

AN ACT

ENTITLED, An Act to revise the standards of review for findings of fact.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 15-6-52(a) be amended to read as follows:

15-6-52(a). In all actions tried upon the facts without a jury or with an advisory jury, the court shall, unless waived as provided in § 15-6-52(b), find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to § 15-6-58. In granting or refusing temporary restraining orders or preliminary injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Findings of fact, whether based on oral or documentary evidence, may not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law need not be made if a temporary restraining order or preliminary injunction is entered in an action arising under chapters 25-3 and 25-4.

A copy of the proposed findings shall be served upon the attorneys of record to the action or upon the parties of record to the action if not represented by counsel. The court may direct counsel for the prevailing party to prepare findings; and counsel shall, within ten days after announcement of decision, unless otherwise ordered, prepare, serve, and submit to the court with copies to opposing counsel, proposed written findings of fact and conclusions of law together with the proposed judgment or decree.

The court may not sign any findings therein prior to the expiration of five days after service of the proposed findings during which time the parties may in writing submit to the court and serve on their adversaries their objections or additional proposals. Thereafter the court shall make or enter such findings and conclusions as may be proper.

Any action or decision of the court in making or modifying findings of fact or conclusions of law

shall be deemed excepted to, but the failure of the court to make a finding or conclusion on a material issue is not to be deemed excepted to unless such finding or conclusion has been proposed to or requested from the court.

If an opinion or memorandum of decision is filed, the facts and legal conclusions stated therein need not be restated but may be included in the findings of fact and conclusions of law by reference.

Findings of fact and conclusions of law are unnecessary on decisions of motions under § 15-6-12 or 15-6-56 or any other motion except as provided in § 15-6-41(b).

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1060

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1060

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State