

1 S.115

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; public defenders; malpractice claims

6 Statement of purpose: This bill proposes to prohibit malpractice claims against
7 public defender contract attorneys unless the plaintiff has first prevailed in a
8 post-conviction relief claim against the attorney based upon ineffective
9 assistance of counsel in the same or a substantially related matter.

10 An act relating to malpractice claims against public defender contract
11 attorneys

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 13 V.S.A. § 5241 is added to read:

14 § 5241. MALPRACTICE CLAIM AGAINST DEFENDER GENERAL;

15 SUCCESSFUL INEFFECTIVE ASSISTANCE CLAIM

16 REQUIRED

17 No action shall be brought for professional negligence against a criminal
18 defense attorney under contract with or providing ad hoc legal services for the
19 office of the defender general unless the plaintiff has first successfully
20 prevailed in a claim for post-conviction relief based upon ineffective assistance

1 of counsel against that criminal defense attorney in the same or a substantially
2 related matter. Failure to prevail in a claim for post-conviction relief based
3 upon ineffective assistance of counsel against a criminal defense attorney
4 under contract with or providing ad hoc legal services for the office of the
5 defender general shall bar any claim against the attorney based upon the
6 attorney's representation in the same or a substantially related matter.