

# H.B. 307

## FACTUAL INNOCENCE AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 2

FEBRUARY 16, 2012 12:14 PM

Representative **David Litvack** proposes the following amendments:

1. *Page 1, Lines 11 through 20:*

11 This bill:

\* \* \* *Some lines not shown* \* \* \*

- 12       ▶ clarifies the requirement of a hearing if the state does not stipulate to factual
- 13 innocence;
- 14       ▶ clarifies that all proceedings are governed by Utah Rules of Civil Procedure, Rule
- 15 65C;
- 16       ▶ sets a standard for the court's determination of factual innocence;
- 17       ▶ disallows prejudgment interest on payments made to a person after a finding of
- 18 factual innocence; and
- 19       ▶ provides that assistance payments on a claim of factual innocence ~~{is}~~ are
- 20 petitioner.

2. *Page 4, Line 117 through Page 5, Line 121:*

117           (13) The procedures governing the filing and adjudication of a petition to determine  
118 factual innocence apply to all petitions currently filed or pending in the district court and any new petitions  
119 or after [the effective date of this amendment] ~~{March 25, 2010}~~ June 1, 2012 .

120           (14) A claim for determination of factual innocence under this part is not extinguished  
121 upon the death of the petitioner. **The assistance payment provisions of Section 78B-9-405 may not apply, and financial payments may not be made, if the finding of factual innocence occurs after the death of the petitioner. In addition, any payments already being made under Section 78B-9-405 shall cease upon the death of the petitioner.**

3. *Page 6, Line 170:*

170 78B-9-401.5(3). =

**(9)(a) The court may not rely on newly discovered evidence that could have been discovered by the petitioner or the petitioner's counsel before or at the time of trial or sentencing through the exercise of reasonable diligence, unless:**

**(i) a court found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the evidence; or**

**(ii) the court waives the requirements of this Subsection in the interests of justice.**

**(b) The court's determination may not be based upon a mere relitigation of facts, issues, or evidence presented in previous proceedings or upon the presentation of issues that appear frivolous or speculative on their face.**