

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

March 1, 2000

LB 1285

I'm for the bill, remember. But what I hope that we can do is keep this matter on the floor of the Legislature, listen to anybody who wants to talk to us, as we do on issues that come before us, but we have to make the ultimate determination. The Legislature, as an institution, has to begin to make it clear that the prerogatives we have entrusted to us are not going to be set aside lightly and we need to adopt this amendment which does not do anything from a philosophical or policy position, nothing different from what already is in the law. In the law right now, a civil penalty of up to \$5,000 per day...well, \$5,000 against any person, motor carrier and so forth for whatever they do. Each violation can carry a fine of up to \$5,000. The principle that bothers Senator Matzke is whether or not you agree with civil penalties. That issue has long been settled, long since resolved. We're looking at the amount now and what we're looking at is a cap, in a sense. We're looking at a maximum and we're telling the violator that you are the one who holds the key to your vault or to your piggy bank or wherever you keep your money. When you decide that you don't want to pay whatever the amount of the fine is, you can turn the lock...the key in the lock and no more money will flow out. And how do you turn the key in the lock to stop the flow out of money? By complying with the law or with the order based on the law. This is not designed to make one company give something over to another company and taking sides. Preponderance of evidence is one of the lowest levels that you have and the example I always give, you have the scales, they're balanced. One side puts something in that scale, one side puts something in the other, and when each has put in all that he or she has to offer, whichever way the scale tips, no matter how slightly, that person wins. Preponderance just means that you have more than the other that shows it's more likely, from what you've presented, that something is the case, or unlikely, depending on your particular view, than the other, and you win. This "clear and convincing" is the level that must be reached in finding violations by judges. It's a high standard. It's lower than beyond a reasonable doubt, but it's much higher than preponderance--clear and convincing. As for what Senator Matzke said about going to court and fines are not levied and things of that kind when no crime is committed, well, we're not talking about a civil or administrative agency punishing somebody for a crime. Crimes are prosecuted in the court pursuant to a charge