Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures, the people in them, the policies, process, and politics that shape them. I am your host, Ed Smith.

The expectation that most people would get health care and retirement through their employer is really an outdated notion in many ways. We do have research suggesting that more than 1 in 10 workers is an independent contractor, temp worker, freelancer in some job that does not provide those traditional benefits.

That was Senator Elena Parent, a Democrat from Georgia and one of my guests on the podcast. She is joined by Senator Arthur Orr, a Republican from Alabama. Both join the podcast to discuss the issue of portable benefits for workers, benefits that are not tied to a particular employer. Since 2018, state lawmakers in at least a dozen states—Alabama and Georgia among them—have introduced legislation that would establish portable benefit programs for gig workers, create funds to foster innovative experimentation in this area or study related issues. Parent and Orr talked about why the issue was important to them and agreed states are a long way from determining the best long-term approach to provide a benefit structure. Parent noted that the pandemic put a spotlight on the need for such benefits and the degree to which nontraditional workers are not covered by the current system. Orr stressed the need for workers in the gig economy to be able to establish robust retirement savings. He also talked about changes the federal government must make to give states the room to innovate. Here is our discussion, starting with Senator Parent.

Senator Parent, welcome to the podcast.

Thank you for having me.
Ed: So, we are here today to talk about portable benefits, benefits that can follow workers. I guess this isn’t a novel idea, the notion of COBRA or Social Security is sort of along those lines. But why has this emerged as such a pressing issue in your state of Georgia in the last few years?

EP: Well, it’s really because of the changing nature of work and the changing nature of the workforce in response to the availability of these different sorts of jobs. You know some of the ones that we tend to think about the most often when we think about jobs that do not come with benefits do fall into this sort of technology disruptor space. Think of the Uber drivers or the food delivery app drivers. These jobs have really exploded and more and more people are working at a job such as the examples I just gave that does not provide a traditional employee/employer relationship in that it does not have the traditional benefits package that our social programs sort of envisioned that American workers would have when they were created. The expectation that most people would get health care and retirement through their employer really an outdated notion in many ways. We do have research suggesting that more than 1 in 10 workers is an independent contractor, a temp worker, freelancer in some job that does not provide those traditional benefits and estimates are that in Georgia the number is even more than 10% of workers. So we just really need to reimagine the entire way that these core benefits are provided to Americans.

Ed: So, I think most of us can understand the Uber drive or something of that nature where you go on a platform, you have some relationship with that organization and you get this on-demand work. Is there a broader group of what is called a nontraditional workers who might be covered by this?

EP: Yeah. Absolutely. There really are. I mean think of people who are freelancers you know consultants. So, say you are an artist or a writer and you write periodic articles for different publications. So, that might be an example. What if you are a graphic designer and you have your own business, but you are putting yourself out there to different companies and you may go on with a company full time or you may operate more in the independent contractor consultant’s sphere. So really there are a lot of industries especially in the creative space that also would fall within the category. I’d say technology space and creative space are two big areas.

Ed: Talk a little bit more about what the term portable means here. Is this something where you live in Georgia and you can go from you either have this kind of non-traditional job or you move from maybe one place to another. Or is this something you could take to another state?

(TM): 04:55
EP: A lot of this discussion about it even really is evolving so there certainly could be a different model. If something was state facilitated for example or the or a state was putting money into a particular benefit, then obviously if you moved out of that state it would have to be worked out in the legislation or in the regulations around that program how it would work if you are no longer at that state. But I will say that the fundamental notion, which is really what your question is about, is that the benefit belongs to the individual and the individual can go from job to job retaining the benefit and not losing it. So, for example, if you had been at a traditional company and you got unemployment through that company, but then you wanted to go on and be a freelance writer, well you would no longer have that benefit through your company. So, the idea would be to create—unemployment is one of the ones that’s often discussed a system where you as a freelance writer can access unemployment benefits and those benefits would stay with you through your different freelancing jobs and really in perpetuity.

Ed: I guess we did see some efforts during COVID to give people in the gig economy access to unemployment benefits.

EP: Yes, you are right, but it had to be a special act of Congress and then they had to stand up a separate system in order to pay them out because our system right now did not contemplate that that gig workers would receive unemployment.

Ed: I guess that makes your point though that this is something where the time has come. Our economy is shifting to different kinds of roles. Let me ask you a little bit about what kind of policies you would like to see in Georgia in terms of promoting access to a core set of essential benefits or I guess more of an a la carte situation, you would promote choice based on individual situations.

EP: You know, a state like Georgia, it might be easier to get buy-in for some of the a la carte depending on what a particular family needs. But the thing is, we would really need to, in designing our program, which we have had very, very preliminary conversations here in Georgia, we have not designed a program. Meaning that throughout the conversation we would really need to be flushing out sort of like cost attainability. It sounds as though it might be better to allow folks to say, well I really need access to unemployment or I need retirement. That’s a biggie. Or paid family and medical leave. It could be cheaper to allow people to pick the ones that and buy into the ones through whatever system was set up that are most needed by them and their family. But you could find that it actually would be more economical to sort of pick certain benefits and apply them for everyone who opts into the portable benefits system instead of doing it like a menu. I think that any state or locality considering this needs to price out and run the numbers based on the number of people they expect, different models of paying for these
benefits and then if you did an a la carte option or if all workers coming in say got the core three of say you made them unemployment, retirement and paid family medical leave.

**Ed:** Well, let me ask you a little bit about the paying for it part and I say that acknowledging that this is the kind of thing state legislatures have to be able to do is talk about ideas and throw them around and think about different models and not immediately get cornered on well how much is this going to cost when you have really even flushed out what it is you want to do. With that caveat, let me ask you what’s the appropriate role of government actors or businesses, customers, workers in paying for this stuff.

**EP:** Well, you know Ed, in your question, you actually named sort of the four groups individuals or entities that have typically been under consideration when thought has been given to standing up a portable benefits system in terms of who is going to pay for it. You’ve got you know taxpayers, the government. You’ve got businesses. You’ve got workers and you’ve got customers. So, there are all you know frankly a number of different ways that you could slice and dice that or put something together. The fact is that most of the workers, not all, but many of the workers that we are discussing say we are talking about gig economy workers are not really making enough money to buy themselves without it being provided as a bit of a benefit at least partially some of these benefits we are talking about. And frankly, when you try to look at it as to try to have it have some comparison to what you would get in a traditional employer/employee relationship, that is not all footed by the employee. That’s why it’s a benefit. The employer is providing it and paying for at least some of it. And so, I think that if we were going to make it be something that is a benefit to the freelance gig economy folks the same way being an employee is, we would not want to expect that the employee would foot the bill for the entire thing which then of course leaves the employer, taxpayers and customers. There are various different ways that you could divey up the costs between these categories. I think it’s a recognition though that the economy has changed. Our social safety net needs to evolve with it.

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**Ed:** You talked before a little bit about the pandemic and how what an effect it has had in this area probably every aspect of our lives whether its education or health care, jobs. And I wonder what lessons you’ve drawn for workforce developments during this era and how that shaped your thinking about portable benefits?

**EP:** Well, we already mentioned what I consider to be one of the prime examples of the need for this type of conversation which was the need for the federal government to go in and recognize that there are these huge numbers of individuals who were working,
who were hardworking, couldn’t work during the lockdowns and fell completely outside of the structures that would have allowed them to access unemployment benefits. That proves the point. Government did respond. They had to go in and seeing that structure it shows it can be done. There have been some bills introduced in Washington that would provide pilot or grant programs for portable benefits to states. It would be a good idea to pass that legislation and access those to try to test things out. I think this is an area where testing out different models at the local level and the state level really would be extremely beneficial.

Ed: You mentioned that there is bipartisan legislation that is in in Congress. Always kind of a crapshoot as to whether things are going to get passed. There’s also some groundbreaking private sector benefit solutions in this area. Do you see an area for that kind of innovation? Maybe it’s partnership with states. Talk about that a little bit.

EP: Absolutely. I think that having the private sector involved actually is important. There are some companies that have put together programs to assist workers in this situation or you know to provide a menu of options. They are very good. The problem with those is a lot of the workers can’t really you know afford them so they are not accessible to a lot of the workers that we would still like to reach. One could easily envision a strong and successful public/private partnership to deliver these benefits to gig workers. You know say if it’s gig workers well why not utilize the gig economy for you know the platform to manage and run some of the benefits.

Ed: Well that it sounds like a very interesting idea and one I hope we can check back with you again. Thanks for talking to us about what’s going on in Georgia in this area. Take care.

EP: Thank you so much Ed. I appreciate the time.

Ed: Thanks Senator. I’ll be back right after this with Senator Arthur Orr of Alabama to discuss the approach his state is taking to the portable benefits issue.

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Senator Orr welcome to the podcast.

AO: Thank you Ed. Good to be with you today.

Ed: So, we are going to talk today about portable benefits. The notion that benefits should follow workers rather than being tied to employer. And I wonder if you could talk a little bit about why this is an important issue for you and for your constituents in Alabama.
AO: Well, several years ago, I sponsored a bill in the legislative process to try to address this and we ran into what I would call federal headwinds, but it seems important in the 21st century that workers have this portability for their benefits. And give you an example. So, let’s take someone who everyday wants to wake up and decide whether they want to work or not. They may have small children. You know they may have other impediments from just an 8 to 5 Monday through Friday type job so they want a flexible workplace. Well, how is that person going to be able to have retirement benefits? They certainly have access to an IRA and that is limited to $6,000 under current law. $7,000 if you are over 50, but still if that’s it and you have no one withholding your Social Security, you know making the Social Security, the FICA payments, now you are in a situation where when you go to retire, you’ve got little to no social security. Your IRA let’s say you fully contributed all you know during your work life let’s say 30 years and so easily that would be $180,000 plus whatever the growth was on that. But still is that enough to be able to retire on in the 21st century and my answer is no. You don’t get the benefit of a 401(k) type of retirement that allows almost $20,000 for people under 50 and over $20,000 for if you are over 50. And a lot of times you get employer matches for that. So, what is this individual to do? How are they going to plan and prepare for their retirement under current law? Quite frankly, they are not because the law constricts them and constricts employers from being able to contribute to let’s say a 401(k) for that employee or that worker that wants to shop their skillsets around and go from employer to employer. Let’s just say it’s a grasscutter. You know a manual labor type person. But you can move on up the skillset level to a gig worker or somebody who is very conversant and has a lot of skills let’s say in the technology field and still same limitations. And it makes no sense that we don’t allow this. And one of the things that we ran into in Alabama – again just using retirement as an example, was the Erisa Law. Federal law comes into play and you have a lot of headwinds that you’ve got that we have to address that needs federal cooperation and then certainly can we do things at the state level. I can go on down the list. You know you’ve got health care. Ah thanks to the Affordable Care Act, you’ve got some options out there that may be affordable for you but are there some government, at least we don’t have that here in Alabama, a government level health care that’s a step above Medicaid where you have a private payer, but not in the exchanges with the Affordable Care Act. So, there is a targeted group out there that again have skills, want to work, want to participate in the economy and the workforce, but the benefits that they are able to get under current law are slim to none and that makes no sense from a policy perspective.

Ed: Now I’ve seen estimates that as much as a third of the U.S. workforce participates in this so-called gig economy. And it is a term that’s pretty hard to define, but who are the workers that you see as the most likely to be helped by a move toward portable benefits?
AO: You know in Alabama again our skillsets are not what they may be in Silicon Valley or somewhat across the board. Nonetheless, they are people. They are human beings and they are for one day not going to be able to work or want to be able to retire. They all need health care. All you know they all face these similar situations. And you mentioned something Ed that I think is critical to this discussion. Earlier I was talking in the context of a full-time worker. After COVID, you know, you’ve got a lot of people that really would prefer to be part-time workers still work for a wage, a salary of whatever, but under current law they are not qualified. Or under the current health care benefit plan, they don’t meet the minimum threshold of hours. Well, why can’t we be innovative and allow for more flexibility when it comes to health care. I mean isn’t that a good public policy aims to have more workers insured and have them insured in the private sector or by the private sector. It doesn’t necessarily always have to be the government picking up the tab. These are able bodied workers wanting to work but is there not a way for them to access the health care world that we can access or provide through the passage of laws that enables their ability to do that. Or like we said earlier, when it comes to retirement income. Even though you may be 65 and retired, can we not still help you build your nest egg because your life expectancy is well into the 80’s. If you are married then your spouse will certainly be able to participate in those benefits should you pass. So, anyway, a lot of things out there that the government or public policy really needs to catch up with the times in this space.

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Ed: Can you talk about the approach you are taking in Alabama? As I understand it, part of the effort is to deal with some worker classification issues.

AO: Right. Well, we you know I sponsored a bill that helped clarify with primarily with worker’s compensation and that’s another issue that you know you get into with well does the employer control the activities the employee. The Obama or excuse me the Biden administration just came out with some guidance on this. Here in Alabama the lines get fuzzy and the employers, the business community gets very skittish when it comes to am I going to be responsible for worker’s compensation on this particular employee or not. I’m not controlling what they do so therefore they are an independent contractor. Our state law needed some clarification in that area and I think it’s good to have clear boundaries because if you don’t have the clear boundaries, you are muddled and employers may be become reluctant to hire or to go down this road when it comes to independent contractors. So that was an important step to take here. But it was low hanging fruit and it still doesn’t address the overall problems that we have with allowing portability of benefits and with allowing for the worker’s comp issue and how we can better manage that rather than this arbitrary test that we have out there. You know that
goes to control and how many hours and things like that of the day that the court systems have developed over the years to determine whether an employee is an employee or an independent contractor.

Ed: I asked this earlier of Senator Parent in Georgia and I think it is something that will vary by state, but what kind of approach for portable benefits would you like to see in Alabama? One that promotes access to a core set of essential benefits or more of an a la carte model designed to promote choice based on individual circumstances.

AO: Because of the overlay of federal law you know I was approaching it more as a a la carte or a cafeteria type plan where you can pick and choose what benefits you want to make it flexible because if you make it too if you throw the kitchen sink in there and you make it where the kitchen sink has to be included then employers become, whoa, that’s too costly. We don’t want to do this. We are going to. You know we are going to hire fewer people and offer any benefits because it’s too costly for our business model. So, making it an a la carte and letting the workers choose perhaps what they want to participate in or not and get that tax benefit of going back to retirement, let them donate which part of their wages end at 401(k) that’s portable that they can take from employer to employer. Allow them that flexibility to get that tax benefit of before tax money being donated to their 401(k). And right now, they don’t have that.

Ed: So, a lot of programs come down to who is going to pay for them. In this discussion and given its early days on this issue, what’s the appropriate role in your mind of government actors, business, customers and workers paying for and administering these programs?

AO: You know I come from the conservative more conservative side of the ledger, but at the end of the day, it is about people. And it’s about government getting out of the way and letting businesses and people decide how best to address their situation. People need to retirement funds or money for their retirement. People need health care. People need some kind of insurance policy if they are hurt or injured on the workplace or on the job. And so, in my mind, Ed, it’s best for the government to lay a field that allows employers and employees to have a very defined area where they can get together and they can determine what is the best benefit package for my business and for my employees to attract the employees that I want and not just try to lowball it. And we ignore the needs of employees that employees are going to one day burnout or need to retire. Their bodies may burnout. They are going to need health care. And all before Medicare days or you know and we don’t want more employees on Medicaid, but how can we work through these issues to be a win/win for the business community so it’s not cost prohibited, but for employees so there are some real benefits and some real security there for them should they be injured, should they need their families need the health
care and when the days of retirement come. And then to allow as we discussed the partial retiree or the part-time worker, the mom with children that doesn’t want to spend 40 hours a week at a workplace. How can we better benefit them to again allow them to accrue some retirement benefits and provide for their families when it comes to health care and other benefits.

Ed: There is pending bipartisan federal legislation that will award grants to states, local governments or nonprofits to support innovative portable benefit projects. And of course, we know that that also might never pass. There are also private sector benefits solutions emerging. What role do you see for innovations on these issues in private business and at the federal level?

AO: I think the states can push the feds to change their current law to allow some innovation at the state level, state governments. And that’s one reason I really like operating in the state government world because we can look across state lines. We can get the benefits from the experiences of other states. We are good plagiarizers at least I’ll admit that here in Alabama. We see what works elsewhere and we will take it and apply it here if it fits in our policy realm of what we’d like to see here. But right now, I think you know states can push the federal government to get out of the way. Let us do some innovation. We’ve got the same desires as our federal representatives and that is we want to take care of workers and allow the workers to take care of themselves. But we don’t want to make it so cost prohibitive that businesses say this is just too expensive and we can’t afford this and it makes us non-competitive out in the marketplace. So I think we can do it. In fact, I know we can do it. Let’s just get the laws situated in such a state that we can innovate and it can become an ultimate win/win for the business community and for the employee community. That’s better for our country all day long.

Ed: Well at NCSL, we love to hear that legislators are learning from other states and working with other states and I certainly hope that’s what is happening here. Thanks so much for walking us through how you are approaching this issue in Alabama. Take care.

AO: Thank you so much Ed.

(TM): 27:11

Ed: I’ve been talking with Senator Elena Parent of Georgia and Senator Arthur Orr of Alabama about portable benefits and how they are approaching the issue in their states. Thanks for listening.

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