

Senate Bill 26

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President

At the request of Senate Interim Judiciary Committee for the Oregon Bankers Association

Title: Relating to out-of-state financial institutions.

SENATE ACTION	HOUSE ACTION
Introduced. First Reading. Referred to President's Desk: 1-11-99	First Reading. Referred to Speaker's Desk: FEB 1 1999
Date of Referral: 1-12-99	Date of Referral: FEB 3 1999
Referred from President's Desk to Committee on: Judiciary	Referred from Speaker's Desk to Committee on: Business and Consumer Affairs
With Subsequent Referral to Committee(s) on:	With Subsequent Referral to Committee on:
Recommendation: 1/28/99 <input checked="" type="checkbox"/> do pass/be adopted <input type="checkbox"/> do pass/be adopted with amendments, printed ___ Eng. <input type="checkbox"/> see additional action	Recommendation: FEB 11 1999 <input type="checkbox"/> do pass/be adopted <input checked="" type="checkbox"/> do pass/be adopted with amendments, printed A Eng. <input type="checkbox"/> see additional action
Be referred to Committee on:	Be Referred to Committee on:
Be referred to Committee on (by prior reference):	Be referred to Committee on (by prior reference):
Recommendation: <input type="checkbox"/> do pass/be adopted <input type="checkbox"/> do pass/be adopted with amendments, printed ___ Eng. <input type="checkbox"/> see additional action	Recommendation: <input type="checkbox"/> do pass/be adopted <input type="checkbox"/> do pass/be adopted with amendments, printed ___ Eng. <input type="checkbox"/> see additional action
Second Reading: 1/28/99	Second Reading: FEB 15 1999
Third Reading: 1-29-99 <input checked="" type="checkbox"/> PASSED 22-1 <input type="checkbox"/> FAILED <input type="checkbox"/> see additional action	Third Reading: FEB 19 1999 <input checked="" type="checkbox"/> PASSED 56-0 <input type="checkbox"/> FAILED <input checked="" type="checkbox"/> see additional action
<input checked="" type="checkbox"/> Senate Concurred in House Amendments and Repassed: (date) 2-23-99 (vote) 28-0 JR <input type="checkbox"/> Senate Refused to Concur in House Amendments: (date) (vote)	
Senate Conferees:	House Conferees:
Conference Committee Recommendation:	
Date Filed in Senate:	Date filed in House:
<input type="checkbox"/> CC Report Adopted/Failed: <input type="checkbox"/> Repassed:	<input type="checkbox"/> CC Report Adopted/Failed: <input type="checkbox"/> Repassed:
Certified: <i>Judy Hall</i> Secretary of the Senate	Certified: <i>Ramon J. Kennedy</i> Chief Clerk of the House

Directs prosecuting attorney to notify victim of motion to set aside conviction. Allows victim to make statement at hearing on motion.

SB 22 By COMMITTEE ON HEALTH AND HUMAN SERVICES (at the request of Pain and Symptom Management Task Force) -- Relating to chronic pain; appropriating money.

- 3-8(S) Introduction and first reading. Referred to President's desk.
 3-9 Referred to Health and Human Services, then Ways and Means.
 4-15 Public Hearing held.
 7-24 In committee upon adjournment.

Establishes Office of Chronic Pain Management within Department of Human Resources. Specifies duties of office. Establishes Chronic Pain Ombudsman within Office of Chronic Pain Management. Specifies duties of ombudsman.

Appropriates moneys to Department of Human Resources.

SB 23 Printed pursuant to Senate Interim Rule 213.28. (at the request of Senate Interim Judiciary Committee) -- Relating to Oregon Youth Authority.

- 1-12(S) Introduction and first reading. Referred to President's desk.
 Referred to Judiciary.
 4-21 Public Hearing held.
 7-24 In committee upon adjournment.

Requires Oregon Youth Authority to contract with private provider to operate youth correction facility unless specified findings are shown. Directs Department of Public Safety Standards and Training to recommend and Board of Public Safety Standards and Training to establish minimum qualifications for private provider employees. Allows authority to contract for other youth correction services.

SB 24 Printed pursuant to Senate Interim Rule 213.28. (at the request of Senate Interim Judiciary Committee for the Judicial Department) -- Relating to indigent defense program.

- 1-12(S) Introduction and first reading. Referred to President's desk.
 Referred to Judiciary.
 1-18 Public Hearing and Work Session held.
 1-22 Recommendation: Do pass and be referred to Ways and Means.
 Referred to Ways and Means by order of the President.
 7-24 In committee upon adjournment.

Establishes that review and approval of certain indigent defense expenses are administrative functions of courts or State Court Administrator. Allows appeal to judge if State Court Administrator denies request for preauthorization or payment of expenses.

SB 25 Printed pursuant to Senate Interim Rule 213.28. (at the request of Senate Interim Judiciary Committee for the Oregon Bankers Association) -- Relating to depositories of public funds.

- 1-11(S) Introduction and first reading. Referred to President's desk.
 1-12 Referred to Judiciary.
 1-26 Public Hearing and Work Session held.
 1-28 Recommendation: Do pass.
 Second reading.
 1-29 Third Reading. Carried by Courtney. Passed.
 Ayes, 23 --Excused, 2--Burdick, Duncan, Attending Legislative Business, 5---Gordly, Hartung, Qutub, Yih, President Adams

- 2-1(H) First reading. Referred to Speaker's desk.
 2-2 Referred to Judiciary - Civil Law.
 2-23 Public Hearing and Work Session held.
 2-25 Work Session held.
 3-2 Recommendation: Do pass with amendments a printed A-Engrossed.
 3-4 Second reading.
 3-5 Third reading. Carried by Edwards. Passed.
 Ayes, 58 --Excused, 2--Strobeck, Westlund.
 3-11(S) Senate concurred in House amendments and re bill.
 Ayes, 26 --Excused, 1--Fisher, Attending Legislative Business, 3---Brown, Ferrioli, Gordly.
 4-8 President signed.
 4-9(H) Speaker signed.
 4-19(S) Governor signed.
 Chapter 48, 1999 Laws.
 Effective date, October 23, 1999.

Allows public official with control of public funds to disburse funds in amount insured by Federal Deposit Insurance Corporation or insured or guaranteed by private insurers before he or she obtains certificates of participation from pool manager or depository bank for any additional amount.

SB 26 Printed pursuant to Senate Interim Rule 213.28. (at the request of Senate Interim Judiciary Committee for the Oregon Bankers Association) -- Relating to out-of-state financial institutions.

- 1-11(S) Introduction and first reading. Referred to President's desk.
 1-12 Referred to Judiciary.
 1-26 Public Hearing and Work Session held.
 1-28 Recommendation: Do pass.
 Second reading.
 1-29 Third Reading. Carried by Bryant. Passed.
 Ayes, 22 --Nays, 1, Wilde, Excused, 2--Burdick, Duncan, Attending Legislative Business, 5---Gordly, Hartung, Qutub, Yih, President Adams.
 Hannon declared potential conflict of interest.
 2-1(H) First reading. Referred to Speaker's desk.
 2-3 Referred to Business and Consumer Affairs.
 2-5 Public Hearing and Work Session held.
 2-11 Recommendation: Do pass with amendments a printed A-Engrossed.
 2-15 Second reading.
 2-16 Rules suspended. Taken from today's Calendar placed in proper order on Wednesday, February 24, 1999.
 2-17 Rules suspended. Taken from today's Calendar placed in proper order on Thursday, February 25, 1999.
 2-18 Rules suspended. Taken from today's Calendar placed in proper order on Friday, February 26, 1999.
 2-19 Third reading. Carried by Thompson. Passed.
 Ayes, 56 --Excused, 4--Butler, Deckert, Morrisette.
 2-23(S) Senate concurred in House amendments and re bill.
 Ayes, 28 --Excused, 1--Courtney, Attending Legislative Business, 1---Wilde.
 4-6 President signed.
 4-8(H) Speaker signed.
 4-16(S) Governor signed.
 Chapter 30, 1999 Laws.
 Effective date, October 23, 1999.

Specifies that certain out-of-state financial institutions engage in mortgage activities in Oregon without being subject to certain tax and corporation laws. Requires out-of-state financial institutions to designate Director of Department of Consumer Business Services as attorney for purposes of service of process. Specifies exceptions.

Enrolled
A-Engrossed

Senate Bill 26

Ordered by the House February 11
Including House Amendments dated February 11

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Judiciary Committee for the Oregon Bankers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Specifies that certain out-of-state financial institutions may engage in mortgage activities in Oregon without being subject to certain tax and corporation laws. Requires out-of-state financial institutions to designate Director of Department of Consumer and Business Services as attorney for purposes of service of process. Specifies exceptions.

A BILL FOR AN ACT

1 Relating to out-of-state financial institutions; creating new provisions; and amending ORS 713.025.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1. Section 2 of this 1999 Act is added to and made a part of ORS chapter 316.**

4 **SECTION 2. (1) As used in this section:**

5 **(a) "Extranational institution" has the meaning given that term in ORS 706.008;**

6 **(b) "Foreign association" means a foreign association as defined in ORS 722.004 or a**
7 **federal association as defined in ORS 722.004, the home state of which is a state other than**
8 **Oregon; and**

9 **(c) "Out-of-state bank" has the meaning given that term in ORS 706.008.**

10 **(2) Except as provided in this section and section 4 of this 1999 Act, an out-of-state bank,**
11 **extranational institution or foreign association described in section 4 of this 1999 Act, that**
12 **engages in activities authorized under section 4 of this 1999 Act, is not subject to any tax,**
13 **license fee or charge for the privilege of doing business in this state or to any tax measured**
14 **by net or gross income.**

15 **(3) If the out-of-state bank, extranational institution or foreign association acquires any**
16 **property given as security for a mortgage or trust deed, all income accruing to the out-of-**
17 **state bank, extranational institution or foreign association solely from the ownership, sale**
18 **or other disposition of such property is subject to taxation in the same manner and on the**
19 **same basis as income of corporations doing business in this state.**

20 **SECTION 3. Section 4 of this 1999 Act is added to and made a part of ORS chapter 713.**

21 **SECTION 4. (1) For purposes of this section, "foreign association" means a foreign as-**
22 **sociation as defined in ORS 722.004 or a federal association as defined in ORS 722.004, the**
23 **home state of which is a state other than Oregon.**

24 **(2) Subject to subsection (3) of this section, any out-of-state bank, extranational institu-**
25 **tion or foreign association, without being authorized to transact banking business or savings**
26

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in boldfaced type.

1 and loan business in this state, may take, acquire, hold and enforce notes secured by mort-
2 gages or trust deeds and make commitments to purchase such notes. The out-of-state bank,
3 extranational institution or foreign association may foreclose the mortgages or trust deeds
4 in the courts of this state, acquire the mortgaged property, hold, own and operate the
5 property for a period not exceeding five years and dispose of the property. The activities
6 authorized under this subsection by an out-of-state bank, extranational institution or foreign
7 association shall not constitute transacting business in this state for the purposes of ORS
8 chapter 60.

9 (3) Before an out-of-state bank, extranational institution or foreign association engages
10 in any of the activities described in subsection (2) of this section, the bank, institution or
11 association shall first file with the Department of Consumer and Business Services a state-
12 ment signed by its president, secretary, treasurer or general manager indicating that the
13 bank, institution or association designates the Director of the Department of Consumer and
14 Business Services its attorney for service of process. The out-of-state bank, extranational
15 institution or foreign association shall pay an initial filing fee of \$200 and an annual fee of
16 \$200. The statement shall include the address of the principal place of business of the out-
17 of-state bank, extranational institution or foreign association.

18 (4) The Director of the Department of Consumer and Business Services, upon receiving
19 service of process as authorized by subsection (3) of this section, immediately shall forward
20 all documents served upon the director to the principal place of business of the out-of-state
21 bank, extranational institution or foreign association.

22 (5) The filing requirements of subsection (3) of this section do not apply to an out-of-state
23 bank or extranational institution that has obtained a certificate of authority to transact
24 banking business in this state under ORS 713.020, or to a foreign association that has ob-
25 tained a certificate of authority to transact savings and loan business in this state under
26 ORS 722.502. Notwithstanding subsection (3) of this section, such an out-of-state bank,
27 extranational institution or foreign association may take, acquire, hold and enforce notes
28 secured by mortgages or trust deeds, make commitments to purchase such notes and par-
29 ticipate with other lenders authorized to do business in this state in the making of loans for
30 which such notes are executed and delivered.

31 (6) An out-of-state bank, extranational institution or foreign association that indirectly
32 engages in the activities described in subsection (2) of this section because of its beneficial
33 interest in a pool of notes secured by mortgages or trust deeds need not comply with sub-
34 section (3) of this section.

35 SECTION 5. ORS 713.025 is amended to read:

36 713.025. (1) Except as provided in subsection (4) of this section and section 4 of this 1999
37 Act, every extranational institution with one or more offices in this state shall deposit with the
38 Director of the Department of Consumer and Business Services in an office located in this state of
39 another bank approved by the director under an agreement satisfactory to the director for the pro-
40 tection of depositors of the extranational institution, free and clear of all other liens and
41 encumbrances, assets in an amount set forth in subsection (2) of this section of the following types:

42 (a) Cash;

43 (b) Interest-bearing bonds, notes or obligations of the United States, including those of its
44 agencies and instrumentalities, or bonds, notes or obligations for which the faith of the United
45 States is pledged for the payment of the principal and interest;

1 (c) Bonds or other obligations of the State of Oregon, any county of this state or any incorpo-
2 rated city, town or school or port district of this state having a population of not less than 2,000
3 as shown by the last federal census, or bonds of any other state, any county, incorporated city, town
4 or school or port district therein having a population of not less than 25,000, as shown by the last
5 federal census, if:

6 (A) The bonds or obligations are issued in compliance with the constitution and laws of the
7 applicable state;

8 (B) The bonds or obligations are general obligations of the state, city, town or school or port
9 district issuing the bonds; and

10 (C) There has been no default in payment of either principal or interest on any of the general
11 obligations of the state, county, incorporated city, town or school or port district for a period of five
12 years preceding the date of the deposit;

13 (d) A surety bond issued by a surety company authorized to transact business in this state and
14 in a form approved by the director, under which the principal and surety indemnify the depositors
15 and creditors of the extranational institution against loss due to nonpayment by the extranational
16 institution, including by reason of the failure of the extranational institution;

17 (e) An irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008,
18 satisfactory to the director; or

19 (f) Any combination of cash, securities complying with subsection (1)(b) and (c) of this section,
20 surety bonds complying with subsection (1)(d) of this section, and letters of credit complying with
21 subsection (1)(e) of this section.

22 (2) The market value of the assets deposited pursuant to subsection (1) of this section shall be
23 not less than:

24 (a) Five percent of the total liabilities of the office including acceptances, but excluding accrued
25 expenses and amounts due to and other liabilities of offices, branches, agencies and subsidiaries of
26 the extranational institution; or

27 (b) Such other amount as the director may determine to be necessary for the protection of
28 depositors and the public interest.

29 (3) The director shall determine the value of the assets maintained for the purposes of this
30 section and shall value marketable securities according to accepted principles of accounting.

31 (4) The deposit requirements of subsection (1) of this section shall not apply to an office of an
32 extranational institution that is an insured branch as defined in section 3(s) of the Federal Deposit
33 Insurance Act (12 U.S.C. 1813(s)).

34 **SECTION 6. (1) Sections 2 and 4 of this 1999 Act and the amendments to ORS 713.025 by**
35 **section 5 of this 1999 Act apply to activities occurring on or after the effective date of this**
36 **1999 Act.**

37 (2) **Notwithstanding subsection (1) of this section, section 2 (2) of this 1999 Act applies**
38 **to tax years beginning on and after January 1, 1997.**

39

SENATE COMMITTEE ON JUDICIARY

January 26, 1999
3:00 pm

Hearing Room 343
Tapes 14 - 15

MEMBERS PRESENT: Sen. Bryant, Chair
Sen. Courtney, Vice-Chair
Sen. Brown
Sen. Burdick
Sen. Nelson
Sen. Qutub
Sen. Tarno

STAFF PRESENT: Anne Tweedt, Counsel
Judy Minnich, Administrative Support

MEASURE/ISSUES HEARD: Public Hearing and Work Session
SB 25
SB 26
SB 32
SB 46
SB 51
SB 107

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 14, A		
003	Chair Bryant	Calls meeting to order at 3:10 pm.
<u>SB 107 PUBLIC HEARING</u>		
008	Greg Chaimov	Legislative Counsel Committee Testifies and submits proposed amendments in support of SB 107 (EXHIBIT A) and testifies in favor of SB 107. Indicates that this bill cleans up anachronisms and glitches in the law relating to which records a public body has to keep in its archives. It is not related to the public record law regarding disclosure of records.
049	Chair Bryant	Closes the public hearing and opens a work session on SB 107.
<u>SB 107 WORK SESSION</u>		
051	Sen. Brown	MOTION: Moves to ADOPT SB 107-1 amendments dated 1/25/99. VOTE: 4-0-3 EXCUSED: 3 - Burdick, Nelson, Qutub
	Chair Bryant	Hearing no objection, declares the motion CARRIED.

TAPE 14A

SB 26 PUBLIC HEARING

141 Tim Martinez
Ken Sherman

Oregon Bankers Association
Oregon Bankers Association

Submits written testimony and testifies in favor of SB 26. (**EXHIBIT C**). During 1997, the recodifying of the Oregon Bank Act inadvertently dropped ORS 705.500 and 705.510. SB 26 will correct that error.

203 Chair Bryant

Comments on the 1997 Oregon Bank Act.

218 Chair Bryant

Closes the public hearing and opens the work session on SB 26.

SB 26 WORK SESSION

218 Sen. Courtney

MOTION: Moves SB 26 to the floor with a DO PASS recommendation.

VOTE: 7-0

Chair Bryant

Hearing no objection, declares the motion CARRIED.

BRYANT will lead discussion on the floor.

230 Chair Bryant

Closes the work session on SB 26 and opens the public hearing on SB 51.

SB 51 PUBLIC HEARING

232 David Culpepper

Oregon State Bar

Submits written testimony and testifies in favor of SB 51 (**EXHIBIT D**). Indicates that the Uniform Limited Liability Company Act promulgated by the National Conference of Commissioners of Uniform State Laws did not meet Oregon's needs. There were specific provisions which were clearer than existing law in Oregon and the LLC Task Force of the Oregon State Bar, Business Law Section used these sections as part of our recommendations.

327 Chair Bryant

Why would the state be concerned whether or not an LLC was member managed or manager managed?

334 Culpepper

It determines the degree to which the members have a parent authority. By making it clear whether it is member or manager managed, third parties can be more certain who has the apparent authority to act as an agent for the company.

350 Chair Bryant

So SB 51 is designed to advise and protect the public when they are doing business with the company.

355 Culpepper

Continues his discussion of Exhibit D, indicating sections 4 and 5 are based on provisions of the ULLCA.

371 Culpepper

Section 6 and 7 makes it specific that although the members don't have personal liability, the entity does have liability for the actions of its members and agents.

390 Culpepper

Section 8 spells out the fiduciary duties of a member managed or a manager managed LLC.

407 Culpepper

Sections 9, 11, 13, 14, 15 and 18 just use the terms "member managed"

TESTIMONY
OF

Kenneth Sherman, Jr.
OREGON BANKERS ASSOCIATION

RE:
SENATE BILL 26
January 26, 1999

I AM KEN SHERMAN, JR., COUNSEL FOR THE OREGON BANKERS ASSOCIATION.

DURING THE 1997 SESSION, THE LEGISLATURE RECODIFIED THE OREGON BANK ACT. AS A PART OF THAT BILL, ORS 705.500 AND 705.510 WERE REPEALED.

706.500 GRANTED AUTHORITY TO FOREIGN AND EXTRANATIONAL BANKING CORPORATIONS AND FOREIGN SAVINGS AND LOAN ASSOCIATIONS TO MAKE MORTGAGE LOANS IN OREGON WITHOUT HAVING TO BE AUTHORIZED TO TRANSACT BUSINESS IN OREGON. AND 706.510 PROVIDED THAT ENGAGING IN OREGON MORTGAGE LENDING BY SUCH FOREIGN AND EXTRANATIONAL INSTITUTIONS WOULD NOT SUBJECT THEM TO TAXATION BASED ON SUCH ACTIVITIES.

WHEN WE WERE WORKING ON THE BANK ACT RECODIFICATION IN 1997, WE DECIDED THAT THESE TWO SECTIONS WERE MIS-PLACED IN CHAPTER 705, WHICH DEALS WITH THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES. PROVISIONS REGARDING FOREIGN AND EXTRANATIONAL BANKS ARE GENERALLY COLLECTED IN CHAPTER 713, SO WE THOUGHT IT WOULD BE APPROPRIATE TO DEAL WITH THESE ISSUES IN THAT CHAPTER.

ALSO AS A PART OF THE RECODIFICATION EFFORT, THE DIRECTOR OF THE DEPARTMENT MADE THE DECISION THAT HE WANTED CHAPTER 713 TO FOCUS ON OUT-OF-STATE AND EXTRANATIONAL BANKS THAT ARE **TAKING DEPOSITS** IN OREGON, AND NOT GENERALLY REGULATE OTHER OREGON BUSINESS ACTIVITIES OF SUCH INSTITUTIONS. SO INSTEAD OF TRANSPLANTING ORS 705.500 AND 705.510 TO CHAPTER 713, THE 1997 LEGISLATION MERELY REPEALED THEM.

WHAT GOT LOST IN THE SHUFFLE WAS 705.510, WHICH EXEMPTED THE OREGON MORTGAGE LENDING ACTIVITIES OF FOREIGN AND EXTRANATIONAL INSTITUTIONS FROM OREGON TAXATION. IT WAS NOT OUR INTENT TO MODIFY IN ANY WAY THE TAX TREATMENT OF THESE ENTITIES.

ADDITIONALLY, FOREIGN AND EXTRANATIONAL INSTITUTIONS HAVE EXPRESSED CONCERNS THAT OUR 1997 REPEAL OF 705.500 COULD BE CONSTRUED AS A WITHDRAWAL OF THEIR AUTHORITY TO ENGAGE IN MORTGAGE LENDING IN OREGON WITHOUT OBTAINING AUTHORITY TO TRANSACT BUSINESS HERE. AGAIN, THAT WAS NOT THE INTENT OF THE 1997 LEGISLATION.

SENATE BILL 26 IS INTENDED TO ELIMINATE THIS CONFUSION AND RESTORE THE SUBSTANCE OF THE 1997 RULES ON OREGON MORTGAGE LENDING BY OUT-OF-STATE AND EXTRANATIONAL BANKS AND FOREIGN SAVINGS AND LOANS.

THE BILL ACCOMPLISHES THIS BY TRANSPLANTING FORMER 705.510 (THE TAX EXEMPTION PROVISION) INTO ORS CHAPTER 316, AND BY ADDING PROVISIONS TO ORS CHAPTER 713 THAT REINSTATE THE AUTHORITY, PREVIOUSLY FOUND IN 705.500, FOR OUT-OF-STATE AND EXTRANATIONAL BANKS AND FOREIGN SAVINGS

AND LOANS TO MAKE MORTGAGE LOANS IN OREGON.

AS BEFORE, WHILE THE MERE MAKING OF AN OREGON MORTGAGE LOAN WON'T SUBJECT THE OUT-OF-STATE OR FOREIGN LENDER TO OREGON TAXATION, IF IT FORECLOSES A LOAN AND THEN SELLS OR OTHERWISE DISPOSES OF THE PROPERTY, IT WILL BE TAXED TO THE SAME EXTENT AS AN OREGON CORPORATION WOULD BE TAXED.

ALSO, AS WAS THE CASE UNDER THE PRE-1997 LAW, WHILE ONE OF THESE FOREIGN ENTITIES WILL BE ABLE TO MAKE OREGON MORTGAGE LOANS WITHOUT GETTING AUTHORIZED TO TRANSACT BUSINESS UNDER CHAPTER 60, THEY WILL STILL HAVE TO COMPLY WITH THE REQUIREMENTS OF APPOINTING THE DIRECTOR AS AGENT FOR SERVICE OF PROCESS, AND PAYING A \$200 PER YEAR LICENSE FEE.

THIS BILL WILL ELIMINATE UNINTENDED CHANGES IN THE RULES REGARDING MORTGAGE LENDING BY OUT-OF-STATE AND FOREIGN INSTITUTIONS, AND RESTORE THOSE RULES TO THEIR PRE-1997 STATUS. WE URGE YOUR FAVORABLE CONSIDERATION OF THIS MEASURE.

REVENUE: No revenue impact
FISCAL: Fiscal Statement Issued

Action:	Do Pass
Vote:	7 - 0 - 0
Yeas:	Brown, Burdick, Courtney, Nelson, Qutub, Tarno, Bryant
Nays:	0
Exc.:	0
Prepared By:	Anne E. Tweedt, Counsel
Meeting Dates:	1/26

WHAT THE BILL DOES: Recodifies provisions of law specifying that certain out-of-state financial institutions may engage in mortgage activities in Oregon without being subject to certain tax and corporation laws. Requires out-of-state financial institutions to designate Director of Department of Consumer and Business Services (DCBS) as agent for purposes of service of process.

ISSUES DISCUSSED:

- Fact that language in measure was mistakenly left out of the 1997 Bank Act rewrite
- Regulation of miscellaneous business activities of out-of-state financial institutions was not intended

EFFECT OF COMMITTEE AMENDMENTS: None

BACKGROUND:

The 1997 Legislative Assembly revised the Oregon Bank Act. In that process, two of the provisions found in SB 26 were repealed (due to misplacement in the Oregon Revised Statutes) and were slated for relocation in another chapter. While the repeal was included in the 1997 legislation, the replacement, inadvertently, was not. SB 26 restores the pre-1997 statutory language. As before, while the making of an Oregon mortgage loan will not subject the out-of-state or foreign lender to Oregon taxation, if it forecloses a loan and then sells or otherwise disposes of the property, it will be taxed to the same extent an Oregon corporation would be taxed.

In addition, as was the case under the pre-1997 law, a foreign entity may make mortgage loans without authorization to transact business under ORS chapter 60 (Corporations), they will still be required to appoint the DCBS director as agent for service of process and pay a \$200 annual licensing fee. This measure was introduced at the request of the Oregon Bankers Association.

01/27/99 8:49 AM

This summary has not been adopted or officially endorsed by action of the committee.

1999 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Legislative Fiscal Office

MEASURE NUMBER: SB 26
STATUS: Original
SUBJECT: Mortgage activities of out-of-state financial institutions.
GOVERNMENT UNIT AFFECTED: Department of Consumer and Business Services
PREPARED BY: Adrienne Sexton
REVIEWED BY: Robin LaMonte
DATE: January 24, 1999

	<u>1999-01</u>	<u>2001-03</u>
EFFECT ON EXPENDITURES: Minimal. See Comments.		

EFFECT ON REVENUE: Other Funds	\$ 8,000	\$ 8,000
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GOVERNOR'S BUDGET: This bill is included in the Governor's budget.

BALLOT MEASURE 30: This bill is not anticipated to have any effect on the activities of cities, counties, or special districts.

COMMENTS: The bill adds provisions to Department of Consumer and Business Services (DCBS) statutes regulating financial institutions. Out-of-state institutions engaging in certain financial activities are required by the measure to file with DCBS a statement designating the Director as attorney for service of process. DCBS estimates a minor increase in workload that can be absorbed within the existing resources of the department. Other Funds revenues of \$8,000 per biennium reflect 20 institutional filings at \$200 per year. Revenue estimates are based on a similar program administered by Division of Finance and Corporate Securities prior to the 1997 revision of the Bank Act (SB 125).

Oregon State Senate
1997 Regular Session

MEASURE NO: SB 26
CARRIER: Bryant
ACTION: Third Reading
MOTION: 3rd Reading
SUBJECT:

DATE: 01-29-99
RCS# 46

	Aye	Nay	Abs	Exc	Bus		Aye	Nay	Abs	Exc	Bus
Beyer	X					Hartung					X
Brown	X					Lim	X				
Bryant	X					Metsger	X				
Burdick				X		Miller	X				
Castillo	X					Nelson	X				
Corcoran	X					Qutub					X
Courtney	X					Shannon	X				
Derfler	X					Shields	X				
Dukes	X					Starr	X				
Duncan				X		Tarno	X				
Ferrioli	X					Timms	X				
Fisher	X					Trow	X				
George	X					Wilde		X			
Gordly					X	Yih					X
Hannon	X					Adams					X
						TOTALS =>	22	1	0	2	5

Ayes: 22 Beyer; Brown; Bryant; Castillo; Corcoran;
Courtney; Derfler; Dukes; Ferrioli; Fisher;
George; Hannon; Lim; Metsger; Miller; Nelson;
Shannon; Shields; Starr; Tarno; Timms; Trow

Nays: 1 Wilde

Absent: 0

Excused: 2 Burdick; Duncan

Leg. Bus: 5 Gordly; Hartung; Qutub; Yih; Adams

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 05, 1999
8:30 a.m.

Hearing Room HR E
Tapes 24-25

MEMBERS PRESENT: Rep. Roger Beyer, Chair
Rep. Dan Gardner, Vice-Chair
Rep. Tim Knopp, Vice-Chair
Rep. Jason Atkinson
Rep. Bill Morrisette
Rep. Terry Thompson
Rep. Jackie Winters

MEMBER EXCUSED:

STAFF PRESENT: Keith Putman, Administrator
Kevin E. Wells, Administrative Support

MEASURE/ISSUES HEARD: SB 26, SB 44, SB 217, and SB 283

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words.
For complete contents, please refer to the tapes.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<u>TAPE 24, A</u>		
<u>PUBLIC HEARING SB 26</u>		
005	Chair Beyer	Calls meeting to order at 8:30 a.m. Asks staff for summary.
010	KeithPutman	Administrator. States the bill clarifies provisions to allow certain out of state financial institutions to operate without certain restrictions.
020	Tim Martinez	Oregon Bankers Association (OBA). Supports bill. Explains that relevant statutes were accidentally repealed
032	Ken Sherman, Jr.	Represents OBA. Explains SB 26 addresses technical changes, restoring <i>status quo</i> of pre-1997. Notes that a revision of bank code in 1997 did not incorporate all previously existing provision regarding out-of-state financial institutions making mortgage loans. Restores tax exempt status on mortgage activities. (EXHIBIT A)
055	Chair Beyer	Closes Public Hearing. Opens Work Session SB 26.
<u>WORK SESSION SB 26</u>		
057	<u>Rep. Thompson</u>	MOTION: Moves to ADOPT SB 26-1 amendments dated 2/4/99.
067	Chair Beyer	Asks Martinez to explain the SB 26-1 amendment.
068	Martinez	Explains the Department of Revenue had asked for clarification concerning tax status of said institutions.

VOTE: 7-0

074 Chair Beyer Hearing no objection, declares the motion CARRIED.

078 Rep. Thompson MOTION: Moves SB 26-1 to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 7-0

AYE: In a roll call vote, all members present vote Aye.

Chair Beyer The motion CARRIES.

REP. THOMPSON will lead discussion on the floor.

080 Chair Beyer Closes Work Session SB 26.

PUBLIC HEAR SB 44

081 Chair Beyer Open Public Hearing SB 44.

095 Putman Explains the bill increases the bonding requirement on certain mortgage bankers with business in several locations. Adds it clarifies language concerning mortgage bankers.

110 Jim Markee Represents Oregon Mortgage Bankers Association. Supports SB 44, states it raises the bonding requirements from \$10,000 to a range between \$25,000 to \$50,000 per company. (EXHIBIT B)

130 Markee Explains SB 44 corrects inadvertent consequence of SB 460 (1997).

140 Markee States SB 44 establishes what mortgage bankers can do regarding servicing of a loan.

152 Rep. Atkinson Asks for clarification on what constitutes a company or company branch and what the bond requirement per branch is.

162 Markee States that the bond requirement has not considered the number of branches. Explains that under SB 44, the Department of Business and Consumer Services (DBCS) would allow additional bonds for branches. States details of bonding for branches.

184 Chair Beyer Asks about bond applicants.

190 Markee Clarifies who is an applicant and cost of application for bonds.

196 Markee Explains it is important to give DBCS more rule making authority.

207 John McCulley Oregon Association of Mortgage Bankers. Agrees with Markee. Supports SB 44. (EXHIBIT C)

213 Rep. Atkinson Asks if intent of SB 44 is consumer protection.

224 Markee Replies that there is always a balance between consumer protection and regulation of industry. Comments that this bill raises bonding requirements to a level suggested by DBCS.

246 John Harlow President, Intervest Mortgage Company. Explains previous bond levels were inadequate. States that the \$10,000 bond is not onerous to the industry and the increment to the new level is reasonable.

260 Chair Beyer Asks about the incremental cost.

**HOUSE AMENDMENTS TO
SENATE BILL 26**

By COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

February 11

- 1 On page 3 of the printed bill, line 31, after "6." insert "(1)".
2 After line 33, insert:
3 "(2) Notwithstanding subsection (1) of this section, section 2 (2) of this 1999 Act applies to tax
4 years beginning on and after January 1, 1997."
5
-

Requested by DOR

MEASURE: SB 26
EXHIBIT: A
HS BUSINESS & CONSUMER AFFAIRS
DATE: 2/5/99 PAGES: 2
SUBMITTED BY: Kenneth Sherman

TESTIMONY
OF

Kenneth Sherman, Jr.
OREGON BANKERS ASSOCIATION

RE:
SENATE BILL 26
February 5, 1999

I AM KEN SHERMAN, JR., COUNSEL FOR THE OREGON BANKERS ASSOCIATION.

DURING THE 1997 SESSION, THE LEGISLATURE RECODIFIED THE OREGON BANK ACT. AS A PART OF THAT BILL, ORS 705.500 AND 705.510 WERE REPEALED.

706.500 GRANTED AUTHORITY TO FOREIGN AND EXTRANATIONAL BANKING CORPORATIONS AND FOREIGN SAVINGS AND LOAN ASSOCIATIONS TO MAKE MORTGAGE LOANS IN OREGON WITHOUT HAVING TO BE AUTHORIZED TO TRANSACT BUSINESS IN OREGON. AND 706.510 PROVIDED THAT ENGAGING IN OREGON MORTGAGE LENDING BY SUCH FOREIGN AND EXTRANATIONAL INSTITUTIONS WOULD NOT SUBJECT THEM TO TAXATION BASED ON SUCH ACTIVITIES.

WHEN WE WERE WORKING ON THE BANK ACT RECODIFICATION IN 1997, WE DECIDED THAT THESE TWO SECTIONS WERE MIS-PLACED IN CHAPTER 705, WHICH DEALS WITH THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES. PROVISIONS REGARDING FOREIGN AND EXTRANATIONAL BANKS ARE GENERALLY COLLECTED IN CHAPTER 713, SO WE THOUGHT IT WOULD BE APPROPRIATE TO DEAL WITH THESE ISSUES IN THAT CHAPTER.

ALSO AS A PART OF THE RECODIFICATION EFFORT, THE DIRECTOR OF THE DEPARTMENT MADE THE DECISION THAT HE WANTED CHAPTER 713 TO FOCUS ON OUT-OF-STATE AND EXTRANATIONAL BANKS THAT ARE **TAKING DEPOSITS** IN OREGON, AND NOT GENERALLY REGULATE OTHER OREGON BUSINESS ACTIVITIES OF SUCH INSTITUTIONS. SO INSTEAD OF TRANSPLANTING ORS 705.500 AND 705.510 TO CHAPTER 713, THE 1997 LEGISLATION MERELY REPEALED THEM.

WHAT GOT LOST IN THE SHUFFLE WAS 705.510, WHICH EXEMPTED THE OREGON MORTGAGE LENDING ACTIVITIES OF FOREIGN AND EXTRANATIONAL INSTITUTIONS FROM OREGON TAXATION. IT WAS NOT OUR INTENT TO MODIFY IN ANY WAY THE TAX TREATMENT OF THESE ENTITIES.

ADDITIONALLY, FOREIGN AND EXTRANATIONAL INSTITUTIONS HAVE EXPRESSED CONCERNS THAT OUR 1997 REPEAL OF 705.500 COULD BE CONSTRUED AS A WITHDRAWAL OF THEIR AUTHORITY TO ENGAGE IN MORTGAGE LENDING IN OREGON WITHOUT OBTAINING AUTHORITY TO TRANSACT BUSINESS HERE. AGAIN, THAT WAS NOT THE INTENT OF THE 1997 LEGISLATION.

SENATE BILL 26 IS INTENDED TO ELIMINATE THIS CONFUSION AND RESTORE THE SUBSTANCE OF THE 1997 RULES ON OREGON MORTGAGE LENDING BY OUT-OF-STATE AND EXTRANATIONAL BANKS AND FOREIGN SAVINGS AND LOANS.

THE BILL ACCOMPLISHES THIS BY TRANSPLANTING FORMER 705.510 (THE TAX EXEMPTION PROVISION) INTO ORS CHAPTER 316, AND BY ADDING PROVISIONS TO ORS CHAPTER 713 THAT REINSTATE THE AUTHORITY, PREVIOUSLY FOUND IN 705.500, FOR OUT-OF-STATE AND EXTRANATIONAL BANKS AND FOREIGN SAVINGS AND LOANS TO MAKE MORTGAGE LOANS IN OREGON.

AS BEFORE, WHILE THE MERE MAKING OF AN OREGON MORTGAGE LOAN WON'T SUBJECT THE OUT-OF-STATE OR FOREIGN LENDER TO OREGON TAXATION, IF IT FORECLOSES A LOAN AND THEN SELLS OR OTHERWISE DISPOSES OF THE PROPERTY, IT WILL BE TAXED TO THE SAME EXTENT AS AN OREGON CORPORATION WOULD BE TAXED.

ALSO, AS WAS THE CASE UNDER THE PRE-1997 LAW, WHILE ONE OF THESE FOREIGN ENTITIES WILL BE ABLE TO MAKE OREGON MORTGAGE LOANS WITHOUT GETTING AUTHORIZED TO TRANSACT BUSINESS UNDER CHAPTER 60, THEY WILL STILL HAVE TO COMPLY WITH THE REQUIREMENTS OF APPOINTING THE DIRECTOR AS AGENT FOR SERVICE OF PROCESS, AND PAYING A \$200 PER YEAR LICENSE FEE.

THIS BILL WILL ELIMINATE UNINTENDED CHANGES IN THE RULES REGARDING MORTGAGE LENDING BY OUT-OF-STATE AND FOREIGN INSTITUTIONS, AND RESTORE THOSE RULES TO THEIR PRE-1997 STATUS. WE URGE YOUR FAVORABLE CONSIDERATION OF THIS MEASURE.

REVENUE: No revenue impact
FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	7 - 0 - 0
Yeas:	Atkinson, Gardner, Knopp, Morrisette, Thompson, Winters, Beyer
Nays:	0
Exc.:	0
Prepared By:	Keith Putman, Administrator
Meeting Dates:	2/5

WHAT THE BILL DOES: Specifies that certain out-of-state financial institutions may engage in mortgage activities in Oregon without being subject to certain tax and corporation laws. Clarifies tax exemption applies to tax years beginning on or after January 1, 1997. Requires out-of-state financial institutions to designate Director of Department of Consumer and Business Services (DCBS) as agent for purposes of service of process.

ISSUES DISCUSSED

- Language in the measure was mistakenly left out of the 1997 Bank Act rewrite

EFFECT OF COMMITTEE AMENDMENTS: Restores a tax exemption inadvertently removed in 1997. Clarifies that the tax exemption applies to tax years beginning on and after January 1, 1997.

BACKGROUND: The 1997 Legislative Assembly revised the Oregon Bank Act. In that process, two of the provisions found in SB 26 were repealed (due to misplacement in the Oregon Revised Statutes) and were slated for relocation in another chapter. While the repeal was included in the 1997 legislation, the replacement, inadvertently, was not. SB 26 restores the pre-1997 statutory language. As before, while the making of an Oregon mortgage loan will not subject the out-of-state or foreign lender to Oregon taxation, if it forecloses a loan and then sells or otherwise disposes of the property, it will be taxed to the same extent an Oregon corporation would be taxed.

In addition, as was the case under the pre-1997 law, a foreign entity may make mortgage loans without authorization to transact business under ORS chapter 60 (Corporations), they will still be required to appoint the DCBS director as agent for service of process and pay a \$200 annual licensing fee. This measure was introduced at the request of the Oregon Bankers Association.

1999 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Legislative Fiscal Office

MEASURE NUMBER: SB 26
STATUS: A-Engrossed
SUBJECT: Mortgage activities of out-of-state financial institutions.
GOVERNMENT UNIT AFFECTED: Department of Consumer and Business Services
PREPARED BY: Adrienne Sexton
REVIEWED BY: Robin LaMonte
DATE: February 5, 1999

	<u>1999-01</u>	<u>2001-03</u>
EFFECT ON EXPENDITURES: Minimal. See Comments.		
EFFECT ON REVENUE: Other Funds	\$ 8,000	\$ 8,000

GOVERNOR'S BUDGET: This bill is included in the Governor's budget.

BALLOT MEASURE 30: This bill is not anticipated to have any effect on the activities of cities, counties, or special districts.

COMMENTS: The bill adds provisions to Department of Consumer and Business Services (DCBS) statutes regulating financial institutions. Out-of-state institutions engaging in certain financial activities are required by the measure to file with DCBS a statement designating the Director as attorney for service of process. Clarifies that tax provisions of Section 2 apply to tax years beginning on and after January 1, 1997, which conforms to current Department of Revenue practice. DCBS estimates a minor increase in workload that can be absorbed within the existing resources of the department. Other Funds revenues of \$8,000 per biennium reflect 20 institutional filings at \$200 per year. Revenue estimates are based on a similar program administered by Division of Finance and Corporate Securities prior to the 1997 revision of the Bank Act (SB 125).

HOUSE COMMITTEE REPORT

February 5, 1999

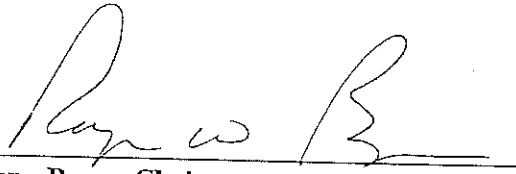
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Speaker Snodgrass:

Your committee on **Business and Consumer Affairs** to whom was referred **SB 26** having had the same under consideration, respectfully reports it back with recommendation that it

DO PASS AS AMENDED AND BE PRINTED ENGROSSED

Rep. Thompson
Carrier of Measure


Rep. Beyer, Chair

FOR INFORMATION ONLY - NOT PART OF COMMITTEE REPORT

VOTING AYE: 7 - Atkinson, Gardner, Knopp, Morrisette, Thompson, Winters, Beyer
VOTING NAY:
EXCUSED:
ABSENT:

FOR OFFICE USE ONLY

Action Code:

CONFLICT REPORT Checked with Legislative Counsel:

Staff Signature *Francis Thomas*

Date *2/5/99*

LEGISLATIVE REVENUE OFFICE

REVENUE IMPACT ANALYSIS

BILL # SB 26 A

DATE: 2/10/99

THE LEGISLATIVE REVENUE OFFICE HAS DETERMINED THIS
LEGISLATION HAS NO IMPACT ON STATE OR LOCAL REVENUES
ANALYZED BY THIS OFFICE

OREGON HOUSE OF REPRESENTATIVES
1999 REGULAR SESSION

ROLL CALL

SB 26 A CARRIED BY Thompson

FRIDAY, FEBRUARY 19, 1999

PASSAGE

YEAS - 56 NAYS - 0 ABSENT - 0 EXCUSED - 4 EXCUSED-HOUSE BUS - 0

Y	Atkinson	Y	Kropf	Y	Rosenbaum
Y	Backlund	Y	Krummel	Y	Ross
Y	Beck	Y	Kruse	Y	Schrader
Y	Beyer	Y	Lehman	Y	Shetterly
Y	Bowman	Y	Leonard	Y	Simmons
E	Butler	Y	Lewis	Y	Starr
Y	Close	Y	Lokan	Y	Strobeck
E	Deckert	Y	Lowe	Y	Sunseri
Y	Devlin	Y	Lundquist	Y	Taylor
Y	Edwards	E	Mannix	Y	Thompson
Y	Gardner	Y	Merkley	Y	Uherbelau
Y	Gianella	Y	Messerle	Y	Walker
Y	Hansen	Y	Minnis	Y	Wells
Y	Harper	Y	Montgomery	Y	Welsh
Y	Hill	Y	Morgan	Y	Westlund
Y	Hopson	E	Morrisette	Y	Williams
Y	Jenson	Y	Patridge	Y	Wilson
Y	Kafoury	Y	Piercy	Y	Winters
Y	King	Y	Prozanski	Y	Witt
Y	Knopp	Y	Rasmussen	Y	Madame Speaker

YEAS, 56, Atkinson, Backlund, Beck, Beyer, Bowman, Close, Devlin, Edwards, Gardner, Gianella, Hansen, Harper, Hill, Hopson, Jenson, Kafoury, King, Knopp, Kropf, Krummel, Kruse, Lehman, Leonard, Lewis, Lokan, Lowe, Lundquist, Merkley, Messerle, Minnis, Montgomery, Morgan, Patridge, Piercy, Prozanski, Rasmussen, Rosenbaum, Ross, Schrader, Shetterly, Simmons, Starr, Strobeck, Sunseri, Taylor, Thompson, Uherbelau, Walker, Wells, Welsh, Westlund, Williams, Wilson, Winters, Witt, Madame Speaker.

NAYS, 0.

ABSENT, 0.

EXCUSED, 4, Butler, Deckert, Mannix, Morrisette.

EXCUSED FOR BUSINESS OF THE HOUSE, 0.

Oregon State Senate
1999 Regular Session

MEASURE NO: SB 26 A

DATE: 02-23-99

CARRIER: Bryant

RCS# 169

ACTION: Propositions and Motions

MOTION: Concur and Repass

SUBJECT: Motion to concur in House amendments and repass

	Aye	Nay	Abs	Exc	Bus		Aye	Nay	Abs	Exc	Bus
Beyer	X					Hartung	X				
Brown	X					Lim	X				
Bryant	X					Metsger	X				
Burdick	X					Miller	X				
Castillo	X					Nelson	X				
Corcoran	X					Qutub	X				
Courtney				X		Shannon	X				
Derfler	X					Shields	X				
Dukes	X					Starr	X				
Duncan	X					Tarno	X				
Ferrioli	X					Timms	X				
Fisher	X					Trow	X				
George	X					Wilde					X
Gordly	X					Yih	X				
Hannon	X					Adams	X				
						TOTALS =>	28	0	0	1	1

Ayes: 28 Beyer; Brown; Bryant; Burdick; Castillo;
Corcoran; Derfler; Dukes; Duncan; Ferrioli;
Fisher; George; Gordly; Hannon; Hartung; Lim;
Metsger; Miller; Nelson; Qutub; Shannon;
Shields; Starr; Tarno; Timms; Trow; Yih; Adams

Nays: 0

Absent: 0

Excused: 1 Courtney

Leg. Bus: 1 Wilde