

1 **FACTUAL INNOCENCE ASSISTANCE AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill modifies the Judicial Code regarding postconviction determinations of factual
9 innocence.
10

11 **Highlighted Provisions:**

12 This bill:

13 ▶ modifies provisions regarding financial assistance to a person found to have been
14 wrongfully convicted, to provide that if the person dies, the financial assistance
15 payment shall be paid to the person's surviving spouse ~~if~~ **if the spouse was married to the**
16a **person from the time of the conviction until the person's death** ~~if~~ ; and

17 ▶ provides that if the spouse has caused the death of the person by the commission of
18 a disqualifying homicide, the survivor forfeits all right to payments.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **78B-9-402**, as last amended by Laws of Utah 2012, Chapter 220

26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **78B-9-402** is amended to read:



90 upon the petitioner and the attorney general. If, upon completion of the initial review, the court
91 does not dismiss the petition, it shall order the attorney general to file a response to the petition.
92 The attorney general shall, within 30 days after receipt of the court's order, or within any
93 additional period of time the court allows, answer or otherwise respond to all proceedings
94 initiated under this part.

95 (c) After the time for response by the attorney general under Subsection (9)(b) has
96 passed, the court shall order a hearing if it finds the petition meets the requirements of
97 Subsections (2) and (3) and finds there is a bona fide and compelling issue of factual innocence
98 regarding the charges of which the petitioner was convicted. No bona fide and compelling
99 issue of factual innocence exists if the petitioner is merely relitigating facts, issues, or evidence
100 presented in a previous proceeding or if the petitioner is unable to identify with sufficient
101 specificity the nature and reliability of the newly discovered evidence that establishes the
102 petitioner's factual innocence.

103 (d) If the parties stipulate that the evidence establishes that the petitioner is factually
104 innocent, the court may find the petitioner is factually innocent without holding a hearing. If
105 the state will not stipulate that the evidence establishes that the petitioner is factually innocent,
106 no determination of factual innocence may be made by the court without first holding a hearing
107 under this part.

108 (10) The court may not grant a petition for a hearing under this part during the period
109 in which criminal proceedings in the matter are pending before any trial or appellate court,
110 unless stipulated to by the parties.

111 (11) Any victim of a crime that is the subject of a petition under this part, and who has
112 elected to receive notice under Section 77-38-3, shall be notified by the state's attorney of any
113 hearing regarding the petition.

114 (12) A petition to determine factual innocence under this part, or Part 3, Postconviction
115 Testing of DNA, shall be filed separately from any petition for postconviction relief under Part
116 1, General Provisions. Separate petitions may be filed simultaneously in the same court.

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
119 new petitions filed on or after June 1, 2012.

120 (14) (a) As used in this Subsection (14) ~~it~~ [:] and in Subsection (15):

120a (i) ["spouse"] "Married" ~~it~~ means the legal ~~it~~ marital ~~it~~ relationship ~~it~~ [:] ~~it~~

121 ~~Ĥ→~~ [(†)] ~~←Ĥ~~ established between a man and a woman ~~Ĥ→~~ **and** ~~←Ĥ~~ as recognized by the
 121a laws of this state ~~Ĥ→~~ [~~;~~ **and**

122 ~~—~~ (ii) existing at the time of the petitioner's death ; **and**

122a (ii) "Spouse" means a person married to the petitioner at the time the petitioner was
 122b found guilty of the offense regarding which a petition is filed and who has since then been
 122c continuously married to the petitioner until the petitioner's death ~~←Ĥ~~ .

123 (b) A claim for determination of factual innocence under this part is not extinguished
 124 upon the death of the petitioner. [~~The assistance payment provisions of Section 78B-9-405~~
 125 ~~may not apply, and financial payments may not be made, if]~~

126 (c) If any payments are already being made to the petitioner under this part at the time
 127 of the death of the petitioner, or if the finding of factual innocence occurs after the death of the
 128 petitioner[~~. In addition, any payments already being made under Section 78B-9-405 shall cease~~
 129 ~~upon the death of the petitioner.~~], the payments due under Section 78B-9-405 shall be paid
 130 according to the schedule under Section 78B-9-405 to the petitioner's surviving spouse.

131 Payments cease upon the death of the spouse.

132 (15) The spouse under Subsection (14) forfeits all rights to receive any payment under
 133 this part if the spouse is charged with a homicide established by a preponderance of the
 134 evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5,
 135 Offenses Against the Person, except automobile homicide, applying the same principles of
 136 culpability and defenses as in Title 76, Utah Criminal Code, including Title 76, Chapter 2,
 137 Principles of Criminal Responsibility.

Legislative Review Note

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Office of Legislative Research and General Counsel