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FISCAL IMPACT REPORT

SPONSOR M. Sanchez DATE TYPED 2/6/04 HB _____

SHORT TITLE Clarify Parent & Child Intestate Inheritance SB 499

ANALYST Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

- Senate Bill 499 amends New Mexico’s existing intestate laws. Intestate laws govern an individual’s right to inherit when the deceased has not left a will.
- Senate Bill 499 amends intestate laws for **adopted** children.
- The law currently provides that an adopted child is the child of his natural parents, regardless of their marital status. It also currently provides an adopted child is the child of his adopting parent(s), and **not** the child of his natural parents, *unless* the adoption involves a natural parent and an adopting spouse.

In instances involving a natural parent and an adopting spouse, the child’s intestate rights in relation to the “non-severed” natural parent remain intact, **as do the child’s rights in relation to the “other”, “severed” natural parent.**

- Senate Bill 499 amends the adopted child’s intestate rights relating to the “other”, “severed” natural parent who was “replaced” by the adopting spouse. The bill limits intestate rights to the child and the “non-severed” natural parent. **The bill eliminates intestate rights between the child and the “severed” natural parent.**

Significant Issues

- In instances where a natural parent's rights, responsibilities and privileges have been terminated, and another has been permitted to assume that position in relation to a child, it seems reasonable that the child not be permitted to seek inheritance from the "severed" parent.
- The severed parent may have another family. The children of this second / other family will have inheritance rights. Without this change to the law, a child for whom all legal responsibility and privileges were terminated could interject himself/herself into the inheritance process— even a process where a will has been established to govern the distribution of property.
- Without this amendment, a child adopted by a natural parent's spouse would be allowed to pursue inheritance rights through the "non-severed" natural parent, the adopting parent and the "severed" natural parent. Such a child is permitted to "double-dip" against the adopting parent and the "severed", replaced parent.
- The "non-severed" natural parent and adopting spouse made a decision regarding the child's legal standing in relation to the "other" natural parent. This decision should be honored, and should not be reversible in the event a profit may be gained.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. There will not be a significant fiscal impact on New Mexico. However, probate, intestate and civil courts would likely see fewer cases if the adopted child's standing in relation to the "severed" parent is clearly established.

SJM/lg