

# Why States Join Interstate Compacts

By Ann O'M. Bowman and Neal D. Woods

*Interstate compacts are an increasingly important and popular form of cooperation among states. Through compacts, states can address shared problems, promote a common agenda, and produce collective goods on a wide array of issues such as child welfare, criminal justice, education, health, natural resources, taxation and transportation.*

## Forms of Interstate Cooperation

When facing common problems or pursuing similar agendas, states often reach out to other states. States cooperate with one another in many ways, including joint administrative agreements, uniform state laws, multistate legal actions, and interstate compacts. For example, simple administrative agreements between two or more states can be created fairly easily and adjusted or rescinded as needed. Uniform state laws adopted by legislatures offer another mechanism for cooperation, as do multistate legal actions pursued by state attorneys general. Interstate compacts, the focus of this article, are an increasingly important form of cooperation. Table A summarizes the notable characteristics of these four cooperative options.

## The Evolution of Interstate Compacts

Interstate compacts are authorized in Article I, Section 10 of the U.S. Constitution. Historically, compacts were used primarily to settle boundary

disputes between a pair of neighboring states, such as the 1949 Kansas-Missouri Boundary Compact. The focus of compacts was fairly narrow and there were not many of them. One estimate of the number of compacts at the turn of the 20th century found fewer than 40 of them in use, the vast majority of them dealing with state borders.<sup>1</sup> Since that time, the substance of compacts has expanded far beyond the resolution of territorial disputes. One of the most prominent early compacts is the Port Authority of New York & New Jersey, established in 1921. By the 1970s, compacts were increasingly being used to address a diverse array of contemporary problems and policies on topics including child welfare, criminal justice, education, health, natural resources, taxation and transportation. Not only has the substantive focus of compacts expanded, so too have administrative, financial and technical aspects of compacts. By 2017, the number of compacts has increased to more than 200, with several more in developmental stages.<sup>2</sup>

**Table A: Types of Interstate Cooperation**

<i>Type of Interstate Cooperation</i>	<i>Notable Characteristics</i>
<b>Administrative agreements</b>	Created by state administrative agencies. Do not require state legislative action. Informal, easy to amend.
<b>Uniform state laws</b>	Drafted by external groups, the most prominent is the Uniform Law Commission. Especially useful when uniformity generates efficiencies. Require state legislative action.
<b>Multistate legal actions</b>	Pursued by the state attorney general. Often formally supported by the National Association of Attorneys General. Compared to a state acting alone, multistate legal actions increase state clout and reduce costs of litigation for participating states.
<b>Interstate compacts</b>	Authorized in the U.S. Constitution. Formal actions that require state legislative approval. Among participating states, compact provisions supersede conflicting state law. Can be bilateral, multistate, or national in scope.

Source: Ann O'M. Bowman and Neal D. Woods, March 2017.

**Table B: Why States Join Interstate Compacts**

<i>Reason</i>	<i>Example</i>
<b>To address shared problems</b>	Pollution in a river that runs through several states.
<b>To promote a common agenda</b>	Reciprocal licensing arrangements for health care professionals across states.
<b>To produce collective goods</b>	Assistance to other states by responding to natural disasters.
<b>To reduce the costs associated with policy design and experimentation</b>	Joint studies to determine better utilization of fisheries or develop restoration standards for mined land.

*Source:* Ann O’M. Bowman and Neal D. Woods, March 2017.

**Benefits of Compacts**

The growing use of compacts is largely a function of their potential for states to address shared problems, promote a common agenda, or produce collective goods. Further, by joining a compact, a state can reduce the costs associated with policy design and experimentation. Table B provides examples of these conditions.

As noted by Michael Buenger and his colleagues in their book, *The Evolving Law and Use of Interstate Compacts*, compacts have several advantages relative to other vehicles for accomplishing these goals. First, because states themselves are designing the compact, it can be more responsive to the interests and needs of member states than federal action. Second, compacts have the salutary effect of blurring the borders that separate states and reducing state insularity.<sup>3</sup> Third, compacts can preempt potential federal interference into traditional state responsibilities. Finally, compacts offer a “predictable, stable, and enforceable mechanism for policy control and implementation” to participating states.<sup>4</sup>

**Compact Development and Implementation**

Ideas for compacts emerge from many sources, oftentimes policy entrepreneurs who realize that states could benefit (i.e., achieve policy goals or save money) from working together in a formal arrangement. State administrators who have encountered challenges working across state lines to accomplish an objective may be promoters of compacts. The federal government itself has encouraged states to form compacts, as in the Low-Level Radioactive Waste Policy Act of 1980, which resulted in 10 compacts being established to manage the disposal of certain types of nuclear waste. In some cases, compacts supplement existing state

laws, but if there is a conflict between compact provisions and statutes, the conflicting state law must give way once a state joins a compact. In other words, states lose a certain amount of autonomy when they enter into a compact with other states. But the promise of compacts is sufficient such that many states are willing to share sovereignty via a compact.

By virtue of their nature, compacts are not in force until a second state joins the agreement. For instance, neither the Compact for Pension Portability for Educators, enacted by Rhode Island in 1989 nor the Interstate Dealer Licensing Compact, enacted by Kansas in 1990, is in effect because no other states have signed on. Some compacts set a high membership threshold before their provisions go into effect. For example, the Interstate Compact for Adult Offender Supervision, a national compact, became effective once it was enacted by 35 states.<sup>5</sup> Compacts are financed in various ways; these can include state appropriations, proceeds from compact activities, foundation funds, and dues assessments.<sup>6</sup>

Based on the subject matter, membership in interstate compacts can be limited to specific states or open to all 50 states. Those with limited membership are typically focused on a specific geographic region such as the Great Lakes or New England, or a particular economic interest, such as grain-producing states or states that allow pari-mutuel gambling. Article 1, Section 10 of the U.S. Constitution declares that interstate compacts require congressional consent, however, in practice, the consent of Congress is required only when a compact would affect the political balance of the federal system.<sup>7</sup>

Much of the growth in the number of compacts is due to compacts in which participation is open to every state. Currently, there are nearly 50 national

## Table C: Factors that Influenced State Participation in National Compacts, 1960–2000

### Factors

#### Internal State Factors

- States with experience in regional compacts tended to join more national compacts.
- Wealthier states joined fewer compacts.
- States with more professionalized legislatures joined fewer compacts.
- States with higher levels of state and local government employment joined more compacts.
- States with a more liberal citizenry joined more compacts.
- States with a higher number of interest groups registered to lobby joined more compacts.

#### External Factors

- Professional associations and interest groups stimulate compact membership.
- As neighboring states joined more compacts, a state joined more itself.
- Federal policy activism affects state compact participation in different ways, depending on the type of compact.

*Source:* Ann O'M. Bowman and Neal D. Woods, March 2017.

compacts in existence. These compacts offer a means of making nationwide policy without the federal government. By developing and implementing these compacts, states can preempt potential interference by the federal government into what have been traditional state responsibilities. Alternatively, states may use compacts to make national policy from the bottom-up in areas where the federal government is unwilling or unable to act.<sup>8</sup>

### Influences on Compact Participation

As noted above, national compacts provide an opportunity for states to make public policy that is national in scope without the passage of federal legislation. The rate at which states join these national compacts varies. On average, a national compact has 23 states as members, while the average state has joined 17 national compacts. The most participatory states (Kansas and New Jersey) have joined 23; the least participatory state (Mississippi) is a member of 12 national compacts.

The variation across states in their rate of participation in national compacts seems to be related to several factors, which are summarized in Table C. Statistical analyses of compact membership data between 1960 and 2000 indicate that states with experience in regional compacts are more likely to join national compacts.<sup>9</sup> Compact membership is additionally associated with several internal characteristics of states. These characteristics include states' fiscal and institutional capacity to make policy, such as their wealth, legislative profession-

alism, and the size of their bureaucratic establishment. Politics also seem to matter, with states with a more liberal citizenry joining slightly more compacts, on average, although this trend may differ across different types of compacts. States with a larger number of interest groups registered to lobby in the state also tend to join more compacts.<sup>10</sup>

In addition to these internal characteristics, states appear to be responsive to external forces. Support from professional associations and interest groups plays a role in spurring compact membership.<sup>11</sup> States also respond to the actions of other governments, both state and federal. States whose neighbors join more national compacts join a greater number themselves. The effect of federal government policy activism is more nuanced. In periods when the federal government is more active, state compact participation increases in certain types of compacts (those with an economic focus) but it decreases in others (compacts with a social policy focus).<sup>12</sup>

### Considerations When Entering Interstate Compacts

Clearly, compacts offer many benefits to participating states. States must nonetheless take several considerations into account when deciding whether to enter into a compact. First, the development and drafting of compacts can be a time-consuming process. Historically, compacts were negotiated by commissioners who were charged by governors or state legislatures to develop a workable agreement

## INTERSTATE COMPACTS

with their counterparts in other states. Today, the compact development process is typically more informal and often involves groups of state officials who begin informal discussions, often facilitated by external organizations such as The Council of State Governments.<sup>13</sup> Collecting information, engaging stakeholders, identifying common ground, resolving disagreements, and developing preliminary provisions can take time. One major issue that drafters have to take up is the administration of the compact. Some compacts are administered by state agencies; compacts that address more complex issues often establish an interstate compact agency to handle implementation and operations.

Once a compact is ratified by the requisite number of states and is in force, it may face two related challenges: securing compliance from member states and avoiding member state defections. States are self-interested entities and will do what is in their best interest. Many compacts include processes for dispute resolution because of the disputes that may arise within the compact. One risk is that a state often on the losing end of these resolutions may withdraw from the compact. Or, rather than formally withdraw, a state may choose to withhold its financial support of the compact. Both of these actions can threaten the sustainability of the compact. Also, there have been instances in which compact members have ousted recalcitrant members, such as the expulsions of Michigan and Nebraska from their respective low-level radioactive waste compacts. Thus, states need to weigh the benefits of compact membership against these potential drawbacks when deciding whether to join compacts.

### Looking Ahead

One trend in recent years has been the increased attention to compacts as a venue for achieving political goals. An example of this is the National Popular Vote Compact, which seeks the adoption and implementation of a nationwide popular election for the U.S. presidency. Rather than employing a top-down process of amending the U.S. Constitution, National Popular Vote Inc., in conjunction with various other interest groups, is following a more decentralized path, promulgating a model compact bill and seeking state ratification. At the time of this writing, the National Popular Vote Compact has been ratified by 10 states and the District of Columbia.

Other recent compacts serve more explicitly partisan or ideological purposes. One such endeavor

is the Health Care Compact, which was developed by groups of conservative state legislators supported by the Health Care Compact Alliance and the American Legislative Exchange Council in order to dismantle the federal health care reforms instituted by the 2010 federal Patient Protection and Affordable Care Act, also known as the ACA or Obamacare. The stated goal in the language of the compact was the return of control of the regulation of health care to the states. Hence the inclusion of this provision in the compact language: “Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact.”<sup>14</sup> Texas was the first state to join the compact in 2011 and by 2014, the compact had nine member states.<sup>15</sup> Subsequently, new state participation stalled, and with the 2016 election of a president committed to modification of the ACA, the compact moved to the back burner. However, other ideologically motivated compacts such as the Compact for a Balanced Budget, or CBB, formulated in 2014, and supported by numerous conservative groups, continue to seek adherents.<sup>16</sup> Four states have joined CBB—Alaska, Georgia, Mississippi and North Dakota—which aims to pressure the federal government to amend the U.S. Constitution to require Congress to pass balanced budgets.

The recent trend toward compacts with an explicitly political focus merits watching to see if it has staying power in the face of significant changes in the national political landscape. In the meantime, states are likely to continue to pursue collective policy goals in less politicized areas where finding common ground may be easier. The Council of State Governments’ own policy and research team identified five emerging issues that are being developed into compacts: common state policies on autonomous vehicles, occupational licensing across state lines, prescription drug monitoring programs, infrastructure development, and violent crime analysis.<sup>17</sup> In these and other policy arenas, states are likely to continue to find compacts an attractive option for addressing common state problems.

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### Notes

<sup>1</sup> Patricia S. Florestano, “Past and Present Utilization of Interstate Compacts in the United States,” *Publius: The Journal of Federalism* 24 (1994): 13–25.

<sup>2</sup>National Center for Interstate Compacts, The Council of State Governments <http://www.csg.org/NCIC/compacts.aspx>. Accessed February 25, 2017.

<sup>3</sup>Neal D. Woods and Ann O'M. Bowman, "Blurring Borders: The Effect of Federal Activism on Interstate Cooperation," *American Politics Research* 39 (2011): 859–884.

<sup>4</sup>Michael Buenger, Jeffrey B. Litwak, Richard L. Masters, and Michael H. McCabe, *The Evolving Law and Use of Interstate Compacts*, 2nd ed. (Chicago: ABA Publishing, 2016), 26.

<sup>5</sup>The effort by the groups supporting the enactment of the National Popular National Vote Compact has set a different type of threshold: whatever combination of states holds the 270 electoral votes to win the presidency.

<sup>6</sup>Buenger et al., *The Evolving Law and Use of Interstate Compacts* ...

<sup>7</sup>A compact that affects the political balance of the federal system is one in which states increase their political power at the expense of the national government or of other states. See the discussion in Buenger et al., pp. 68–75.

<sup>8</sup>Woods and Bowman, "Blurring Borders."

<sup>9</sup>Ann O'M. Bowman and Neal D. Woods, "Strength in Numbers: Why States Join Interstate Compacts." *State Politics and Policy Quarterly* 7 (2007): 347–369.

<sup>10</sup>Ann O'M. Bowman and Neal D. Woods, "Expanding the Scope of Conflict: Interest Groups and Interstate Compacts," *Social Science Quarterly* 91 (2010): 668–687.

<sup>11</sup>Andrew Karch, Sean C. Nicholson-Crotty, Neal D. Woods, and Ann O'M. Bowman, "Policy Diffusion and the Pro-Innovation Bias," *Political Research Quarterly* 69 (2016): 83–95.

<sup>12</sup>Woods and Bowman, "Blurring Borders."

<sup>13</sup>Buenger et al., *The Evolving Law and Use of Interstate Compacts* ...

<sup>14</sup>The Health Care Compact, National Center for Interstate Compacts, The Council of State Governments. <http://apps.csg.org/ncic/PDF/Health%20Care%20Compact.pdf>. Accessed March 1, 2017.

<sup>15</sup>Compact legislation was introduced in 16 states in 2011, and in addition to Texas, the bills became law in three other states (Georgia, Missouri (without the Democratic Governor's signature), and Oklahoma). In 2012, Republican-led Indiana, South Carolina, and Utah joined passed similar compact legislation, and in 2013, Alabama followed suit, in 2014, Kansas. The governors of Arizona and Montana vetoed the compact bills passed by their legislatures 2011. In 2013, Utah included a provision to repeal their compact in 2014, pending an analysis of how a compact would affect the state. See "States Consider Health Compacts to Challenge Federal PPACA," National Conference of State Legislatures, <http://www.ncsl.org/research/health/states-pursue-health-compacts.aspx>. Accessed March 1, 2017.

<sup>16</sup>"Balanced Budget Compact Project," <http://www.compactforamerica.org/balanced-budget-compact-project>. Accessed March 3, 2017.

<sup>17</sup>Colmon Elridge, "Top Five Issues in 2017: Interstate Compacts," <http://knowledgecenter.csg.org/kc/content/top-5-issues-2017-interstate-compacts>. Accessed February 27, 2017.

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