

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

718D0286

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1060** - 1/24/00

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the standards of review for findings of fact.

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

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

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

15 A copy of the proposed findings shall be served upon the attorneys of record to the action
16 or upon the parties of record to the action ~~when~~ if not represented by counsel. The court may

1 direct counsel for the prevailing party to prepare findings; and counsel shall, within ten days after
2 announcement of decision, unless otherwise ordered, prepare, serve, and submit to the court with
3 copies to opposing counsel, proposed written findings of fact and conclusions of law together
4 with the proposed judgment or decree.

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

9 Any action or decision of the court in making or modifying findings of fact or conclusions
10 of law shall be deemed excepted to, but the failure of the court to make a finding or conclusion
11 on a material issue ~~shall~~ is not to be deemed excepted to unless such finding or conclusion has
12 been proposed to or requested from the court.

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

16 Findings of fact and conclusions of law are unnecessary on decisions of motions under
17 § 15-6-12 or 15-6-56 or any other motion except as provided in § 15-6-41(b).

1 **BILL HISTORY**

2 1/14/00 First read in House and referred to Judiciary. H.J. 46

3 1/24/00 Scheduled for Committee hearing on this date.

4 1/24/00 Judiciary Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 191