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HOUSE BILL NO. 2069

Offered January 23, 1995

A BILL to amend the Code of Virginia by adding in Article 10 of Chapter 14.3 of Title 45.1 a section numbered 45.1-161.180:1, relating to inspection of mines for smoking violations.

Patrons—Phillips and Stump

Referred to Committee on Mining and Mineral Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 10 of Chapter 14.3 of Title 45.1 a section numbered 45.1-161.180:1 as follows:

§ 45.1-161.180:1. Inspections for smoking violations.

In order to carry out the purposes of §§ 45.1-161.177, 45.1-161.178 and 45.1-161.180, the Chief may enter and inspect any mine operation, with the consent of the owner or operator or pursuant to a warrant, for smoker's articles or materials used for igniting smoker's articles. Administrative search warrants for inspections of mine operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the mine operation to be inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. No such warrant shall be issued pursuant to this section except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected, and the purpose for which an inspection is to be made. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist that reasonably justify the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of §§ 45.1-161.177, 45.1-161.178, or 45.1-161.180. Probable cause may be demonstrated by an affidavit showing cause to believe that a mine operator, his agent, mine foreman, miner, or other person is in violation of §§ 45.1-161.177, 45.1-161.178, or 45.1-161.180, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of those sections. In the case of an administrative search warrant based on administrative standards for selecting mine operations to be inspected, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge that the inspection program is based on reasonable standards and that the standards are being applied to a particular mine operation in a neutral and fair manner. The issuing judge may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

INTRODUCED

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