

Legislative History for SB 2018 (w comment on SB1190) (1988)  
[attached]

This Introduction by Barbara A. DiFranza

Claim 1: That the availability of separate property accounts under Family Code § 2610<sup>1</sup> (formerly Civil Code 4800.8) was intended to disallow the remedy provided to former spouses under *Gillmore*.<sup>2</sup> Under *Gillmore*, a nonemployee spouse may demand payment from the employee spouse once the employee spouse becomes eligible, despite the employee spouse's decision to continue in employment.

Fact: See attached legislative history. No "new rights or benefits in either the member or the non-member spouse" were intended.

Claim 2: Family Code § 2610 provisions were intended to defeat the right of a nonemployee spouse to pursue relief under *Gillmore*:

2610 (b) A court shall not make any order that requires a retirement **plan** to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

Fact: See attached legislative history. The bill was passed at the behest of and to protect **public** pension plans to **protect the plans** from early/excessive orders—not to protect the employee spouse.

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<sup>1</sup> See the full version of this statute elsewhere on this site or by visiting <http://www.leginfo.ca.gov/calaw.html>.

<sup>2</sup> *In re Marriage of Gillmore* (1981) 29 Cal.3d 418, 174 Cal.Rptr. 493. See also *In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 53 Cal.Rptr.2d 81, 916 P.2d 476 which requires filing a motion to mark the *Gillmore* date.

## CALIFORNIA COMMITTEE ANALYSIS STATEMENT

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Assembly Committee on Judiciary Bill No. SB 2018 = Date of Hearing: July 1, 1992

COMMITTEE: Assembly Committee on Judiciary

BODY: SB 2018 Date of Hearing: July 1, 1992

ASSEMBLY COMMITTEE ON JUDICIARY - Phillip Isenberg, Chair

SB 2018 (Calderon) - As Amended: May 13, 1992

PRIOR ACTION Sen. Com. on JUD. 9-0 Sen. Floor 32-0

**SUBJECT:** This bill clarifies what a court may require **of a retirement plan**<sup>3</sup> with regard to the types of orders a court may make when dividing community property retirement benefits.

### BACKGROUND

*History.* SB 1190 (Lockyer), Chapter 542, Statutes of 1988, provided a mechanism for the division of community property rights in a retirement plan or pension in a dissolution proceeding. The intent of that bill was to provide an effective way to grant owners of community property interests in **public** pension systems access to their property rights without interference from their former spouses.

Prior to SB 1190, it was possible for a member spouse (e.g., the employed spouse who received the retirement benefits as part of their employment benefits) to control a former spouse's access to his or her property rights by delaying the date of retirement and thus, the date at which the non-member spouse could begin to receive his or her community share of the benefits.

**It was not the intent of SB 1190 to create new rights or benefits in either the member or the non-member spouse.**

### DIGEST

Existing statutory law, Civil Code Section 4800.8(a), provides with regard to community property retirement benefits that, among other things, a court may make whatever orders are necessary or appropriate to assure that each party receives his or her full community property share in any retirement plan, including, but not limited to:

- 1) Ordering the division of retirement benefits that are due or payable on the death of either party.
- 2) Ordering a party to elect a survivor benefit annuity where a plan provides such an election.

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<sup>3</sup> Bolding for emphasis in this reprint is supplied by DiFranza.

Existing case law provides, among other things that:

- 1) Where a plan member chooses to work beyond the date that retirement is available, a court may order a plan member, but not the plan, to make payments to the non-member spouse from the date that retirement was an option. (In re Marriage of Gilmore [1981] 29 Cal.3d 418; In re Marriage of Nice [1991] 281 Cal.App.3d 444)
- 2) While a court may make whatever orders are necessary and appropriate to assure each party receives his or her equal share of the community property interest in a retirement plan, the court may not make orders that alter or enlarge a retirement plan's liability.

(In re Marriage of Carnall (1989] 216 Cal.App.3d 1010)

This bill *clarifies existing* law by:

- 1) Adding Section 4800.8(a)(5) which states that a court may order a retirement plan to make payments directly to a non-member party of his or her interest in the retirement benefits.
- 2) Specifying that the blanket authorization in Section 4800.8(a) is subject to the specific prohibitions set out in Section 4800.8(b) that a court may not require **a retirement plan** to:
  - a) Make payment in such a manner as will result in an increase in the amount of benefits provided for in the plan.
  - b) Make payment of benefits to any party before the member retires, unless the plan so provides. (This paragraph also makes specific exemption for PERS and STRS which do provide for such payment.)

## FISCAL EFFECT

None

## COMMENTS

- 1) *Sponsor's Statement.* According to the sponsor, the City of Los Angeles (LA), this bill is necessary to keep courts from ordering **public employee pension plans** to pay larger than promised benefits and to make payments to a non-member spouse before the member spouse retires.

The sponsor claims that there are several cases on appeal involving LA where the courts are misapplying Section 4800.8 in a manner that increases the liability of the plan. For example: (a) requiring the plan to make payments to a non-member spouse before the member spouse retires (in spite of significant case law to the contrary); (b)

requiring the plan to make spousal survivorship payments to a former spouse while the plan is still required to make payments to an existing spouse, in a manner that increases the overall liability of the plan for that deceased member, rather than dividing the total allocated benefit between the former and existing spouse; and (c) exposing the plan to potential liability to the heirs of a former non-member spouse, who has long since died, where the member spouse is long retired and the plan had been making the full payments to him or her.

2) *Issues.* The issues involved in division of community property interests in a retirement plan are extremely complex. The current statutory provision is very general and does not address these issues.

Case law has attempted, time after time, to address these issues, but this results in greater confusion as the courts must state the law in the context of the facts in the case before the court.

Further, the trial courts seem to be confused about the state of the law.

For example, in the Gilmore case in 1984,<sup>4</sup> the California Supreme Court set forth the rule that where a member spouse decides not to retire when he or she is first able to do so, then the non-member spouse must still be paid his or her share of the retirement benefits from the time the member spouse was first able to retire. The Gilmore court stated, however, that **the plan was not required** to make these payments, but that the member spouse must do so. Even so, there have been several appellate cases encompassing the same issue. [bolding supplied]

The case law rules are not precise and clear enough to provide a coherent guide to the courts, families and plans that are involved. As retirement benefit payments may be crucial to the well-being of the retiree and his or her spouse, the confusion can be costly and devastating to the parties. It seems advisable that the statutes be amended to clearly provide a guide in this area.

This bill is a first-step in bringing some clarity to the area.

#### SUPPORT

City of Los Angeles (sponsor)  
State Association of County Retirement Systems  
State Bar, Family Law Section

OPPOSITION - Unknown

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<sup>4</sup> *Sic: Gillmore* is misspelled and had been decided in 1981.