

their own as a result of government action and I support the amendment.

SPEAKER BAACK: Thank you, Senator Schmit. Senator Wickersham.

SENATOR WICKERSHAM: Thank you, Mr. Speaker. Senator Elmer, if I may, if you would yield to a question or two. Senator Elmer, earlier you alluded to the fact that you could recover attorney's fees in certain civil actions. Do you know if you can recover attorney's fees in all civil actions?

SENATOR ELMER: Senator Wickersham, I don't know. Not being a lawyer myself, I was informed that there are some civil actions where the judge can award the defense costs to a defendant if the case is frivolous or if it's thrown out on some causes.

SENATOR WICKERSHAM: All right, thank you. And I think your answer is accurate that you can recover attorney's fees in some actions, some actions. And in fact, in most civil actions in the State of Nebraska you cannot recover attorney's fees. Secondly, Senator Elmer, if you are able to recover attorney's fees in a civil action, let's say one that even involved the unconstitutionality of a statute, are you able to recover those fees against the State of Nebraska or are those fees recovered against your opponent in the litigation?

SENATOR ELMER: In the case of a civil action against another individual and the law is found unconstitutional, this amendment or bill would not apply because it applies only to cases brought by a government or one of its subdivisions against an individual in a criminal matter.

SENATOR WICKERSHAM: All right, thank you. Again, colleagues, I call to your attention the distinction that is being made in this piece of legislation and the fact that we can do as much harm in the civil arena by unconstitutional litigation as we can do in the criminal arena. And the fact of the matter is that this bill doesn't say that if you have a civil statute that is unconstitutional that you can recover against the State of Nebraska. It would seem to me that if we are going to adopt a policy which inhibits our desire, if you will, to pass unconstitutional legislation, that it would be appropriate to extend that to the civil area as well. And I know that Senator Chambers earlier made some remarks about a situation that I think we would all agree is egregious. I'm sorry, Senator