

Withdrawn  
3/16/04

FILED FEB 18 2004

SENATE FILE 2145  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3060)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to raising an ineffective assistance of counsel  
2 claim against an attorney in a criminal case on appeal.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2145  
JUDICIARY

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

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

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

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

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

29 3. If an ineffective assistance of counsel claim is raised  
30 on direct appeal from the criminal proceedings, the court may  
31 decide the record is adequate to decide the claim or may  
32 choose to preserve the claim for determination under chapter  
33 822.

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

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

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

16 6. An attorney appointed under this section is not liable  
17 to a person represented by the attorney for damages as a  
18 result of a conviction in a criminal case unless the court  
19 determines in a postconviction proceeding or on direct appeal,  
20 that the person's conviction resulted from ineffective  
21 assistance of counsel, and the ineffective assistance of  
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24 not liable to a person represented by the attorney for damages  
25 unless it has been determined that the attorney has provided  
26 ineffective assistance of counsel, and the ineffective  
27 assistance of counsel claim is the proximate cause of the  
28 damage.

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EXPLANATION

30 This bill relates to raising an ineffective assistance of  
31 counsel claim in a criminal case against an attorney on  
32 appeal. An ineffective assistance claim generally alleges  
33 that a defendant's conviction resulted from the ineffective  
34 assistance of the defendant's counsel, and the ineffective  
35 assistance of counsel is the proximate cause of the damage to

1 the defendant.

2 The bill provides that an ineffective assistance of counsel  
3 claim shall generally be determined by filing an application  
4 for postconviction relief pursuant to Code chapter 822. The  
5 bill provides that the claim need not be raised on direct  
6 appeal in order to preserve the claim for postconviction  
7 relief purposes. Current law provides that a person must  
8 raise an ineffective assistance of counsel claim on direct  
9 appeal from the criminal proceedings in order to preserve a  
10 claim for postconviction relief.

11 A party under the bill may raise an ineffective assistance  
12 claim on direct appeal if the party has reasonable grounds to  
13 believe that the record is adequate to address the claim on  
14 direct appeal. However, the bill provides that the court has  
15 the option to decide the claim on appeal or choose to preserve  
16 the claim for postconviction relief purposes under Code  
17 chapter 822.

18 The amendments to Code sections 13B.9, 814.11, and 815.10  
19 enhance the readability of these sections with the changes in  
20 the bill.

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Kettering  
Tinsman  
Horn

Succeeded By SSB#3060  
SI/HF 2145  
SENATE FILE Judiciary  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON REDFERN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
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S.F. \_\_\_\_\_ H.F. \_\_\_\_\_

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