

that they don't have to award the fees.

SENATOR ELMER: First, it is discretionary and, second, they can set the amount they pay.

SENATOR KRISTENSEN: Thank you.

SPEAKER BAACK: Further discussion? Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, on the surface, this bill, obviously, has equity to the individual who files a case, but there has been questions raised. You know, this is one of these bills that I suspect there is not a soul in this body has the vaguest idea out of all the several sections of laws that have been enacted in the last 100 plus years may, may be subject to the provisions of this. I'd be more comfortable and I assume it can't be done, but if we're going to move in this direction that it applied to legislation from this time forward rather than going back and giving a blanket policy, although that, obviously, is a certain amount of justice but totally unknown, a blanket opportunity for every statute that has a criminal penalty that is in the act now. We also enacted, and Senator Landis and Senator Kristensen have both reminded us of the responsibility we have to try and pass constitutional legislation although, by the same token, every act we pass is presumed to be constitutional at the time it's enacted. At least that's what I was always told until the court changes it and administratively I believe, by and large, that is what is done. I need to understand one other thing that perhaps Senator Elmer can explain. I assume this applies both to the federal Constitution and state Constitution, and if it does, it seems to me that there are some occasions, at least as I understand it, one of the attorneys can correct me, but it seems to me there are some occasions in which the Nebraska Supreme Court has declared an act unconstitutional based upon the federal Constitution, but there is no basis on which that case could be appealed to the U.S. Supreme Court to finalize it. And, so I would be interested in knowing for sure if this only applies to the state Constitution or the federal Constitution as well, and particularly in criminal law that becomes probably far more significant than what the state does. And, finally, as I read the bill or read the fiscal note more specifically, the claim will go against the agency that might be involved. I have some concern about that because it is not the agency's fault and I'm thinking particularly of smaller regulatory agencies, and