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AN ACT  
RELATING TO RAISING AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM  
AGAINST AN ATTORNEY IN A CRIMINAL CASE ON APPEAL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 13B.9, subsection 2, Code Supplement  
2003, is amended to read as follows:

2. An attorney appointed under this section is not liable  
to a person represented by the attorney for damages as a  
result of a conviction in a criminal case unless the court  
determines in a postconviction proceeding or on direct appeal,  
that the person's conviction resulted from ineffective  
assistance of counsel, and the ineffective assistance of  
counsel is the proximate cause of the damage. In juvenile or  
civil proceedings, an attorney appointed under this section is  
not liable to a person represented by the attorney for damages  
unless it has been determined that the attorney has provided  
ineffective assistance of counsel and the ineffective  
assistance of counsel claim is the proximate cause of the  
damage.

Sec. 2. NEW SECTION. 814.7 INEFFECTIVE ASSISTANCE CLAIM  
ON APPEAL IN A CRIMINAL CASE.

1. An ineffective assistance of counsel claim in a  
criminal case shall be determined by filing an application for  
postconviction relief pursuant to chapter 822, except as  
otherwise provided in this section. The claim need not be  
raised on direct appeal from the criminal proceedings in order  
to preserve the claim for postconviction relief purposes.

2. A party may, but is not required to, raise an  
ineffective assistance claim on direct appeal from the  
criminal proceedings if the party has reasonable grounds to  
believe that the record is adequate to address the claim on  
direct appeal.

3. If an ineffective assistance of counsel claim is raised  
on direct appeal from the criminal proceedings, the court may  
decide the record is adequate to decide the claim or may  
choose to preserve the claim for determination under chapter  
822.

Sec. 3. Section 814.11, subsection 7, Code 2003, is  
amended to read as follows:

7. An attorney appointed under this section is not liable  
to a person represented by the attorney for damages as a  
result of a conviction in a criminal case unless the court  
determines in a postconviction proceeding or on direct appeal,  
that the person's conviction resulted from ineffective  
assistance of counsel, and the ineffective assistance of  
counsel is the proximate cause of the damage. In juvenile or  
civil proceedings, an attorney appointed under this section is  
not liable to a person represented by the attorney for damages  
unless it has been determined that the attorney has provided  
ineffective assistance of counsel and the ineffective  
assistance of counsel claim is the proximate cause of the  
damage.

Sec. 4. Section 815.10, subsection 6, Code 2003, is  
amended to read as follows:

6. An attorney appointed under this section is not liable  
to a person represented by the attorney for damages as a  
result of a conviction in a criminal case unless the court  
determines in a postconviction proceeding or on direct appeal,  
that the person's conviction resulted from ineffective  
assistance of counsel, and the ineffective assistance of  
counsel is the proximate cause of the damage. In juvenile or  
civil proceedings, an attorney appointed under this section is  
not liable to a person represented by the attorney for damages  
unless it has been determined that the attorney has provided  
ineffective assistance of counsel, and the ineffective  
assistance of counsel claim is the proximate cause of the  
damage.

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Speaker of the House

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JEFFREY M. LAMBERTI

President of the Senate

I hereby certify that this bill originated in the House and  
is known as House File 2325, Eightieth General Assembly.

\_\_\_\_\_  
MARGARET THOMSON

Chief Clerk of the House

Approved \_\_\_\_\_, 2004

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THOMAS J. VILSACK  
Governor