Mr. MORAN. Mr. President, over two decades ago, Congress passed a law on an overwhelming bipartisan basis to provide a standard way of doing business for motor carriers nationwide. This preemption provision resulted in increased efficiencies that led to lower transportation costs and improved services, which have benefitted shippers and consumers throughout the country.

For two decades, this intent of Congress was adhered to for those involved in interstate commerce, and even upheld by the Supreme Court. Unfortunately, a recent Ninth Circuit Court decision has brought confusion to what had been the clear intent of Congress, and in my home State of Kansas, numerous trucking companies and drivers have become victims of these unintended consequences.

As the Senate begins consideration of the Transportation, Housing and Urban Development, THUD, Appropriations bill, the issue of trucking preemption laws may be debated once again. Due to escalating rhetoric and increasingly pointed statements regarding this issue, I sought the objective, authoritative policy expertise of the Congressional Research Service, CRS, to answer one-by-one many of the claims being made.

As the debate on THUD appropriations moves forward, I would encourage any of my colleagues interested in the trucking preemption debate to consult this CRS analysis and judge for themselves the merits of this important issue. I think they will find many of the claims made in opposition are exaggerations, if not outright falsehoods, and that the original intent of Congress on this matter was and continues to be critical for preventing unnecessary burdens on an industry that hauls our Nation's freight and is vital to our economic well-being.

I ask unanimous consent to have printed in the Record the CRS memo provided to me with its thoughtful and informative answers.

Thank you.

There being no objection, the material was ordered to be printed in the RECORD, as follows:
MEMORANDUM

To: Hon. Jerry Moran.
From: Rodney Perry.
Subject: Implications of Section 611 of the Proposed Aviation Innovation, Reform, and Reauthorization Act of 2016.

This memorandum provides responses to your questions concerning California law and the implications of Section 611 of the proposed Aviation Innovation, Reform, and Reauthorization Act of 2016 (Section 611).

Section 611 contains two primary provisions. The first provision would expressly preempt state laws that prohibit employees whose hours of service are subject to regulation by the Department of Transportation (DOT) under 49 U.S.C. §31502 from working “to the full extent permitted or at such times as permitted under [49 U.S.C. §31502].” It would also preempt any state laws that “impos[e] any additional obligations on motor carriers if such employees work to the full extent or at such times as permitted” by DOT regulations issued pursuant to 49 U.S.C. §31502, which permits DOT to prescribe requirements for the qualifications and maximum hours of service of motor carrier employees.

The second provision of Section 611 would expressly preempt any state laws that require payment of “separate or additional compensation” by a motor carrier that compensates employees on a piece-rate basis, so long as the total sums paid to an employee, when divided by the employee's total number of hours worked during the corresponding work period, equals or exceeds the applicable minimum wage for that state.

You specifically asked for responses to the following questions:

1. Although the meal period must be paid if the employee is on-duty or required to remain on the premises, doesn't California law permit an on-duty meal period only if there is a written agreement between the parties that can be revoked at any time? Absent such agreement, isn't the default obligation to provide an off-duty meal period? Does the employer have to pay for an off-duty meal period?

Under California law, unless an employee is relieved of all duty during a meal period, the meal period is considered an “on duty” meal period that counts toward hours worked, and is thus compensable. On duty meal periods are only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) there is a written agreement between the employer and employee for on duty meal periods. Such a written agreement must state that the employee can, in writing, revoke the agreement at any time. Absent such an agreement, any meal periods provided as required by law are off duty. Off duty meal periods do not count toward time worked (i.e., they are unpaid).
2. Does anything in Sec. 611 mandate that motor carriers utilize piece-rate pay systems?

Under Section 611, if a motor carrier compensates an employee on a piece-rate basis, it is not required to provide any additional compensation so long as the sum of the piece-rate compensation, when divided by the total number of hours worked during the corresponding pay period, equals or exceeds the applicable minimum wage. This does not appear to require motor carriers to pay their employees on piece-rate bases. Rather, it seemingly prevents an employer that chooses to pay its employees on a piece-rate basis from having to provide additional compensation in specified circumstances.

3. Is an employer, paying an employee on a piece-rate basis, in compliance with federal minimum wage laws if the sum paid to the employee, when divided by the total number of hours worked, meets or exceeds the applicable minimum hourly wage rate?

This appears to be correct. Courts have generally held that an employer meets federal minimum wage requirements if the total weekly wage paid is equal to or greater than the number of hours worked in the week multiplied by the statutory minimum rate.

4. Would a motor carrier employee loading a truck have to be compensated for that time as hours worked under federal law? Does anything in Sec. 611 alter the conclusion?

Pursuant to the federal minimum wage requirements, covered employers must pay employees the applicable minimum wage for all compensable hours worked. The Supreme Court has held that activities that are an "integral and indispensable part of the principal activities for which covered workmen are employed" are compensable. At least one federal appellate court has found that loading a truck is an integral and indispensable part of the principal activity for which a truck driver is employed (driving a truck), and thus is compensable. Section 611, by its terms, specifies circumstances wherein state laws, regulations, or "other provision[s] having the force and effect of law" are preempted by federal law. As such, it does not appear that section 611 would alter the determination of whether time spent loading a truck is compensable under federal law.

5. Under California law, would a motor carrier have to pay a driver for the mandated 10-minute rest break? If a driver were to take a rest break or any other type of break of 10 minutes, would a motor carrier have to pay the driver for that time under federal law? If Sec. 611 were enacted, would the requirement under federal law still apply?

Under California law, motor carriers are required to provide employees with paid 10-minute rest breaks for every four hours worked. Under federal law, employer-provided breaks that are between 5 and 20 minutes in duration are generally compensable. Section 611, by its terms, specifies circumstances wherein state laws, regulations, or "other provision[s] having the force and effect of law" are preempted by federal law. As such, it does not appear as though section 611 would alter the determination of whether a 10-minute break is compensable under federal law.
6. Does California Labor Code §226.2 apply to independent contractors or only to employees?

By its terms, California Labor Code §226.2 (Section 226.2) applies to "employees." Given the time constraints required to respond to your request, and the methodology used to search for relevant cases, CRS could find no case law interpreting Section 226.2 that discusses its potential applicability to independent contractors.

7. Would Section 611 preempt state meal and rest break laws, like California's, as applied to motor carriers?

Section 611 would preempt any state laws that prohibit employees whose hours of service are regulated by the Department of Transportation (DOT) under 49 U.S.C. 31502 "from working to the full extent permitted or at such times as permitted under [49 U.S.C. §31502]." Section 611 would also preempt any state laws that "impos[e] any additional obligations on motor carriers if such employees work to the full extent or at such times as permitted" by DOT regulations issued pursuant to 49 U.S.C. §31502, which permits DOT to prescribe requirements for the qualifications and maximum hours of service of motor carrier employees. Thus, any state meal or break laws that impose more stringent requirements on motor carriers than DOT's meal or break regulations for motor carriers, found at 49 C.F.R. Part 395, would seem to be preempted by Section 611. This interpretation of the legislative language would appear to be consistent with the legislative intent behind Section 611.