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FLOOR DEBATE

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LB 270

based, then I would be found not guilty. Am I off base here?

SENATOR CUDABACK: Senator Chambers, would you...?

SENATOR CHAMBERS: Here's the way it goes. Under the present law, which now is unconstitutional, the conviction would be had on the underlying offense. That had to take place first. And under the existing law, which I say again is now unconstitutional, the judge would consider, after the jury is out of the picture, whether or not there was evidence of this racial animus, and if it were found then the punishment that would be imposed for the underlying crime could be enhanced to the next high level. That would have been done by the judge. What the U.S. Supreme Court said is that you must first, obviously, convict of the underlying offense, and that can only be done by a jury, if a person wants a trial by jury. The enhancement, in effect, creates a second offense, which is the underlying offense, plus. Since you're going to increase the punishment beyond what the statute required for the underlying offense, that determination has to be made by the jury also. So you can be convicted, if we change the law in this manner, you can be convicted of the underlying offense and the jury may determine that it was not based on racial, sexual, or these other factors and the enhancement would not occur. You still would remain convicted of the underlying offense. The punishment for that offense would be imposed, but there would be no enhancement because the jury failed to agree that there was sufficient evidence to establish that the crime was based on those other factors.

SENATOR RAIKES: So what you're telling me is the jury would, in effect, be presented kind of alternatives A and B; that either I committed the assault and it was...

SENATOR CUDABACK: One minute.

SENATOR RAIKES: ...racially motivated and, therefore, I get penalty X, or I committed the assault but it was not racially motivated and then I get penalty less than X.

SENATOR CHAMBERS: Well, you have to first be convicted of the