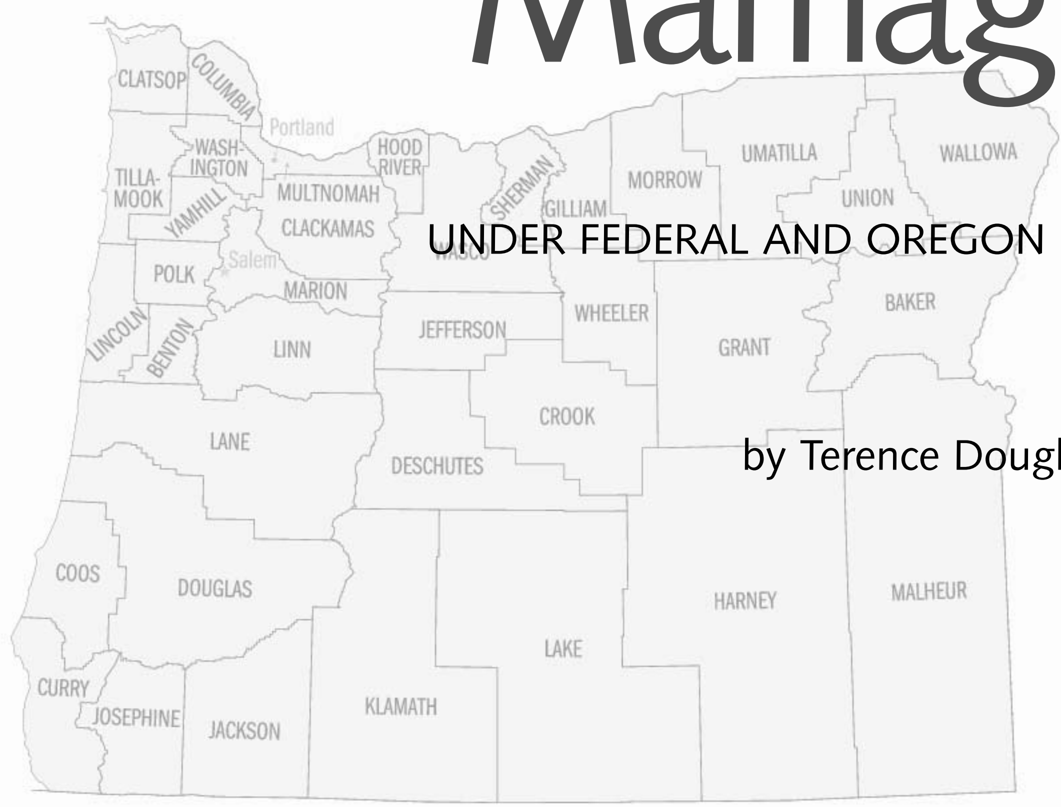
Economic Benefits of Marriage

UNDER FEDERAL AND OREGON LAW

by Terence Dougherty



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The **National Gay and Lesbian Task Force Policy Institute** is a think tank dedicated to research, policy analysis and strategy development to advance greater understanding and equality for lesbian, gay, bisexual and transgender people.

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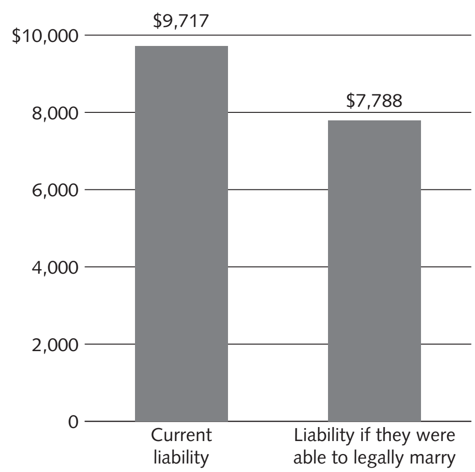
Executive Summary

ECONOMIC BENEFITS OF MARRIAGE UNDER FEDERAL AND OREGON STATE LAW

CIVIL UNIONS ARE NOT EQUAL TO MARRIAGE

- The 1,138 federal benefits and protections of marriage are only available to couples that are allowed to legally marry. These include Social Security survivor and spousal benefits, the ability to file a joint tax return, immigration rights, and coverage under the Family and Medical Leave Act.
- To date, civil unions are not "portable," meaning that when a couple moves to another state, none of the benefits, rights or responsibilities coming from the civil union move with them.
- While the federal government is unlikely to recognize same-sex marriages in the short run, a future President and Congress more supportive of equality may move to treat married same-sex couples equally under federal policy. Under the current legal framework—which is based on marital status—the only way to extend federal protections associated with marriage to couples who have entered civil unions would be to amend more than 1,000 separate laws and regulations.

TOTAL INCOME TAX LIABILITY (2002) FOR BRIAN AND TIMOTHY



ECONOMIC IMPACT ON A SAMPLE OF REAL SAME-SEX COUPLES IN OREGON

- Brian Garza, 45, and Timothy Leighty, 54, are a couple living in Oregon and have been together for eight years. Brian works full time as a manufacturing technician. Timothy is a part-time travel agent.

FEDERAL AND STATE INCOME TAX LIABILITY

- Because they cannot marry, Brian and Timothy's combined federal and state income tax liability is 25% higher ($1,929 more) than it would be if they could file a joint return.

SOCIAL SECURITY RETIREMENT BENEFITS

- If Brian and Timothy were able to legally marry, their monthly Social Security benefit would be $2,350. Without legal recognition, they would receive $1,567, or $783 less.

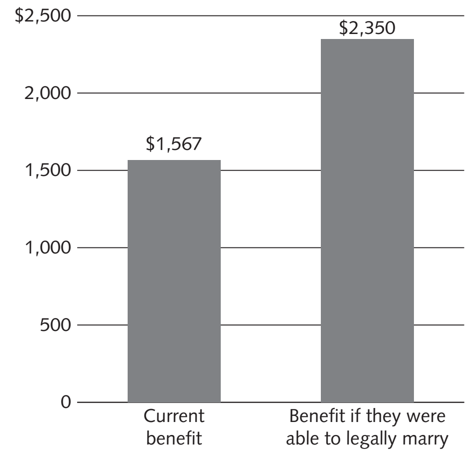
SOCIAL SECURITY SURVIVOR BENEFITS

- If Brian and Timothy were able to legally marry prior to Brian's death, Timothy's monthly Social Security survivor benefit would be $1,567. Without legal recognition, Timothy would receive no survivor benefit.

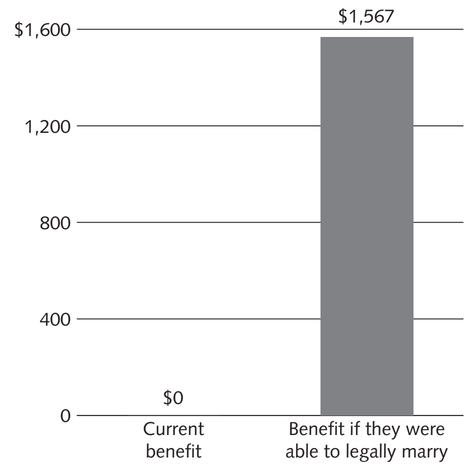
CONCLUSION

- When Oregon and the U.S. government respect the marital relationships of same-sex couples, these couples will pay a more equitable share of the tax burden and receive a more equitable share of benefits from the Social Security system that they pay into their entire lives. These benefits and protections make it easier for same-sex partners to care for each other when they are sick or elderly, and make it more likely that their children have access to vital financial support should one or both parents die.

MONTHLY SOCIAL SECURITY RETIREMENT BENEFIT FOR BRIAN AND TIMOTHY



SOCIAL SECURITY SURVIVOR BENEFITS FOR TIMOTHY



Economic Benefits of Marriage under Federal and Oregon Law

INTRODUCTION

Marriage has profound social, cultural, and religious meaning in the United States. Since the decision to get married is an intensely personal choice, it is impossible to enumerate all of the reasons why couples decide to marry, or to define or quantify the significance of the marital relationship across all communities and classes of people.

In addition to the social, cultural and religious meaning of marriage, it also is an important legal relationship. All states within the U.S. and the District of Columbia permit the right to be legally married under various conditions.[1] Once married, a couple is entitled to specific benefits and protections, and is also subject to specific default rules on the termination of their marriage, including because of the death of a spouse. These benefits and protections are derived from both state and federal law. With some exceptions, all states and the District of Columbia recognize marriages formed in other states, and foreign countries.[2]

This report focuses on the economic costs under federal and Oregon law borne by same-sex couples who are not able to legally marry, compared to their married heterosexual counterparts.

This report focuses specifically on the economic costs under federal and Oregon law borne by same-sex couples who are not able to legally marry, compared to their married heterosexual counterparts. Much has been and is currently being written concerning the ethical, social, and civil rights-based arguments for permitting same-sex marriage. A focus, however, on economic issues quantitatively illustrates how same-sex couples are discriminated against by not being allowed to access the same benefits, protections, and responsibilities of civil marriage that many heterosexual couples take for granted.

In order to learn about the economic issues faced by actual Oregon residents, several

1. State law has historically limited the right of individuals to marry close relatives, imposes age and competency limitations on the ability to marry, and has denied couples the right to marry if one or both members of the couple are already married.
2. In addition to limiting the definition of marriage for purposes of all federal laws to marriages between individuals of the opposite sex, the federal Defense of Marriage Act gives states the permission to disregard marriages between two same-sex individuals formed under the laws of any other state. DEFENSE OF MARRIAGE ACT, 110 Stat. 2419 (1996), amending Chap. 115 of Title 28, signed into law by President William Jefferson Clinton, September 21, 1996.

same-sex couples were interviewed. These couples live in various parts of the state, and have different income levels and educational backgrounds. Some are parents of young children, some have adult children and some are approaching retirement age. Regardless of their individual circumstances, each faces specific financial hardship because of discrimination in state and federal civil marriage laws.

THE ECONOMIC BENEFITS OF MARRIAGE

There are numerous areas under both federal and Oregon law in which marital status has a large economic impact on two people in a relationship. This study focuses primarily on income tax, estate and gift tax, Social Security benefits, Oregon workers' compensation benefits, and benefits available to certain Oregon public employees. These areas are the primary focus of this study since they can potentially affect all couples residing in Oregon. They provide excellent examples of how same-sex couples are treated differently from married heterosexual couples because these benefits are calculated based on relatively standard mathematical formulas.

This study focuses on income, estate and gift taxes, Social Security benefits, and Oregon workers' compensation and public employee benefits, since these issues can potentially affect all Oregon couples.

BACKGROUND

Eligibility for 1,138 federal protections, rights and benefits is contingent upon marital status. Same-sex couples are denied these protections, rights and benefits and thus are denied equal treatment under Social Security policy, federal tax laws, immigration policy, and other federal legislation that allows them to protect their families like the Family and Medical Leave Act.

Given the passage of the federal Defense of Marriage Act (DOMA) in 1996, which allows the federal government to withhold recognition from same-sex marriages performed in any state, in the short run same-sex marriages performed in any state will not be recognized by federal bureaucracies. However, some believe DOMA to be unconstitutional, and it is possible that in the future DOMA will be struck down or repealed. It is also possible that a President and Congress more supportive of equal rights for gay and lesbian people will afford these federal protections to married same-sex couples.

There are several significant state protections, rights and benefits that are only available to married couples in Oregon.

Some counties in Oregon have begun to issue marriage licenses to same-sex couples. However, it is unclear whether same-sex couples holding those licenses will be able to enjoy marital benefits under Oregon law. There are several significant state protections, rights and benefits that are only available to married couples in Oregon. Additionally, if the marriages of Oregon same-sex couples are not legally recognized, those couples are in a weaker position to challenge DOMA's constitutionality than they would be if they were legally married under state law.

FEDERAL AND OREGON INCOME TAX LAW

There is a strong presumption under federal tax law to treat married couples as an economic unit. The fact that married couples can file a joint income tax return, combining their income and expenses and paying taxes based on rates applicable specifically to married couples, is a primary example. Whether the overall tax liability of a couple filing a joint return or two individual returns will be lower or higher depends on the couple's economic circumstances. Generally, when two individuals have roughly the same income, they will pay slightly more taxes filing a joint return than they would if they filed two individual returns. This is the so-called "marriage penalty," which recently enacted federal tax law has begun to phase out.

There is a strong presumption under federal tax law to treat married couples as an economic unit.

In contrast, when there is a divergence between the earnings of two individuals (e.g., where one member of the couple works full-time and the other works part time in order to take care of dependent children or other family members), those two individuals often pay more tax filing separate returns than they would if they were able to file a joint return.

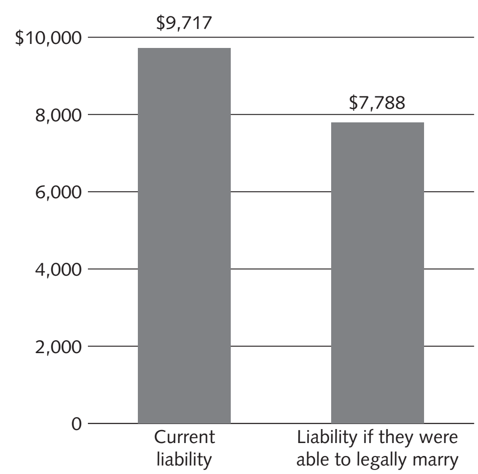
Federal tax law also provides some direct statutory subsidies to married couples. For example, an individual is entitled to pay for his or her portion of an employer-provided health insurance plan out of pre-tax dollars. If the individual's employer provides benefits to his or her family members, the portion of the individual's health insurance payments attributable to his or her spouse's health insurance and paid by the employer is excluded from the individual's taxable income. In contrast, if an individual's employer provides health insurance benefits to domestic partners, this beneficial treatment is not extended to amounts expended by that individual on, or provided by the individual's employer for, his or her same-sex partner's insurance benefits, or on his or her same-sex partner's children's benefits (unless the children are jointly adopted by both partners).

Oregon income tax law is very similar to the federal regime in many respects, including that it permits the filing of married joint returns. Further, Oregon taxable income is calculated in a similar manner to federal taxable income. For example, the preferable treatment under federal law afforded to married couples who receive spousal health benefits from their employers is also available under Oregon law.

Example: Brian Garza & Timothy Leighty

Brian Garza and Timothy Leighty are a couple living in Oregon, and have been together for eight years. In March of this year, they obtained a marriage license from Multnomah County, although it is unclear whether this license entitles them to the marital benefits afforded to heterosexual married couples in Oregon. Brian, 45 years old, works full time as a manufacturing technician. Based on his base pay and overtime, he earned nearly $50,000 in 2003. Timothy, 54

TOTAL INCOME TAX LIABILITY (state and federal) for Brian and Timothy's family



Because they cannot marry, Brian and Timothy's income tax liability is almost 25% higher than it would be if they could file a joint return as a married couple, a difference of $1,929.

years old, earned roughly $900 in 2003 as a part-time travel agent and had roughly $800 in taxable interest income. Thankfully, the couple has health insurance through Brian's company, which offers domestic partnership benefits.

Because they are unable to legally marry, Brian and Timothy are classified as single persons living in Oregon. Brian incurs a federal income tax liability of $8,116, and an Oregon state income tax liability of $3,376.[3] With his limited income, Timothy incurs no federal income tax liability but incurs an Oregon income tax liability of $142. Combined, their overall federal and state income tax burden is $9,717.

Because they cannot marry, Brian and Timothy's income tax liability is almost 25% more than it would be if they could file a joint return as a married couple, a difference of $1,929.

If Brian and Timothy's marriage in Oregon were recognized for purposes of Oregon and federal law and they were able to file joint federal and state income tax returns, they would incur a federal income tax liability of $4,554 and an Oregon liability of $3,234, totaling $7,788. However, because they are unable to file a joint return and must each file a single filer return, Brian and Christopher's overall income tax liability is $1,929 higher, almost 25% more, than it would be if they could file a joint return as a married couple.

SOCIAL SECURITY

Social Security is a primary means of subsistence for many elderly people in the United States. The benefits provided under the Social Security system change depending on the marital status of the recipient. For example, an individual can claim Social Security benefits based on his or her spouse's earning history. Further, a widow or widower can receive additional benefits upon the death of his or her spouse. The spouse of a disabled individual eligible for Social Security may claim additional benefits if that spouse is raising the disabled individual's young child. And, a spouse who is at least 62 years old may claim additional benefits based on his or her spouse's disability.

SOCIAL SECURITY RETIREMENT BENEFITS BASED ON SPOUSAL EARNINGS

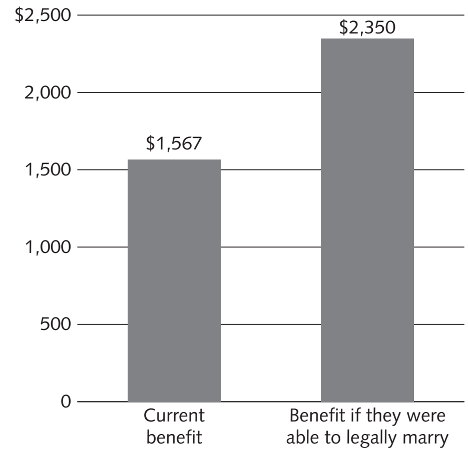
The Social Security retirement benefit a person is entitled to receive is based on his or her earnings history. However, an individual who is married is also entitled to receive benefits based on his or her spouse's earnings history under some circumstances. If a person's monthly benefit is less than half of his or her spouse's monthly benefit (or even if the person is entitled to no benefits based on his or her own earnings), that person is entitled to receive benefits based both on his or her own earnings and his or her spouse's earnings, so that the total benefit equals up to one half of his or her spouse's benefit. All Social Security benefits are potentially subject to reduction in the event the recipient of the benefits earns wage income.

Additionally, if someone gets divorced after at least 10 years of marriage, at age 62 he or she can collect retirement benefits based on his or her former spouse's income history if he or she has not remarried (the former spouse, by contrast, may be remarried), or that later marriage ended by death, divorce or annulment, and if his or her former spouse is entitled to or currently receives those benefits. In order to be eligible for these

3. These calculations are based on 2003 tax rates. Calculations assume that all income earned by the couple is wage income. Calculations assume that Timothy's health benefits that are paid by Brian are worth $3,000.

benefits, the potential recipient of benefits may not be eligible for equal or higher benefits based on his or her own (or someone else's) earnings record.

COMBINED MONTHLY SOCIAL SECURITY RETIREMENT BENEFIT for Brian and Timothy's family



Upon retirement, Brian and Timothy's combined monthly Social Security retirement benefit would be 50% higher if they were legally married.

Example: Brian & Timothy

Brian and Timothy each may be entitled to Social Security benefits upon reaching retirement age. Based solely on Timothy's current wage earnings of almost $900 in 2003, he would not be eligible for Social Security benefits.[4] Brian, by contrast, currently earns roughly $50,000 in wage income. Based on this income, a rough estimate of his monthly Social Security benefit at his full retirement age is $1,567 per month. This would be the total monthly Social Security benefits they would be entitled to.

If Brian and Timothy were legally married under state and federal law, upon Brian reaching retirement age, Timothy would be entitled to receive benefits based on Brian's employment record in the amount of one half of Brian's benefits. This would amount to a monthly payment of $783.50. Combined, the couple's benefit would be $2,350 per month, which is 50% higher than the combined benefit they would be entitled to receive as an unmarried couple.

Timothy also would be entitled to receive additional benefits based on Brian's income history even if he and Brian were divorced, as long as their marriage lasted at least 10 years and Timothy did not remarry, or the later marriage ended by death, divorce or annulment.

SOCIAL SECURITY SURVIVOR BENEFITS

A portion of all Social Security tax payments goes towards survivors' insurance, which provides support to surviving spouses of heterosexual marriages. At present, there are about 5 million widows and widowers receiving monthly Social Security benefits based on their deceased spouse's income history.[5] Everyone who pays Social Security taxes, including single individuals and unmarried couples, contributes toward this benefit.

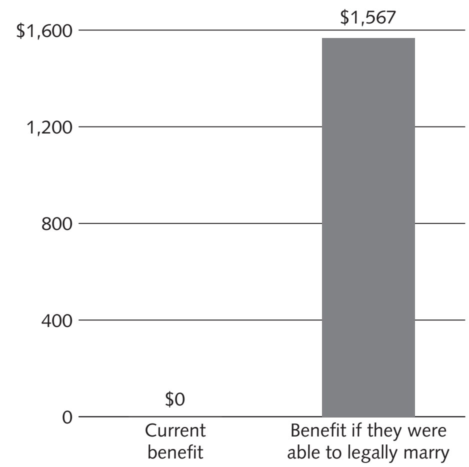
A surviving spouse who is not disabled can receive 100% of his or her spouse's full retirement benefit upon reaching his or her full retirement age (or 71% of that amount if the surviving spouse elects to receive benefits at age 60). Disabled surviving spouses can receive benefits as early as age 50. A surviving spouse is also entitled to receive a one-time death benefit of $255. Further, a surviving spouse can receive survivor benefits no matter what his or her age is if he or she takes care of the decedent spouse's child who is under 16 or disabled and who receives benefits based on the decedent spouse's earnings record. Finally, an unmarried person whose former spouse dies can receive full spousal benefits as long as the marriage to the former spouse lasted at least 10 years. However, none of these benefits are available to same-sex couples, regardless of how long they have been together.

4. This is a rough estimate because it makes assumptions about future earnings based on current earnings. Amounts are expressed in today's dollars. Calculations of Social Security benefits were made using the Social Security benefits calculators on the Social Security Administration's website, available at http://www.ssa.gov.

5. See www.ssa.org.

Individuals earn "credits" each year they pay Social Security benefits, and the number of credits needed to provide benefits to his or her surviving spouse depends on the age of death. The younger the person is at death, the fewer credits needed for his or her spouse to receive survivor's benefits. The amount of credits needed to provide benefits to a spouse who is caring for his or her partner's children is even lower. An individual collecting survivor's benefits can switch to his or her own retirement benefits (assuming he or she is eligible and his or her retirement benefits are higher than the survivor's rate) as early as age 62.

MONTHLY SOCIAL SECURITY SURVIVOR BENEFIT FOR TIMOTHY



If Brian and Timothy were able to legally marry prior to Brian's death, Timothy would be entitled to a monthly Social Security benefit of $1,567. Since their marriage license is not recognized under federal law if Brian died he would currently receive nothing.

Example: Brian & Timothy

As discussed in the preceding example, Timothy will not be entitled to receive Social Security benefits based solely on his own current earnings when he reaches full retirement age. In contrast, if Brian and Timothy had been legally married, upon Brian's death, Timothy would be entitled to receive benefits based on Brian's income history, which would amount to $1,567 in benefits per month.[6] Additionally, Timothy would be entitled to receive a one-time death benefit of $255.

If Timothy were disabled and their marriage were recognized by the Social Security Administration, he would receive benefits based on Brian's earnings as early as age 50.

ESTATE AND GIFT TAXATION

Married heterosexual couples can transfer assets to each other without having to pay taxes, whether those transfers are made while they are alive (in the form of gift) or after one of them dies (in the form of an estate). Same-sex couples are not entitled to this benefit, and any transfer of an asset between members of a same-sex couple, living or dead, requires the payment of a gift or estate tax.

In general, the transfer of assets made by an individual to anyone other than his or her spouse in excess of $11,000 per year is considered a gift, and the recipient must report that gift on his or her tax return and pay a gift tax. However, individuals are entitled to a lifetime credit against their gift tax liability, currently set at $1,000,000, for gifts in excess of the $11,000 annual exclusion. In other words, if an individual who has never made a gift in any year in excess of the annual exclusion makes a gift in 2003 to another person of $1,011,000, no portion of that gift is taxable. However, any additional gifts made in that year to that person, and any gifts made in any future year to any person in excess of $11,000, would be subject to a gift tax.

There is no gift tax in Oregon.

6. Different rules would apply in the event that Timothy remarried.

When someone who is married dies, his or her spouse is entitled to a reduction in estate tax liability. The transfer of an estate to the surviving spouse of a heterosexual marriage occurs tax-free. All other transfers at death are potentially subject to an estate tax. However, only estates that exceed a certain value are subject to estate tax. For those who die in 2004, this amount is $1,500,000. Any value of an estate in excess of this amount is subject to the estate tax at a maximum rate of 48%.

Individuals who must pay an estate tax are generally entitled to a credit based on any estate tax paid to a state. Like the federal estate tax, Oregon subsidizes married couples by permitting a full marital deduction for amounts passing from a decedent to his or her spouse. This means that an estate passing from a person to his or her spouse is not subject to the Oregon estate tax. This benefit will not be available to same-sex couples in Oregon whose marriages are not legally recognized by the State of Oregon.

Hypothetical Example: Susan & Mary

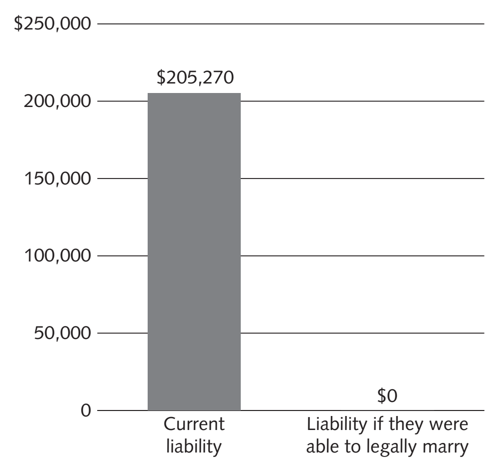
Susan D. and Mary L. have been together for 6 years. Susan's father died several years ago, and upon the death of her mother, she inherited the family home and some investment assets worth, after taxes, $3,000,000. Susan sold the house, and would like to invest both the proceeds from the sale of the house and the investment assets in a mutual fund jointly held by her and Mary. Since she never gave sizable gifts to Mary previously (or to anyone else), Susan has not used up any of her $1,000,000 lifetime gift tax credit as defined by federal law.

If Susan invests the $3,000,000 in a mutual fund jointly held by her and Mary, it will be classified under federal law as a gift of $1,500,000 to Mary (50% of $3 million). Since Susan has never used any of her unified credit, $1,000,000 of her $1,500,000 gift to Mary will not be subject to gift tax. Additionally, Susan is entitled to an annual $11,000 exclusion from gift tax. Therefore, $489,000 is taxable, leading to a gift tax liability of $205,270. Since Susan will use her entire $1,000,000 lifetime unified credit in this one transaction, any future gifts to anyone else in excess of $11,000 (increased in subsequent years for cost of living adjustments) will be subject to a gift tax.

Alternatively, Susan could transfer all of the money to Mary through a complicated procedure that married heterosexual couples do not have to do. For example, she could make a tax-free gift of only $1,011,000 to Mary in the same year she receives the proceeds from the sale of the family home. Then, she could make annual gifts to Mary of $11,000 for the next 44 years—presuming they both live that long—in order to transfer the full $1,500,000 without having to pay a gift tax.

In contrast, if Susan and Mary were able to legally marry under Oregon and federal law, Susan could make the transfer of $1,500,000 without having to pay a gift tax or file a gift tax return. Additionally, she would not use up any of her $1,000,000 unified gift tax credit or her $11,000 annual exclusion. This would allow her to use

GIFT TAX LIABILITY
for Susan and Mary



If Susan and Mary were legally married, Susan could transfer an unlimited amount of her inheritance to Mary without paying a gift tax ($0 liability). Since they can not legally marry, Susan's current gift tax liability is $205,270.

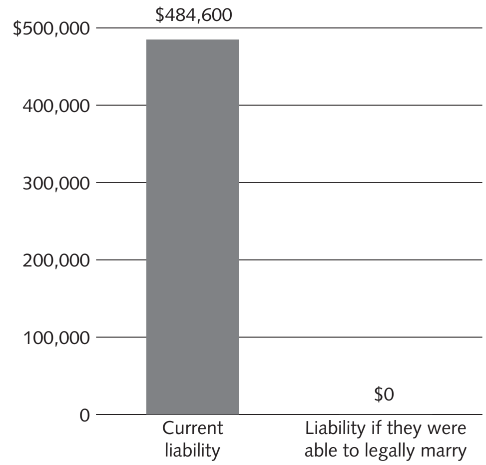
those credits to make tax-free gifts to other people in the future, including her children.

Hypothetical Example: Evan & Michael

Evan R. and Michael H. lived together on a dairy farm in Oregon for 25 years. Michael grew up on the farm and inherited it from his parents when they died. Although the farm is self-sufficient, Michael did not earn much income from it. Evan was originally in the construction business, but worked on the farm for two years prior to Michael's death.

Together, Evan and Michael had nominal savings, and their biggest asset was the farmland itself. When Michael inherited the farm, its fair market value was $350,000. Since that time, property values have risen considerably in that part of Oregon because of the growing wine-making industry in that region. In fact, the farm is currently worth $2,000,000.

ESTATE TAX LIABILITY
for Evan and Michael



If Evan and Michael were legally married before Michael's death, the farm would have transfered to Evan free of federal and Oregon estate tax. Since they could not legally marry, Evan must pay $484,600 or lose the farm.

Michael died in late 2003, and left the farm and its business to Evan in his will, who would like to continue living on the farm and operate the dairy business, especially since the farm has been his home for 25 years and source of income for two years. However, to keep the farm, Evan will have to pay significant estate taxes on its full value as part of his partner's estate. After the applicable credit for payment of Oregon estate taxes, the tax on Michael's estate will be $385,200. Under current Oregon law, Michael's estate is not entitled to a marital deduction for the amount transferred to Evan, since at the time of Michael's death, Evan and Michael were not legally married. Consequently, the Oregon estate tax on Michael's estate will be $99,600, and the combined state and federal estate tax is $484,600.

If Evan cannot come up with the money to pay the estate tax, the farm he and Michael lived on together for 25 years will have to be sold. He literally will lose the farm.

If Michael and Evan were able to legally marry before Michael died, and that marriage was recognized under federal law, the farm would pass to Evan completely free of federal and Oregon estate tax.

WORKERS' COMPENSATION BENEFITS

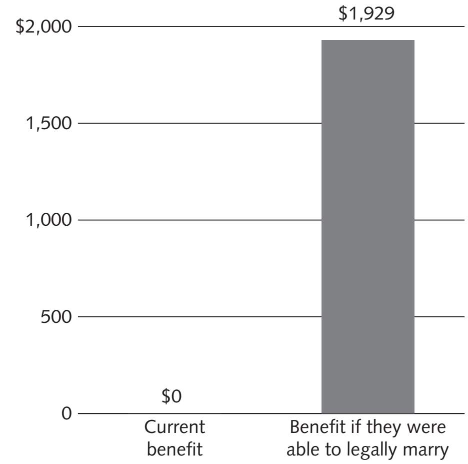
Oregon employers generally are required by law to provide workers' compensation insurance to all employees. These benefits protect workers who are injured on the job or who develop a work-related illness. Benefits are based on a percentage of the average weekly wages of the employee. The benefits are subject to a cap based on a periodic averaging of the wages of employees covered by workers' compensation in Oregon. For the fiscal year beginning July 1, 2003 and ending June 30, 2004, this cap is $665.10 per week. In the case of permanent and

7. The minimum weekly payment is the lesser of $50 per week or 90% of the weekly wage.

total disability, an eligible employee is entitled to receive two-thirds of his or her average weekly wage, subject to the $665.10 cap.[7]

If an employee's accidental injury leads to his or her death, or the employee dies while on permanent total disability, the surviving spouse is entitled to a monthly, life-time benefit of $1,929 per month (4.35 times two-thirds of the state average weekly wage of $665.10), as long as that surviving spouse does not either remarry or cohabit for at least one year and have a child with another person. If the surviving spouse either remarries or cohabits for more than one year and has a child with another person, the surviving spouse is entitled to receive, as a lump sum benefit, 36 times the monthly benefit as a final payment. Surviving spouses also are entitled to receive amounts with respect to minor children of the deceased worker, subject to a cap on total benefits. Finally, dependents of the deceased worker may be entitled to benefits of up to 50% of the average monthly support received by the dependent from the worker during the 12 months preceding the accidental injury causing death. "Dependents" are limited to certain relatives of the deceased worker, and would not include a same-sex partner.

MONTHLY WORKER'S COMPENSATION BENEFIT
for Timothy upon Brian's death



If Brian died as a result of an injury at work, Timothy would receive $1,929 per month in worker's compensation benefits if they were legally married. Since they can not legally marry, Timothy would currently receive $0.

Example: Brian & Timothy

As discussed earlier, Brian earns approximately $50,000 per year, or approximately $1,019 per week. If he were permanently disabled because of an accident that occurred while he was working, he would receive a life-time benefit of $665 per week in workers' compensation benefits.[8] If he and Timothy were legally married under Oregon law, and he were to die as a result of his injury, Timothy would receive $448 per week ($1,929 per month) until the time that he either remarries or lives with another person for at least one year and has a child with that person. In either case, he would receive at that time a lump sum final payment of $69,436.44. However, since it is not clear whether Oregon will recognize their marriage for these purposes, Timothy may not be eligible to receive any of the benefits afforded to similar heterosexual couples. Further, as a same-sex partner, he is unable to claim benefits as Brian's dependent.

OREGON ESTATE LAW

Under Oregon law, a surviving spouse is entitled to a portion of his or her spouse's estate if that spouse dies without a will. If they have no "issue," for example, children or grandchildren, a spouse is entitled to the full value of the estate. If the decedent has issue, the spouse is entitled to one-half of the entire estate.

8. Although 2/3 of Brian's weekly pay is $679, the benefit is subject to the $665 cap.

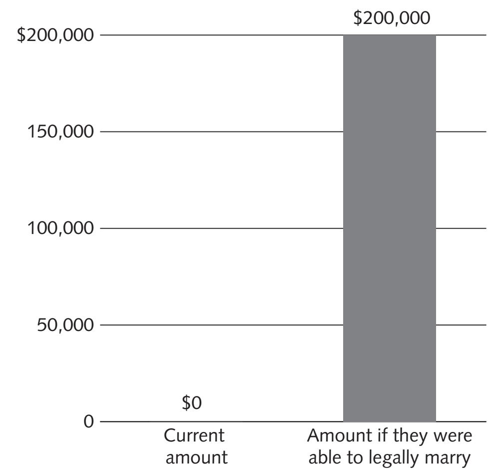
Hypothetical Example: Cynthia & Pilar

Cynthia and Pilar were in a committed relationship for 15 years at the time of Cynthia's death. Cynthia had two adult children. Both Cynthia and Pilar were retired and living primarily on Social Security. Cynthia's entire estate includes the house she owned, in which she and Pilar lived together for 15 years, and savings of $200,000. The house is worth $200,000.[9] Although Cynthia wanted Pilar to keep their home after her death, Cynthia could not afford to pay the legal expenses of drafting a will, so there is no legal document with specific directions for her estate.

Without a will, Cynthia is considered to have died "intestate." Because Cynthia and Pilar could not legally marry, Pilar has no legal right to any of Cynthia's assets. Under the intestate succession rules in Oregon, the house and the savings account will pass to Cynthia's children. In fact, Pilar has no legal right to remain living in the house, or to any of the assets in Cynthia's estate.

If Cynthia and Pilar were able to legally marry before Cynthia died, Pilar would automatically be entitled to one half of Cynthia's estate, including the house and the $200,000 savings.

AMOUNT OF CYNTHIA'S ESTATE AUTOMATICALLY CONFERRED to Pilar when Cynthia died



If Cynthia and Pilar were able to legally marry before Cynthia died, Pilar would receive 50% of Cynthia's estate, a total of $200,000, in addition to Cynthia's car. However, since they were not married, Pilar receives nothing.

BENEFITS FOR OREGON PUBLIC EMPLOYEES

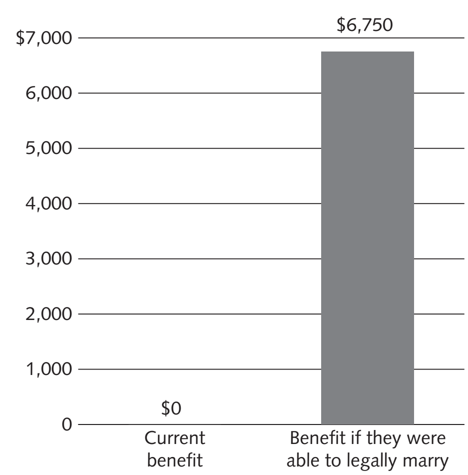
Oregon public employees are entitled to numerous death and retirement benefits. For example, a police officer or firefighter that is a member of the Oregon Public Employees Retirement System is entitled to certain disability and retirement benefits. If he or she dies while receiving either of these benefits, his or her surviving spouse is entitled to receive a benefit of 25% of the benefit the police officer or firefighter was entitled to receive.

Hypothetical Example: Anita & Carla

Anita and Carla are police officers, and have been together since they met at the police academy over 12 years ago. Up until 2002, Anita earned $54,000 per year. However, in 2003, Anita became disabled on the job and began to collect a yearly Oregon Public Employees Retirement System disability benefit of 50% of her annual salary, or $27,000.

In 2003, Anita died as a result of her injury. If Anita and

ANNUAL BENEFIT Carla would receive if Anita died in the line of duty



If Carla and Anita were able to legally marry before Anita died in the line of duty, Carla would be entitled to a pension benefit of $6,750 annually. Since they could not legally marry, Carla gets nothing ($0).

9. Under both U.S. and Oregon estate tax law, this is not a taxable estate.

Carla had been married at the time of Anita's death, Carla would be entitled to receive an annual death benefit of $6,750. However, if they are unable to legally marry, Carla would be entitled to no payments whatsoever.

CONCLUSION

Without the right to legally marry under Oregon law, same-sex couples are denied numerous protections, rights and benefits that have a significant economic impact on same-sex couples living in Oregon. Marriage licenses issued to same-sex couples by counties in Oregon are symbolically important, but they don't necessarily provide those couples with the marital benefits afforded to heterosexual married couples. Civil unions, even if they grant equality at the state level, put gay and lesbian residents of Oregon in a worse position than they would be in if they were married and wanted to take legal action to gain access to the 1,138 federal benefits and protections automatically granted to their heterosexual counterparts when they marry.

The 2000 U.S. Census found that more 8,932 cohabitating same-sex couples live in Oregon.[10] Twenty percent of the gay male couples and 28 percent of the lesbian couples in Oregon are raising children.[11] This is likely a significant undercount. When Oregon and the U.S. government respect the marital relationships of same-sex couples, these couples will pay a more equitable share of the tax burden and receive a more equitable share of benefits from the Social Security system that they pay into their entire lives. These benefits and protections make it easier for same-sex partners to care for each other when they are sick or elderly, and make it more likely that their children have access to vital financial support should one or both parents die.

10. Simmons, T., & O'Conell, M. (2003, February). *Married-Couple and unmarried-partner households: 2000*. United States Census Bureau. Retrieved December 4, 2003, from http://www.census.gov/prod/2003pubs/censr-5.pdf

11. Bradford, J., Barrett, K., and Honnold, J.A. (2002). *The 2000 Census and same-sex households: A user's guide*. New York: The National Gay and Lesbian Task Force Policy Institute, the Survey and Evaluation Research Laboratory, and the Fenway Institute. www.thetaskforce.org

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The **National Gay and Lesbian Task Force Policy Institute** is a think tank dedicated to research, policy analysis and strategy development to advance greater understanding and equality for lesbian, gay, bisexual and transgender people.