The Evolution of Interstate Compacts

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Interstate compacts are the only form of multi-state cooperation specifically referenced in the Constitution. This brief outlines the history of interstate compacts and specifically addresses how modern compacts are being used to address cross border policy challenges.

About Interstate Compacts

Compacts initially were used to resolve disputes between colonies. Since 1789, they have grown beyond bi-state agreements into national and regional creations with both advisory and regulatory responsibilities. Interstate compacts are contracts between two or more states. As such, compacts are governed by the tenets of contract law, meaning an offer to enter the agreement is expressed by the first state to join the compact and accepted by each subsequent jurisdiction that also joins. States have used interstate compacts to address a variety of challenges, including:

- Resolving boundary disputes;
- Managing the interstate allocation of natural resources; and
- Creating interstate administrative agencies in a wide range of policy areas, including tax reform, education, criminal justice, licensing, and energy and environment.

This diversity is one of the primary benefits interstate compacts provide. They can be used to address a variety of challenges, from the very simple to the extremely complex.

Compacts also provide other advantages, such as allowing states to maintain their sovereignty by providing a means to act collectively outside the confines of federal legislation or regulation. Compacts let states develop a dynamic, self-regulatory system that remains flexible enough to address changing needs.
The History of Interstate Compacts

The use of interstate compacts has evolved considerably throughout the course of American history. As of 2011, approximately 215 interstate compacts were active, with each state belonging to an average of 25. Virginia is a member of the most compacts, adopting approximately 40 different agreements, while Hawaii has the fewest agreements, with approximately 15 active compacts. Most of the earliest compacts were bi-state agreements intended to resolve border disputes. Border compacts represent the simplest form of the mechanism, with no oversight authority or governing structure required for enforcement. As the use of compacts became more common, compacts grew in sophistication. In the early part of the 20th century, states began entering into what would eventually become known as advisory compacts. These agreements between two or more states often were used to create study commissions to examine a problem and report their findings to the member states. While advisory compacts represented an evolution in the use of interstate compacts, they still lacked any kind of formal governance structure or enforcement procedures.

The creation of the Port Authority of New York and New Jersey in 1922 through an interstate compact signaled a significant shift in the use and application of interstate compacts. States began using them for the first time to establish regulatory agencies with the authority to act on the state’s behalf. While the formation of the port authority ushered in a new era, states really began using compacts as a means to resolve challenging policy questions beginning in 1955 with the creation of administrative compacts.

Since 1955, the use of interstate compacts has grown dramatically. Consider these facts:

- States have adopted nearly 1,300 compacts;
- States have adopted an average of 23 compacts per year, with a high of 74 adoptions in 1974 and a low of five in 1994;
- Numerous regional and national compacts have been formed; and
- Interstate administrative agencies intended to address a wide range of policy challenges have been created.

The past four decades have seen some fairly dramatic ebbs and flows in the use of compacts. In a 26-year period from 1974 to 2000, state adoptions were above the annual average of 23 only four times—none of them during the eight years of the Clinton administration. Conversely, from 2001 to 2011, the number of state adoptions was above average in seven legislative cycles.

While the reasons for the increased use of compacts over the course of the past decade is impossible to determine, one possible explanation may be attributed to recent Republican electoral successes. Both the Bush administration and the recent shift to a Republican-controlled U.S. House of Representatives have resulted in calls for a less centralized federal government and more emphasis on state-driven solutions.

Current Trends

This argument seems to carry more water when analyzing compact adoptions during the past two state legislative sessions. In 2010, state legislatures around the country adopted 17 pieces of compact legislation. While this number is not extremely low when looking across the past 66 years, it is well below the annual average number of state adoptions. Conversely, state legislatures in the first half of 2011 took action on 29 compact adoptions, which is well above the annual average. These include compacts concerning juvenile justice, surplus lines insurance, thoroughbred and harness horse racing, education, health insurance and insurance product regulation.

Once again, such a dramatic jump in the use of compacts from 2010 to 2011 is difficult to explain. It
seems reasonable to conclude that the November 2010 elections, which resulted in Republicans gaining control of the U.S. House of Representative and making significant gains in the number of gubernatorial seats held and the number state houses and senates controlled, played a significant role. With Republicans advocating a reduced reliance on the federal government, states have become more active in addressing policy challenges by working on an interstate basis.

**Modern Administrative Compacts**

Administrative compacts are often the most intricate of the compacts and have the most extensive administrative apparatus. Administrative compacts typically require the creation of an interstate agency to oversee an ongoing area of interstate policy. These agencies, typically known as commissions, often serve as quasi-governmental agencies and have the authority to pass rules, form committees, establish organizational policy, seek grants and ensure compliance with the compact. Additionally, many modern administrative compacts create a national office and hire staff to carry out the day-to-day operations of the compact.

While opponents of interstate compacts would argue these functions simply result in another level of bureaucratic red tape, administrative compacts have the unique ability to create economies of scale, in turn saving states valuable resources during challenging fiscal times. For example, the Interstate Compact for Adult Offender Supervision, which was redrafted in 1999 by The Council of State Governments and the Department of Justice, is tasked with tracking the movement of adult criminal offenders and parolees across state lines. In order to streamline this process, the commission and CSG developed an online tracking system to create a more efficient monitoring process. The online monitoring system reduced what used to be a multiweek process down to a matter of minutes. With all 50 states and each the four territories as members, the compact and the work of its commission have saved dollars and reduced staff time, in turn saving states valuable resources.

Modern administrative compacts also provide states a number of additional advantages. Administrative compacts frequently have a clearly defined governance structure, ensuring that mechanisms are in place to resolve disputes between member states. The compacts also typically call for the creation of standing committees, which have the ability to make decisions and allow the compact to evolve over time.

Equally important, administrative compacts allow for flexibility and necessary adjustments through the promulgation of rules. While each member state of an interstate compact adopts nearly identical language, the rule-making authority that is frequently granted to commissions in administrative compacts ensures that the compact can evolve in a changing world.

**Ongoing CSG Compact Projects**
Policymakers should have several compacts on their radar in 2012 and beyond.

**CSG-facilitated interstate compacts available for legislative consideration:**

- **The Prescription Monitoring Program Compact**
  The Prescription Monitoring Program Compact allows states to securely share prescription drug data on an interstate basis while protecting patient privacy. An interoperable system of information sharing among the various state monitoring programs is the most reliable and effective means of properly distributing these medicines and reducing prescription drug abuse.

- **The Surplus Lines Insurance Multistate Compliance Compact**
  In the Nonadmitted and Reinsurance Reform Act of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress recommended that states adopt uniform requirements, forms and procedures to facilitate reporting, payment, collection and allocation of premium taxes for the
surplus lines insurance industry. The compact, which nine states have adopted and regulators and industry groups have endorsed, brings states into compliance with that act.

**CSG-facilitated interstate compacts under development:**

- **Interstate Compact for the Siting of Electricity Transmission Lines**
  The Energy Act of 2005 granted states advance congressional consent to create regional interstate compacts governing the siting of interstate transmission lines. At the request of its membership, CSG developed an electric transmission line siting compact to help move energy from where it is produced to where it is needed. Compact drafting is under way and should be completed well in advance of the 2013 state legislative sessions.

- **The Interstate Reciprocity Compact**
  Many of today’s colleges and universities employ online learning to offer study on a national, and even international, scale. Regulatory requirements and evaluative measures, however, vary considerably from state to state, making interstate reciprocity difficult. This is costing states and institutions significant amounts of money. To that end, CSG has been working jointly with The Presidents’ Forum [3] to develop an Interstate Reciprocity Compact designed to improve access to quality higher education. Compact drafting has begun and language should be ready for consideration by the states beginning in 2013.

For more information about which compacts your state is a member of, visit the National Center for Interstate Compacts Database [4].

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**References:**

3 National Center for Interstate Compacts. "Compacts as a Tool of the Game [6]."
6 Ibid [8].
8 Ibid [7].
9 Ibid [7].

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**Tags:**

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