350.053 Seizure and sale of equipment -- Rights of owner or lien holder.

(1) Authorized representatives of the Office of Special Investigations of the cabinet and all peace officers may seize and take possession of all instrumentalities willfully and knowingly used in the mining of coal without a permit in violation of KRS 350.060(1)(a) or willfully and knowingly used for the removal of more than twenty-five (25) tons of coal during coal exploration in violation of KRS 350.057(3).

(2) Upon conviction of any person for the willful and knowing violation of KRS 350.057(3)(a) or 350.060(1)(a), the court shall order the machinery, trucks, and earth moving equipment, and materials used in furtherance of the crime forfeited and sold at public auction. Proceeds from the sale shall be deposited in the "illegal mining and conveyance reclamation fund" established by KRS 350.054(1).

(3) Upon conviction of any person of a violation of KRS 350.057(3)(b) or 350.060(1)(b), the court shall order the instrumentalities used in furtherance of the crime forfeited and sold at public auction. Proceeds from the sale shall be deposited in the illegal mining and conveyance reclamation fund established by KRS 350.054(1).

(4) All property seized under subsection (1) of this section shall be subject to the right of any owner or lienor whose lien is valid and recorded to intervene and upon trial or special hearing held for that purpose before the court establish his rights in the property by proving that the property was used in violation of KRS 350.057(3) or 350.060(1) without the knowledge, consent, or approval of the owner or lienor. If the owner of the property does so prove, the court may order the property restored to him. If the lienor so proves, the court may order a sale of the property at public auction with the lienor receiving from the sale the amount of his outstanding lien. However, the cabinet shall deliver any seized property to a lienor whose claim has been established by order of a court of competent jurisdiction, upon payment to the cabinet of the difference between the fair market value of the property so seized and the recorded claim of the lienor.

(5) If the person charged with a violation of KRS 350.057(3) or 350.060(1) is acquitted, all property seized pursuant to subsection (1) of this section shall be ordered returned to the rightful owner unless previously returned under subsection (4) of this section.

(6) All expenses associated with the seizure, storing, and, if applicable, sale of the property shall be the responsibility upon conviction of the person charged with a violation of KRS 350.057(3) or 350.060(1).

(7) All peace officers and other public officers or officials having knowledge of the lawful owner or claimant of property subject to forfeiture shall report the same to the court before the act of forfeiture occurs.

Effective: July 13, 1990.

History: Amended 1990 Ky. Acts ch. 205, sec. 2, effective July 13, 1990; and ch. 212, sec. 1, effective July 13, 1990. -- Created 1982 Ky. Acts ch. 150, sec. 6, effective July 15, 1982.

Legislative Research Commission Note (7/13/90) This section was amended by two 1990 Acts which do not appear to be in conflict and have been compiled

together.