

taken away all judicial discretion and because we've taken, if we have taken away all judicial discretion, can they void this schedule? Because from time to time they've revised their waiver schedule, as I recall. So does this statutory provision take away all discretion to the point where it is perhaps an infringement on the courts' authority and could be struck?

SENATOR KRISTENSEN: No, and the reason...

SENATOR WICKERSHAM: No.

SENATOR KRISTENSEN: May I take a minute, or...

SENATOR WICKERSHAM: Sure.

SENATOR KRISTENSEN: ...I can do it on my time.

SENATOR WICKERSHAM: No, no, you can take as much time as you want. I'm interested in this issue.

SENATOR KRISTENSEN: The purpose behind that is obviously we have several statutes in other areas which set the penalty. We are free, as a Legislature, I think, as long as there is some substantial relationship, and I mean that's all it is, is a rational basis test, I think, for constitutionality. Is there a rational basis between the penalty that we impose and the evil that we seek to prohibit? I think the range of penalty is acceptable, but I also think that we have the constitutional power, as a Legislature, to set a fine and say, look, this is the penalty if you do this. Now, the issue where there may be some discretion, obviously, may be intolerance of equipment and so on that you may have trouble with 76-77, in that range, and I assume that would be a spot to fight in the future.

SENATOR WICKERSHAM: Okay.

SENATOR KRISTENSEN: But I think we have the legislative authority to set the penalty.

SENATOR WICKERSHAM: Okay. Now, I think at one point you noted there had to be a rational basis for the fine scheme, if we were going to fix it in statute. So I'm assuming you would like to articulate the rational basis for having a different fine schedule on the freeways as opposed to any other highway.