

# COUNCIL OF STATE GOVERNMENTS—NATIONAL CENTER FOR INTERSTATE COMPACTS

## Understanding Interstate Compacts

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Interstate compacts represent an opportunity for multistate cooperation, reinforcing state sovereignty and avoiding federal intervention. The emergence of broad public policy issues that cross jurisdictional boundaries present new governing challenges to state authorities. 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 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. Compacts enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time.

### **What is an Interstate Compact?**

Interstate compacts are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters. Interstate compacts are the most powerful, durable, and adaptive tools for ensuring cooperative action among the states. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure for collaborative and dynamic action, while building consensus among the states and evolving to meet new and increased demands over time.

General purposes for creating an interstate compact include:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.

It should be noted that an interstate compact is not a uniform state law. In fact, an interstate compact differs from a uniform state law in several ways, most notably that 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

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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.

Compacts are created when an offer is made by one state, usually by statute that adopts the terms of a compact requiring approval by one or more other states to become effective. Other states accept the offer by adopting identical compact language. Once the required number of states has adopted the pact, the “contract” among them is valid and becomes effective as provided.

### **How prevalent are Interstate Compacts?**

Compacts were seldom used until the 20th century. Between 1783 and 1920, states approved just 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II. On average, a state today belongs to 25 interstate compacts.

Although there are many types of interstate compacts, they can generally be divided into three camps:

- **Border Compacts:** agreements between two or more states that establish or alter the boundaries of a state.
- **Advisory Compacts:** agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report to the respective states on their findings.
- **Regulatory Compacts:** broadest and largest category of interstate compacts may be called “regulatory” or “administrative” compacts. Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact.

### **Compacts Today**

The purpose of interstate compacts ranges from implementing common laws to exchanging information about similar problems. They apply to everything from conservation and resource management to civil defense, emergency management, law enforcement, transportation, and taxes. Other compact subjects include education, energy, mental health, workers compensation and low-level radioactive waste.

Some compacts authorize the establishment of multistate regulatory bodies. The first and most famous of these is the New York-New Jersey Port Authority, which arose from a 1921 compact between the two states. But other agreements are simply intended to establish uniform regulations without creating new agencies.

In recent years, compacts have grown in scope and number. Today, many are designed for regional or national participation, whereas the compacts of old were usually bi-state agreements. Recent efforts include the *Emergency Management Assistance Compact*, the *Interstate Insurance Product Regulation Compact*, *National Crime Prevention & Privacy Compact*, and the *Wildlife Violator Compact*.

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Other examples of compact activity include the revision of existing interstate agreements; updating agreements that maintain relevance, but which require a modernization of their structures. Recent examples include the *Interstate Compact for Adult Offender Supervision* and the *Interstate Compact for Juveniles*.

### **Congressional Consent**

Article I, Section 10, Clause III of the U.S. Constitution provides in part that “no state shall, without the consent of Congress, enter into any agreement or compact with another state.” Historically, this clause generally meant all compacts must receive congressional consent. However, it has been found in a number of instances, notably the 1893 US Supreme Court case *Virginia v. Tennessee* that not all compacts require congressional consent. It is well established today that only those compacts that affect a power delegated to the federal government or alter the political balance within the federal system, require the consent of Congress.

Fortunately, even though congressional consent may be needed, it is not particularly burdensome to acquire. Though usually satisfied by means of a congressional resolution granting the states the authority to create a compact, the Constitution specifies neither the means nor the timing of the required consent. 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.