

**COUNCIL OF STATE GOVERNMENTS—NATIONAL CENTER FOR
INTERSTATE COMPACTS**

Interstate Compacts vs. Uniform Laws

Interstate Compacts

Interstate compacts are formal agreements between states that have the characteristics of both statutory law and contractual agreements. They are enacted by state legislatures adopting reciprocal laws that substantively mirror one another. Compacts are considered contracts because of the manner in which they are enacted. There is an offer (the presentation of a reciprocal law to state legislatures), acceptance (the actual enactment of the law) and consideration (the settlement of a dispute or creation of a regulatory scheme).

Since a state is forbidden by the Constitution to impair the obligation of contracts, it cannot unilaterally renounce an interstate compact except as agreed by the parties. Consequently, the interstate compact is the instrument best suited for the establishment of permanent arrangements among the states. The interstate compact is effective in the formulation of arrangements where a high degree of stability is desired.

Interstate compacts are not uniform laws. Unlike laws such as the Uniform Commercial Code, compacts are not subject to unilateral amendment. Nor are interstate compacts mere administrative agreements. As contracts, compacts constitute solemn treaties between the states, which are acting as sovereigns within a constituent union when adopting a compact.

Therefore, compacts have standing as both binding state law and a contract between the member states such that no one state can unilaterally act in conflict with the terms of the compact. Any state law in contradiction or conflict with the compact is unconstitutional, absent the reserve of power to the party states. The terms of the compact take precedence over state law even to the extent that a compact can trump a state constitutional provision. In effect, by entering a compact, the party states have contractually agreed that the terms and conditions of the compact supercede state considerations to the extent authorized by the compact relative to any conflicting laws or principles.

Advantages of Interstate Compacts

- Interstate compacts provide an effective solution that respects fundamental principles of federalism, recognizing the supremacy of the federal government regarding national issues while allowing the states to take appropriate collective action in addressing suprastate problems. Compacts enable the states – in their sovereign capacity – to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while concomitantly respecting the view of Congress on the appropriateness of joint action. The interstate compacts can effectively preempt federal interference into matters that are traditionally within the purview of the states and yet which have regional or national implications.

COUNCIL OF STATE GOVERNMENTS—NATIONAL CENTER FOR INTERSTATE COMPACTS

- 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. The very nature of an interstate compact makes it an ideal tool to meet the need of cooperative state action in developing and enforcing standards upon the party states. Compacts also enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time. In short, through the compact device, states acting jointly can control not only the solution to a problem but also shape the future agenda as the problem changes. The closer the coordination between the various elements of the cooperative undertaking, the more necessary is the use of the compact approach.
- Interstate compacts can be structured to respect the balance of power among federal, state, and local interests. While many regulatory compacts provide power to regulate cross-border problems, they can be structured to do so in a manner that preserves national interests. To a large extent, the Compact Clause requiring congressional consent to compacts that impact federal interests ensures that federal concerns are at the forefront of compact construction while simultaneously enabling states to maintain functional and regulatory control over an issue. Approval by Congress provides states with the authority to regulate in an area which would otherwise be unavailable to the state.
- Interstate compacts can broaden a state's parochial focus by allowing states to act collectively and jointly to address regional and national problems. Making decisions based on the state line boundaries can be problematic because boundaries do not necessarily reflect natural or logical divisions to supra-state problems. State legislatures and state regulators generally do not make decisions that are likely to restrict their own citizens' activities based on the need to protect a neighboring state's interests. Consequently, an interstate compact provides the opportunity to make decisions across state boundaries without resorting to federalization, which has limitations in resolving cross-boundary problems.
- Interstate compacts provide party states with a predictable, stable and enforceable instrument of policy control. The contractual nature of compacts ensures their enforceability on the party states. The fact that compacts cannot be unilaterally amended ensures that party states will have predictable and stable policy platform for resolving problems. By entering into an interstate compact, each party state acquires the legal right to require the other states to perform under the terms and conditions of the compact.

Disadvantages of interstate compacts

The principle disadvantage of compacts may be characterized as twofold:

- The long negotiations and arduous course they must run before becoming effective; and

COUNCIL OF STATE GOVERNMENTS—NATIONAL CENTER FOR INTERSTATE COMPACTS

- The ceding of traditional state sovereignty, particularly as required by several modern administrative compacts. The very purpose of an interstate compact is to provide for the collective allocation of governing authority between party states, which does not allow much room for individualism. The requirement of substantive “sameness” prevents party states from passing dissimilar enactments notwithstanding, perhaps, pressing state differences with respect to particular matters within the compact. To the extent that a compact is used as a governing tool, they require, even in the boundary compact context, that party states cede some portion of their sovereignty.

Uniform Laws

The concept of uniformity is most familiar in connection with the work of the National Conference of Commissioners on Uniform State Laws. That organization has accomplished much by preparing uniform laws and offering them for consideration by the states. A number of these laws, especially in the commercial field, have achieved wide adoption over a period of years. However, uniformity attained in this way is subject to dissipation from two directions:

1. Uniformity can be impaired by the unilateral action of particular state legislatures in amending a uniform statute so that it is no longer uniform or in introducing non-uniform provisions when the act is being initially considered by the legislature.
2. Differing interpretations of provisions of uniform acts can impair the degree of uniformity actually achieved. The ordinary law, for all its identity in language with the laws of other states, is only a simple statute organically unconnected with the statutes of other jurisdictions. Accordingly, the courts in different states can and sometimes do interpret identical provisions differently. Since the highest court of each state is the final authority on the meaning of the statutes of its own state, there is no satisfactory way to achieve a reconciliation of divergent interpretations.

If uniform provisions are embodied in a compact, no state could subsequently destroy this uniformity by unilateral amendment of its own statute except to the extent that such variation might be permitted by specific provision of the compact. To some degree, this limitation of a state's freedom to alter its law unilaterally may raise questions. However, if the virtue of a uniform measure is to be found in the identity of the law from state to state, the superior stability produced by a compact should be considered.