

the enacting clause.

PRESIDENT: The Chair recognizes Senator Baack.

SENATOR BAACK: Mr. President and colleagues, I make this motion just to bring to your attention some problems that might be inherent in this legislation. I have done some research into this legislation and find that in all probability this legislation could be unconstitutional. There have been a couple of test cases on legislation like this, one of them in Illinois and the other in Maryland. In both cases the decision rendered was that this was unconstitutional because it violated the due process laws of the 14th Amendment to the U.S. Constitution because it does not allow a state the power to ask any out-of-state merchant to either collect or remit sales tax. So this is one of the problems with the bill. I think that another problem is in the enforcement provisions of the bill. The bill has with it...I think if you would look at your fiscal note, you will see some of the problems in this. The fiscal note states that they are only going to allocate \$5,000 to take care of this. But I think if you read the fiscal note in its entirety, you will find that if they were really going to enforce this law, it would take many times that amount because it does allow any out-of-state vender, rather than remitting the sales tax, it does allow them to just simply send a list to the Department of Revenue. Then it would be up to the Department of Revenue to send out notices to anyone who had bought merchandise from an out-of-state merchant. The Department of Revenue would send them a notice, and then these people would send in their tax. So I think it could...I think one of the statements in the fiscal note says if a collection program were to be set up, data processing costs alone could be many times the \$5,000 that is shown in the fiscal note. So I think that this bill had good intentions of being possibly a revenue generator. But I think what it could amount to is it could be a bill that would be a revenue loser because we could find ourselves creating a small bureaucracy within the Department of Revenue just to administer this program. There is another fiscal note in there that says they have no idea what kind of revenue this might generate. But it could end up costing as much as a half a million dollars to administer this program. So I think that one of the problems I have is I don't understand why we would want to pass legislation that, first of all, might be unconstitutional and, secondly, why