

undertaking by the defendant. The surety under this section is responsible only for the failure of the defendant to appear at required court appearances during the period of deferral of judgment.

Approved April 27, 1984

CHAPTER 1153
ASSESSMENT OF COAL MINING PENALTIES
H.F. 531

AN ACT to revise the procedures for the assessment of penalties under the laws regulating coal mining.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 83.15, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. A person who violates a permit condition, any provision of this chapter or a rule or order issued under this chapter shall be subject to a civil penalty not to exceed five thousand dollars per day for each day of violation. If any violation results in the issuance of a cessation order, a civil penalty shall be imposed. Such penalty shall not exceed five thousand dollars for each day of violation.

In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

An operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction shall be required to pay a civil penalty of not less than seven hundred fifty dollars for each day during which the failure or violations continue.

NEW SUBSECTION. Where a notice or order has been issued, the department may assess a recommended penalty in accordance with a schedule established by rule. The person to whom the notice or order was issued may submit written information within fifteen days of the notice or order to be considered by the department. The department shall serve the assessment by certified mail return receipt requested within thirty days of issuance of the notice or order. The department may reassess any penalty if necessary to consider facts not reasonably available on the date of issuance of the assessment and may provide an informal conference to review the recommended penalty. A person may consent to a penalty assessment by paying the penalty without resort to judicial proceedings.

NEW SUBSECTION. Judicial review of any action of the department shall be in accordance with the provisions of chapter 17A.

NEW SUBSECTION. If a person violates a permit condition or violates a provision of this chapter, or a rule, or order issued under this chapter, the attorney general shall, at the request of the department, institute a civil action in the district court for injunctive relief or for the assessment of a civil penalty as determined by the court. If any violations result in the issuance of a cessation order under section 83.14, the department shall request the attorney general to institute a civil action in the district court for the assessment of a civil penalty. Injunctive relief to prevent or abate any violation of this chapter, permit condition, rule, or order issued under this chapter shall be available upon proof of the violation. A final order of the department is judicially enforceable and is not subject to collateral attack in any judicial proceeding if opportunity for hearing and judicial review were available to the person.

An appeal bond shall be required for any appeal of a judgment assessing a civil penalty.

Sec. 2. Section 83.15, subsections 1 and 4, Code 1983, are amended by striking the subsections.

Approved April 30, 1984

CHAPTER 1154

DISPOSITION OF PROPERTY POSSESSED BY DEPARTMENT OF PUBLIC SAFETY

H.F. 573

AN ACT providing for the disposition of personal property in the possession of the department of public safety.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter 80, Code 1983, is amended by adding the following new section:

NEW SECTION. DISPOSITION OF PERSONAL PROPERTY.

1. Personal property, except for property subject to forfeiture, motor vehicles subject to sale pursuant to section 321.89, weapons subject to disposition pursuant to section 691.9, and seized property subject to disposition pursuant to chapter 809, which personal property is found or seized by, turned in to, or otherwise lawfully comes into the possession of the department of public safety and which the department does not own, shall be disposed of pursuant to this section. If by examining the property the owner or lawful custodian of the property is known or can be readily ascertained, the department shall notify the owner or custodian by certified mail directed to the owner's or custodian's last known address, as to the location of the property. If the identity or address of the owner cannot be determined, notice by one publication in a newspaper of general circulation in the area where the property was found is sufficient notice. Publication notice may contain multiple items.

2. The department may return the property to a person if that person or the person's representative does all of the following:

a. Appears at the location where the property is located.