

The House Committee on Special Judiciary offered the following substitute to HB 369:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 5 of Title 5 of the Official Code of Georgia Annotated,  
2 relating to procedures regarding new trials, so as to provide for extraordinary motions for  
3 new trials based on newly discovered evidence regarding paternity of a child; to provide  
4 requirements for filing such a motion; to provide that relief on such motion shall be granted  
5 if genetic testing conclusively shows that the alleged father is not the natural father of the  
6 child and if the alleged father has not adopted the child and if the child was not conceived  
7 by artificial insemination; to provide that such relief shall not be denied solely because of the  
8 prior occurrence of certain acts; to provide for additional testing; to provide for costs; to  
9 provide for relief; to provide for matters relative to the foregoing; to repeal conflicting laws;  
10 and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

12 Article 3 of Chapter 5 of Title 5 of the Official Code of Georgia Annotated, relating to  
13 procedures regarding new trials, is amended by adding after Code Section 5-5-41 a new Code  
14 section to read as follows:  
15

16 "5-5-41.1.

17 (a) In any action in which a male is required to pay child support as the father of a child,  
18 an extraordinary motion for a new trial may be made at any time upon the grounds set forth  
19 in this Code section, without a showing of due diligence, regarding the paternity of such  
20 child. Any such motion shall include:

21 (1) An affidavit executed by the movant that the newly discovered evidence has come  
22 to movant's knowledge since the entry of judgment; and

23 (2) The results from scientifically credible parentage-determination genetic testing, as  
24 authorized under Code Section 19-7-46 and administered within 90 days prior to the  
25 filing of such motion, that finds that there is a 0 percent probability that the male ordered  
26 to pay such child support is the father of the child for whom support is so required.

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1 (b) The court shall grant relief on a motion filed in accordance with subsection (a) of this  
2 Code section if all of the following apply:

3 (1) The court finds that the genetic test required in paragraph (2) of subsection (a) of this  
4 Code section was properly conducted;

5 (2) The male ordered to pay child support has not adopted the child; and

6 (3) The child was not conceived by artificial insemination while the male ordered to pay  
7 child support and the child's mother were in wedlock.

8 (c) The court shall not deny relief on a motion filed in accordance with subsection (a) of  
9 this Code section solely because of the occurrence of any of the following acts if the male  
10 ordered to pay child support did not know at the time of the occurrence of the act that he  
11 was not the natural father of the child:

12 (1) The male ordered to pay child support married the mother of the child;

13 (2) The male ordered to pay child support acknowledged his paternity of the child in a  
14 sworn statement;

15 (3) The male ordered to pay child support was named as the child's natural father on the  
16 child's birth certificate with the consent of the male ordered to pay child support;

17 (4) The male ordered to pay child support was required to support the child because of  
18 a written voluntary promise or by a court order or an administrative support order;

19 (5) The male ordered to pay child support signed a voluntary acknowledgment of  
20 paternity as provided in Code Section 19-7-46.1;

21 (6) The male ordered to pay child support was determined to be the child's natural father  
22 in an action brought pursuant to Article 3 of Chapter 7 of Title 19; or

23 (7) The male ordered to pay child support acknowledged himself to be the child's natural  
24 father.

25 (d)(1) In any action brought pursuant to this Code section, if the genetic test results  
26 submitted in accordance with paragraph (2) of subsection (a) of this Code section are  
27 solely provided by the male ordered to pay child support, the court on its own motion  
28 may, and on the motion of any party shall, order the child's mother, the child, and the  
29 male ordered to pay child support to submit to genetic tests. The clerk of the court shall  
30 schedule such genetic testing not later than 30 days after the court issues its order.

31 (2) If the mother of the child or the male ordered to pay child support willfully fails to  
32 submit to genetic testing, or if either such party is the custodian of the child and willfully  
33 fails to submit the child for testing, the court shall issue an order determining the relief  
34 on the motion against the party so failing to submit to genetic testing. If a party shows  
35 good cause for failing to submit to genetic testing, such failure shall not be considered  
36 willful.

1 (3) The party requesting genetic testing shall pay any fees charged for the tests. If the  
2 custodian of the child is represented by an administrative agency in its role as an agency  
3 providing enforcement of child support orders, such agency shall pay the cost of genetic  
4 testing if it requests the test and may seek reimbursement for the fees from the person  
5 against whom the court assesses the costs of the action.

6 (e) If relief on a motion filed in accordance with this Code section is not granted, the court  
7 shall assess the costs of the action and attorney's fees against the movant."

8 **SECTION 2.**

9 This Act shall become effective upon its approval by the Governor or upon its becoming law  
10 without such approval.

11 **SECTION 3.**

12 All laws and parts of laws in conflict with this Act are repealed.