

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

400A0779

## HOUSE BILL NO. 1260

Introduced by: The Committee on Judiciary at the request of the Governor

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 granting or refusing temporary restraining orders or preliminary injunctions the court shall  
8 similarly set forth the findings of fact and conclusions of law which constitute the grounds of its  
9 action. Findings of fact ~~shall, whether based on oral or documentary evidence, may~~ not be set  
10 aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court  
11 to judge of the credibility of the witnesses. The findings of a referee, to the extent that the court  
12 adopts them, shall be considered as the findings of the court. Findings of fact and conclusions  
13 of law need not be made when a temporary restraining order or preliminary injunction is entered  
14 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 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~~ may not 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).

18 Section 2. That § 1-26-36 be amended to read as follows:

19 1-26-36. ~~The court shall give great weight to the findings made and inferences drawn by an~~  
20 ~~agency on questions of fact~~ Findings of fact, whether based on oral or documentary evidence,  
21 may not be set aside unless clearly erroneous, and due regard shall be given to the opportunity  
22 of the agency to judge of the credibility of the witnesses. The court may affirm the decision of  
23 the agency or remand the case for further proceedings. The court may reverse or modify the  
24 decision if substantial rights of the appellant have been prejudiced because the administrative  
25 findings, inferences, conclusions, or decisions are:

- 1       (1)    In violation of constitutional or statutory provisions;
- 2       (2)    In excess of the statutory authority of the agency;
- 3       (3)    Made upon unlawful procedure;
- 4       (4)    Affected by other error of law;
- 5       (5)    Clearly erroneous in light of the entire evidence in the record; or
- 6       (6)    Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
- 7            exercise of discretion.

8        A court shall enter its own findings of fact and conclusions of law or may affirm the findings  
9        and conclusions entered by the agency as part of its judgment. The circuit court may award costs  
10       in the amount and manner specified in chapter 15-17.