, in the case of an order denying a license any date after the filing of the application, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which the statement was made, false or misleading with regard to a material fact;

(b) Violated or failed to comply with a provision of this chapter or chapter 720 of NRS;

(c) Within the last 10 years been convicted of a felony or misdemeanor that the secretary of state determines to have:

(1) Arisen out of the conduct of business as a certification authority or repository; or

(2) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of money, any similar offense or conspiracy to commit such an offense;

(d) Been temporarily or permanently enjoined by any court of competent jurisdiction, from:

(1) Performing any activity as a certification authority or repository;

(2) Performing any activity as an affiliated person or employee of a certification authority or repository; or

(3) Engaging in or continuing any conduct or practice in connection with an activity described in subparagraph (1) or (2),

unless the order has been vacated;

(e) Been or is the subject of an order of the secretary of state for the denial, suspension or revocation of a license, unless the order has been vacated;

(f) Been or is the subject of an order issued within the last 5 years under the authority of another country or state or a Canadian province or territory, after the provision of notice and an opportunity for a hearing:

(1) For the denial, suspension or revocation of a license as a certification authority; or

(2) To cease and desist any activity as a certification authority,

unless the order has been vacated; or

(g) Become insolvent. For the purposes of this paragraph, “insolvent” means that:

(1) The liabilities of a person exceed his assets; or

(2) A person is unable to meet his obligations as they mature.

2. If the secretary of state, when a license becomes effective, has knowledge of any fact or transaction for which he may issue an order pursuant to subsection 1, he must commence proceedings for the issuance of the order within 90 days after the issuance of the license.

3. If the secretary of state determines that a licensee or an applicant for a license has ceased to exist or to do business as a certification authority, the secretary of state may issue an order revoking the license or denying the application for a license.

Sec. 99. 1. *Except as otherwise provided in this chapter, the provisions of this chapter must be carried out in accordance with the provisions of chapter 233B of NRS.*

2. *A person affected by a determination or action of the secretary of state made pursuant to this chapter may request an administrative hearing on the matter before a hearing officer by submitting an application for such a hearing to the secretary of state. The application:*

(a) May be submitted on a form provided by the secretary of state, or on another document or in an electronic message signed by the applicant or his representative; and

(b) Must specify each issue to be considered at the hearing.

Sec. 100. *No person may appear in a representative capacity in an administrative hearing conducted pursuant to this chapter except:*

1. An attorney who is admitted to practice law in this state.

2. An authorized officer, manager, partner or full-time employee of an organization or governmental entity who appears on behalf of the organization or governmental entity.

3. A natural person who represents himself.

4. An interpreter for a person who:

(a) Speaks a language other than English and does not know the English language; or

(b) Is a handicapped person, as that term is defined in NRS 50.050.

5. Such other persons as the hearing officer allows, based upon his determination that it would be unduly burdensome to require a person to use one of the representatives identified in subsections 1 and 2.

Sec. 101. *For the purposes of an administrative hearing conducted pursuant to this chapter or any other adjudication of a dispute involving a digital signature, there is a rebuttable presumption that:*

1. A certificate that has been:

(a) Digitally signed by a recognized certification authority; and

(b) Published in a recognized repository or otherwise made available by the certification authority who issued the certificate or the subscriber identified in the certificate, has been issued by that certification authority and accepted by that subscriber.

2. The information set forth in a valid certificate and confirmed by the certification authority who issued the certificate is accurate.

3. If a digital signature is verified by the public key set forth in a valid certificate:

(a) The digital signature is the digital signature of the subscriber identified in that certificate;

(b) The 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 notice or knowledge that:

(1) The subscriber has breached any term of his promise pursuant to section 63 of this regulation; or

(2) The signer does not rightfully hold the private key used to create the digital signature.

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

Sec. 102. *In an administrative hearing conducted pursuant to this chapter:*

1. A party to the hearing may, unless the hearing officer directs otherwise, file any pleading or other document in electronic form.

2. If a pleading or other document that is filed electronically must be signed, it must be signed with a digital signature that is verifiable by a valid certificate issued by a certification authority who is not a party to the hearing.

3. The service of a pleading or other document by electronic transmission shall be deemed effective upon receipt, except that such an electronic transmission which is sent after 5 p.m. on a business day or at any time on a weekend or state holiday shall be deemed effective at 8 a.m. on the next business day.

Sec. 103. *1. As an alternative to any other authorized procedure, the secretary of state may commence a proceeding under this chapter or chapter 720 of NRS by entering a summary order pursuant to this section. The order must be in writing and may be entered without providing any prior notice or opportunity for a hearing, and need not be supported by findings of fact or conclusions of law.*

2. Upon the entry of a summary order pursuant to subsection 1, the secretary of state will promptly notify in writing all persons against whom action is taken or contemplated that the summary order has been entered and the reasons therefor. The secretary of state will send all persons against whom action is taken a notice of an opportunity for a hearing on the matters set forth in the order. The notice must state that the persons have 15 calendar days after receipt of the notice to mail a written request for a hearing to the secretary of state.

3. The secretary of state will set the matter for a hearing on a date not more than 60 or less than 15 calendar days after the receipt of the request for a hearing, and will promptly notify the parties of the time and place for the hearing. The time of the hearing may be continued upon the written request of a party for good cause shown.

4. The secretary of state may issue an order that makes a summary order final:

(a) Fifteen days after a person against whom action is taken or contemplated receives notice of the right to request a hearing, if that person fails to request a hearing; or

(b) If a party fails to appear at a hearing, on the date set for the hearing.

5. If a hearing is requested, the secretary of state may:

(a) Extend the summary order until final determination of the matter; or

(b) After providing further notice of an opportunity for a prior hearing to all parties against whom action is taken or contemplated, modify or vacate the summary order.

6. For the purposes of this section, notice is complete:

(a) Upon delivery personally to a person;

(b) By mailing by certified mail to the last known address of a person; or

(c) By mailing by electronic mail to the address of a person specified on an application submitted by the person pursuant to this chapter to the secretary of state.

Sec. 104. 1. *To carry out the provisions of this chapter or chapter 720 of NRS and as an alternative to any other authorized procedure, the secretary of state may use an emergency administrative proceeding pursuant to this section if there is an immediate danger to the public welfare requiring immediate action.*

2. The secretary of state may take only such action pursuant to this section as is necessary to prevent or avoid the immediate danger to the public welfare that justifies the use of an emergency administrative proceeding.

3. An order issued pursuant to this section will include a brief statement of:

(a) Findings of fact;

(b) Conclusions of law; and

(c) The reasons for:

(1) Determining that there is an immediate danger to the public welfare; and

(2) The decision of the secretary of state to take the specific action ordered.

4. The secretary of state will give such notice as is practicable to persons who are required to comply with the order. The order is effective when issued.

5. After issuing an order pursuant to this section, the secretary of state will proceed as quickly as feasible to complete the proceedings in the manner otherwise provided pursuant to the provisions of chapter 233B of NRS.

6. The record of the secretary of state consists of the documents regarding the matter that were considered or prepared by him. The secretary of state will maintain these documents as the official record.

7. Except as otherwise required by law, the official record need not constitute the exclusive basis for his action in an emergency administrative proceeding or for judicial review of the action.

8. An order issued pursuant to this section is subject to judicial review in the manner provided in chapter 233B of NRS for the final decision in a contested case.