

Presented to the governor March 19, 1998

Signed by the governor March 23, 1998, 10:55 a.m.

CHAPTER 321—S.F.No. 2068

An act relating to commerce; providing for the reliability of electronic messages; providing for certification authorities; providing licensing and enforcement powers; defining terms; providing rulemaking; amending Minnesota Statutes 1997 Supplement, sections 325K.01, subdivisions 6, 11, 18, 21, 27, 35, 39, and by adding a subdivision; 325K.03; 325K.05, subdivisions 1, 4, 5, 6, and 7; 325K.07, subdivisions 2 and 3; 325K.10, subdivision 1; 325K.12, subdivision 4; 325K.13, by adding a subdivision; 325K.14, subdivisions 1, 2, 3, 5, and by adding a subdivision; 325K.15, subdivisions 3 and 7; 325K.18, subdivisions 1 and 2; and 325K.25, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 325K; repealing Minnesota Statutes 1997 Supplement, sections 325K.05, subdivision 3; 325K.06, subdivisions 3, 4, and 5; 325K.13, subdivisions 2 and 3; and 325K.14, subdivision 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1997 Supplement, section 325K.01, subdivision 6, is amended to read:

Subd. 6. **CERTIFICATION AUTHORITY DISCLOSURE RECORD.** “Certification authority disclosure record” means an on-line, publicly accessible electronic record that concerns a licensed certification authority and is kept by the secretary. A certification authority disclosure record has the contents specified by rule by the secretary under section 325K.03.

Sec. 2. Minnesota Statutes 1997 Supplement, section 325K.01, subdivision 11, is amended to read:

Subd. 11. **DIGITAL SIGNATURE OR DIGITALLY SIGNED.** “Digital signature” or “digitally signed” 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:

- (1) whether the transformation was created using the private key that corresponds to the signer’s public key; and
- (2) whether the initial message has been altered since the transformation was made.

Sec. 3. Minnesota Statutes 1997 Supplement, section 325K.01, subdivision 18, is amended to read:

Subd. 18. **LICENSED CERTIFICATION AUTHORITY.** “Licensed certification authority” means a certification authority to whom a license has been issued by the secretary and whose license is in effect, or a certification authority who operates under a license issued by a governmental entity which has been certified pursuant to section 325K.05, subdivision 5.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 4. Minnesota Statutes 1997 Supplement, section 325K.01, subdivision 21, is amended to read:

Subd. 21. **OPERATIVE PERSONNEL.** "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:

- (1) managerial or policymaking responsibilities for the certification authority; or
- (2) duties directly involving the issuance of certificates, creation of private keys, or administration of a certification authority's computing facilities.

Sec. 5. Minnesota Statutes 1997 Supplement, section 325K.01, subdivision 27, is amended to read:

Subd. 27. **RECIPIENT.** "Recipient" means a person who receives or 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.

Sec. 6. Minnesota Statutes 1997 Supplement, section 325K.01, subdivision 35, is amended to read:

Subd. 35. **SUITABLE GUARANTY.** (a) "Suitable guaranty" means either:

(1) a surety bond executed by a surety authorized by the commissioner of commerce to do business in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state, that:

(1) 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;

(2) is in an amount specified by rule by the secretary under section 325K.03;

(3) states that it is issued for filing under this chapter;

(4) specifies a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority; and

(5) is in a form prescribed or approved by rule 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 for the benefit of persons holding qualified rights of payment against the licensed certification authority named as the principal of the bond or the customer of the letter of credit; or

(2) a policy of insurance that provides that claims may be made and resolved without obtaining a qualified right to payment.

(b) The suitable guaranty must:

(1) be in an amount specified by rule by the secretary under section 325K.03;

(2) state that it is issued under this chapter;

(3) specify a term of effectiveness of at least five years; and

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(4) be in a form the content of which is described in rule by the secretary.

If the suitable guaranty is a surety bond, it must be issued by a surety authorized by the commissioner of commerce to do business in this state. If the suitable guaranty is an irrevocable letter of credit, it must be issued by a financial institution authorized to do business in this state. If the suitable guaranty is a policy of insurance, it must be issued by an insurance company authorized by the commissioner of commerce to do business in this state.

Once a qualified right to payment or claim has been satisfied from the suitable guaranty, the licensed certification authority must provide evidence to the secretary that the amount required by rule is again available.

Sec. 7. Minnesota Statutes 1997 Supplement, section 325K.01, is amended by adding a subdivision to read:

Subd. 35a. SUMMARY SUSPENSION. "Summary suspension" means a temporary rescission of a certification authority's license by order of the secretary. The secretary may order the summary suspension of a license before holding a hearing. The summary suspension is effective for up to five business days. If an action for suspension or revocation is instituted within five business days, the summary suspension is extended until the action for suspension or revocation is ultimately determined.

Sec. 8. Minnesota Statutes 1997 Supplement, section 325K.01, subdivision 39, is amended to read:

Subd. 39. TRUSTWORTHY SYSTEM. "Trustworthy system" means a computer hardware and software that:

- (1) are reasonably secure from intrusion and misuse;
- (2) provide a reasonable level of availability, reliability, and correct operation; and
- (3) are reasonably suited to performing their intended functions.

Sec. 9. Minnesota Statutes 1997 Supplement, section 325K.03, is amended to read:

325K.03 ROLE OF THE SECRETARY.

Subdivision 1. TRANSITIONAL DUTY SECRETARY AS CERTIFICATION AUTHORITY. If six months elapse during which time no certification authority is licensed in this state, then The secretary shall be a certification authority, and may. The secretary shall issue, suspend, and revoke certificates in the manner prescribed for licensed certification authorities under section 325K.10 to applicants for licensure. The secretary may also issue, suspend, and revoke certificates for governmental entities. Except for licensing requirements, this chapter applies to the secretary with respect to certificates the secretary issues. The secretary must discontinue acting as a certification authority if another certification authority is licensed, in a manner allowing reasonable transition to private enterprise.

Subd. 2. RECORD. The secretary must maintain an on-line, publicly accessible electronic database containing a certification authority disclosure record and list of judgments for each licensed certification authority. The secretary must publish the contents of the database in at least one recognized repository.

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Subd. 3. **RULES.** The secretary must adopt rules ~~consistent with this chapter and in furtherance of its purposes to:~~

(1) ~~to govern licensed certification authorities and repositories, their practice, and the termination of a certification authority's~~ their practice;

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

(3) ~~to specify reasonable requirements for the form of certificates issued by licensed certification authorities, in accordance with generally accepted standards for digital signature certificates;~~

(4) ~~to specify reasonable requirements for recordkeeping by licensed certification authorities;~~

(5) ~~to specify reasonable requirements for the content, form, and sources of information in certification authority disclosure records, the updating and timeliness of the information, and other practices and policies relating to certification authority disclosure records;~~

(6) ~~to specify the form of the certification practice statements; and~~

(7) ~~otherwise to give effect to and implement this chapter~~ specify the procedure and manner in which a certificate may be suspended or revoked.

Sec. 10. Minnesota Statutes 1997 Supplement, section 325K.05, subdivision 1, is amended to read:

Subdivision 1. **LICENSE CONDITIONS.** To obtain or retain a license, a certification authority must:

(1) be the subscriber of a certificate published in a recognized repository;

(2) employ as operative personnel only persons who have not been convicted within the past 15 years of a felony or a crime involving fraud, false statement, or deception;

(3) employ as operative personnel only persons who have demonstrated knowledge and proficiency in following the requirements of this chapter;

(4) file with the secretary a suitable guaranty, unless the certification authority is a department, office, or official of a federal, state, city, or county governmental entity, ~~provided that:~~ is self-insured;

(i) ~~each of these public entities act through designated officials authorized by rule or ordinance to perform certification authority functions; or~~

(ii) ~~one of these public entities is the subscriber of all certificates issued by the certification authority;~~

(5) ~~have the right to use a trustworthy system, including a secure means for limiting access to its private key;~~

(6) present proof to the secretary of having working capital reasonably sufficient, according to rules adopted by the secretary, to enable the applicant to conduct business as a certification authority;

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(7) maintain an office in this state or have established a registered agent for service of process in this state register its business organization with the secretary, unless the applicant is a governmental entity or is otherwise prohibited from registering; and

(8) comply with all further licensing requirements established by rule by the secretary.

Sec. 11. Minnesota Statutes 1997 Supplement, section 325K.05, subdivision 4, is amended to read:

Subd. 4. **REVOCAATION OR SUSPENSION.** (a) The secretary may revoke or suspend a certification authority's license, in accordance with the Administrative Procedure Act, chapter 14, for failure to comply with this chapter or for failure to remain qualified under subdivision 1.

(b) The secretary may order a summary suspension of a license. The written order for summary suspension may include a finding that the certification authority has:

(1) used its license in the commission of a state or federal crime or of a violation of sections 325F.68 to 325F.70; or

(2) engaged in conduct giving rise to serious risk of loss to public or private parties if the license is not immediately suspended.

Sec. 12. Minnesota Statutes 1997 Supplement, section 325K.05, subdivision 5, is amended to read:

Subd. 5. **LOCAL OTHER AUTHORITIES.** The secretary may recognize by rule the licensing or authorization of certification authorities by ~~local, metropolitan, or regional non-Minnesota~~ governmental entities, provided that those licensing or authorization requirements are substantially similar to those of this state. If licensing by another governmental entity is so recognized:

(1) sections 325K.19 to 325K.24 apply to certificates issued by the certification authorities licensed or authorized by that governmental entity in the same manner as it applies to licensed certification authorities of this state; and

(2) the liability limits of section 325K.17 apply to the certification authorities licensed or authorized by that governmental entity in the same manner as they apply to licensed certification authorities of this state.

Sec. 13. Minnesota Statutes 1997 Supplement, section 325K.05, subdivision 6, is amended to read:

Subd. 6. **APPLICABILITY TO DIGITAL SIGNATURES.** ~~Unless the Parties may provide otherwise by contract between themselves, the licensing requirements in this section do not affect for the effectiveness, enforceability, or validity of any digital signature, except that as between those parties. Sections 325K.19 to 325K.24 do not apply in relation to a certificate and associated digital signature that cannot be verified by a certificate issued by an unlicensed certification authority.~~

Sec. 14. Minnesota Statutes 1997 Supplement, section 325K.05, subdivision 7, is amended to read:

Subd. 7. **NONAPPLICABILITY.** A certification authority that has not obtained a license is not subject to the ~~provision~~ provisions of this chapter, except as specifically provided.

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Sec. 15. Minnesota Statutes 1997 Supplement, section 325K.07, subdivision 2, is amended to read:

Subd. 2. **SUSPENSION OR REVOCATION.** The secretary may summarily suspend or revoke the license of a certification authority for its failure to comply with an order of the secretary.

Sec. 16. Minnesota Statutes 1997 Supplement, section 325K.07, subdivision 3, is amended to read:

Subd. 3. **CIVIL PENALTY.** 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 \$5,000 per incident, or 90 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. The secretary may adopt rules setting the standards governing the determination of the penalty amounts.

Sec. 17. Minnesota Statutes 1997 Supplement, section 325K.10, subdivision 1, is amended to read:

Subdivision 1. **CONDITIONS.** A licensed certification authority may issue a certificate to a subscriber only after all of the following conditions are satisfied:

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

(2) the 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 each agent 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; and

(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.

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

Sec. 18. Minnesota Statutes 1997 Supplement, section 325K.12, subdivision 4, is amended to read:

Subd. 4. **INDEMNIFICATION BY SUBSCRIBER OR AGENT.** By accepting a certificate, a subscriber undertakes to indemnify the issuing certification authority for loss or damage caused by issuance or publication of a certificate in reliance on:

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

(2) 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 gross 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 subdivision, 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.

Sec. 19. Minnesota Statutes 1997 Supplement, section 325K.13, is amended by adding a subdivision to read:

Subd. 2a. POSSESSION OF PRIVATE KEY. A certification authority cannot hold a private key on behalf of a subscriber.

Sec. 20. Minnesota Statutes 1997 Supplement, section 325K.14, subdivision 1, is amended to read:

Subdivision 1. **SUSPENSION FOR 48 96 HOURS.** Unless the certification authority and the subscriber agree otherwise, the licensed certification authority that issued a certificate that is not a transactional certificate must suspend the certificate for a period not to exceed 48 96 hours:

(1) upon request by a person identifying himself or herself as the subscriber named in the certificate, or as a person in a position likely to know of a compromise of the security of a subscriber's private key, such as an agent, business associate, employee, or member of the immediate family of the subscriber; or

(2) by order of the secretary under section 325K.10.

The certification authority need not confirm the identity or agency of the person requesting suspension.

Sec. 21. Minnesota Statutes 1997 Supplement, section 325K.14, subdivision 2, is amended to read:

Subd. 2. **SUSPENSION FOR 48 96 HOURS; OTHER CAUSES.** (a) ~~Unless the certificate provides otherwise or the certificate is a transactional certificate,~~ The secretary ~~or a county clerk~~ may suspend a certificate issued by a licensed certification authority for a period of 48 96 hours, if:

(1) a person identifying himself or herself as the subscriber named in the certificate or as an agent, business associate, employee, or member of the immediate family of the subscriber requests suspension; and

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

(b) The secretary ~~or county clerk~~ may require the person requesting suspension to provide evidence, including a statement under oath or affirmation, regarding the requester's identity, authorization, or the unavailability of the issuing certification authority, and may decline to suspend the certificate in its discretion. The secretary or law enforcement

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agencies may investigate suspensions by the secretary or county clerk for possible wrongdoing by persons requesting suspension.

Sec. 22. Minnesota Statutes 1997 Supplement, section 325K.14, subdivision 3, is amended to read:

Subd. 3. **NOTICE OF SUSPENSION.** Immediately upon suspension of a certificate by a licensed certification authority, the licensed certification authority shall 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 section 325K.25, the licensed certification authority must also publish the notice in a recognized repository. If a certificate is suspended by the secretary or county clerk, the secretary or clerk must give notice as required in this subdivision 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.

Sec. 23. Minnesota Statutes 1997 Supplement, section 325K.14, subdivision 5, is amended to read:

Subd. 5. **CONTRACT LIMITATION OR PRECLUSION.** 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 or county clerk when the issuing certification authority is unavailable, the limitation or preclusion is effective only if notice of it is published in the certificate.

Sec. 24. Minnesota Statutes 1997 Supplement, section 325K.14, is amended by adding a subdivision to read:

Subd. 8. **COMPLETION OF SUSPENSION.** A suspension under this section must be completed within 24 hours of receipt of all of the information required in this section.

Sec. 25. Minnesota Statutes 1997 Supplement, section 325K.15, subdivision 3, is amended to read:

Subd. 3. **AFTER DEATH OR DISSOLUTION.** A licensed certification authority must revoke a certificate that it issued:

(1) upon receiving a certified copy of the subscriber's death certificate, or upon confirming by other evidence that the subscriber is dead; or

(2) 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.

Sec. 26. Minnesota Statutes 1997 Supplement, section 325K.15, subdivision 7, is amended to read:

Subd. 7. **WARRANTIES DISCHARGED.** Upon notification as required by subdivision 5, a licensed certification authority is discharged of its warranties based on is-

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suance of the revoked certificate as to transactions occurring after the notification and ceases to certify as provided in section 325K.11, subdivisions 2 and 3, in relation to the revoked certificate.

Sec. 27. Minnesota Statutes 1997 Supplement, section 325K.18, subdivision 1, is amended to read:

Subdivision 1. **BOND OR LETTER OF CREDIT.** (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 the full amount of a qualified right to payment only in accordance with the terms of the letter of credit.

(c) If the suitable guaranty is a policy of insurance, a person may recover under the terms of the policy.

(d) 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.~~

Sec. 28. Minnesota Statutes 1997 Supplement, section 325K.18, subdivision 2, is amended to read:

Subd. 2. **ATTORNEY FEES AND COURT COSTS.** (a) Subject to paragraph (b), in addition to recovering the amount of a qualified right to payment, a claimant may recover:

- (1) from the proceeds of the guaranty, until depleted;
- ~~(2)~~ (1) the attorneys' fees, reasonable in amount; and
- ~~(3)~~ (2) court costs incurred by the claimant in collecting the claim.

(b) However, 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.

Sec. 29. Minnesota Statutes 1997 Supplement, section 325K.25, subdivision 1, is amended to read:

Subdivision 1. **CONDITIONS.** The secretary must recognize one or more repositories, after finding that a repository to be recognized:

- (1) is operated under the direction of a licensed certification authority;
- (2) includes a database 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;

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- (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 rule by the secretary;
- (3) operates by means of a trustworthy system;
- (4) contains no significant amount of information that is known or likely to be untrue, inaccurate, or not reasonably reliable;
- (5) 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
- (6) keeps an archive of certificates that have been suspended or revoked, or that have expired, within at least the past three years; and
- (7) complies with other reasonable requirements adopted by rule by the secretary.

Sec. 30. [325K.27] COURT RULES.

Nothing in this chapter shall be construed to limit the authority of the supreme court to adopt rules of pleading, practice or procedure, or of the court of appeals or district courts to adopt supplementary local rules, governing the use of electronic messages and documents, including, but not limited to, rules governing the use of digital signatures in judicial proceedings.

Sec. 31. REPEALER.

Minnesota Statutes 1997 Supplement, sections 325K.05, subdivision 3; 325K.06, subdivisions 3, 4, and 5; 325K.13, subdivisions 2 and 3; and 325K.14, subdivision 7, are repealed.

Presented to the governor March 19, 1998

Signed by the governor March 23, 1998, 10:51 a.m.

CHAPTER 322—S.F.No. 2911

An act relating to lawful gambling; allowing expenditures as lawful purposes of compliance with the Americans with Disabilities Act; authorizing organizations to make certain expenditures and contributions through electronic fund transfers; allowing an employee to participate in lawful gambling under certain circumstances; allowing locally administered funds receiving contributions from gambling profits to be spent for certain public safety purposes; amending Minnesota Statutes 1996, sections 349.168, subdivision 6; 349.19, subdivision 3; and 349.213, subdivision 1; Minnesota Statutes 1997 Supplement, sections 349.12, subdivision 25; 349.154, subdivision 2; and 349.18, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1997 Supplement, section 349.12, subdivision 25, is amended to read:

Subd. 25. **LAWFUL PURPOSE.** (a) "Lawful purpose" means one or more of the following:

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