

UNDERSTANDING INTERSTATE COMPACTS

Interstate compacts operate in the gray area of the Constitution, involving issues of regional or national importance that do not fall within the immediate purview of the federal government, yet clearly rest beyond the realm of the states acting individually. They are the most powerful, durable, and adaptive tool for ensuring cooperative action among states. Compacts enable states—in their sovereign capacity—to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while respecting the view of Congress on the appropriateness of joint action. Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self-regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process.

Nature of an Interstate Compact

Interstate compacts are formal agreements among and between states that have the characteristics of both statutory law and contractual agreements. They are enacted by state legislatures that adopt reciprocal laws that substantively mirror one another. Since compacts are a statute in each of the jurisdictions that are party to it, the entire body of legal principles applicable to the interpretation of statutes also applies to the interpretation of compacts. In addition, compacts are considered contracts because of the manner in which they are enacted. There is an offer (the presentation of a reciprocal law to the state legislatures), acceptance (the actual enactment of the law) and consideration (the settlement of a dispute or creation of a regulatory scheme). As a contract, an interstate compact is binding on member states in the same manner as any other contract entered into by an individual or corporation. Once they have been enacted, compacts cannot be unilaterally amended.

It is important to appreciate that compacts are not mere intergovernmental agreements or informal administrative alliances. Although passed by state legislatures in essentially the same form, compacts are not “uniform laws.” Interstate compacts differ from uniform state laws in several ways. Most notably, a uniform law does not depend on contractual obligations and a state can, therefore, change any portion of the law, thus losing any degree of uniformity initially intended. Second, courts of different states may interpret the provisions of a uniform state law differently and since the highest court in a state is the final arbiter on legal issues within that state, there is no satisfactory way to achieve a reconciliation of divergent interpretations. In contrast, compacts are binding legal contracts with their terms and conditions controlling, even trumping, the actions and conduct of the member states as to the subject matter of the compacts. The fact that compacts are creations and creatures of individual state legislatures does not alter, in any way, their status as contracts with enforceable obligations between the member states.

History of Interstate Compacts

Felix M. Frankfurter, former U.S. Supreme Court Justice, referred to interstate compacts as one of the “axioms of modern government.” In an historic court opinion in which the Court upheld the validity of a state’s authority to enter into compacts and delegate authority to an interstate agency, Justice Frankfurter also called such state action “a conventional grant of legislative power.”¹ Throughout the history of the United States, interstate compacts have been used to define and

¹ See, *West Virginia, ex rel. Dyer vs. Sims*, 341 U.S. 22 (1951).

redefine the relationships of states and the federal government on a broad range of issues, and their number and scope has changed dramatically. All but one of the 36 compacts adopted before 1921 were used to settle boundary disputes and the disposition of land between two adjoining states. From 1921 to 1969 approximately 125 compacts were ratified that resolved issues, including natural resources conservation, utility regulation, public transportation, and the control of offenders in the criminal justice system.² Today, there are almost 250 compacts in effect and others are being drafted or are under consideration. On average, a state today is a party to approximately two dozen interstate compacts.

Given the continued movement to decentralize federal government activities and increased state responsibilities, interstate compacts enjoy wide appeal as an effective tool for resolving a broad range of national–state and interstate conflicts and problems. The Emergency Management Assistance Compact (EMAC), established in 1996, is such a compact. Other recently developed compacts being used to solve national–state and interstate issues include the Interstate Insurance Product Regulation Compact, the Interstate Mining Compact, the Interstate Passenger Rail Compact, and the Nurse Licensure Compact. Other examples of compact activity include revising existing interstate agreements; updating agreements that maintain relevance, but that require modernization of their structures. Recent examples include the *Interstate Compact for Adult Offender Supervision* and the *Interstate Compact for Juveniles*. Most recently, the area in which a significant number of new compacts have been developed is occupational licensure, particularly in the health professions in which there are more than 15 additional compacts which are being considered by legislatures throughout the United States.

Congressional Consent

Article I, Section 10, Clause III of the U.S. Constitution that provides that “no state shall, without the consent of Congress, enter into any agreement or compact with another state” appears to require congressional consent of all interstate compacts. The Supreme Court, however, has determined that the clause is activated only by those compacts that would alter the balance of political power between the states and the federal government or intrude on a power reserved to Congress (*Virginia v. Tennessee*, 148 U.S. 503 (1893)). Therefore, where an interstate agreement accomplishes nothing more than what the states are otherwise empowered to do unilaterally, federal interests are not at issue and there is no requirement for congressional consent.

Fortunately, even when congressional consent is needed, it is not particularly burdensome to acquire and is usually granted by means of a congressional resolution granting the states the authority to create a compact. Over the years, the Supreme Court has held that congressional consent may be expressed or implied and may be obtained either before or after a compact is enacted.

² Interstate Compacts: The Invisible Area of Interstate Relations, Patricia S. Florestano, Schaefer Center for Public Policy, University of Baltimore, Sept. 1993.