The drafters of the U.S. Constitution included five most important interstate clauses: full faith and credit, interstate commerce, interstate compacts, privileges and immunities, and rendition in order to make perfect the economic union and the political union.

Uniform State Laws
Conflicts between the laws of states in a federal system are common. To reduce this problem, the National Conference of Commissioners on Uniform State Laws was organized in 1892 to draft uniform laws on a wide variety of subjects and to urge state legislatures to enact them. Commissioners are appointed by each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.

States frequently employ uniform laws in attempts to collect child support from obligors residing in sister states.

North Dakota in 2013 was the first state to enact the Uniform Deployed Parents and Custody and Visitation Act approved by the Uniform Law Commission in 2012. The act pertains to child custody and visitation arising while the parents are deployed in military or other national service. Most deployments are sudden, thereby making it difficult to resolve custody issues prior to deployment by customary child custody procedures. The act, among other provisions, stipulates the absence of a military parent from a state cannot be utilized to deprive the state of jurisdiction over custody or visitation proceedings.

The state legislatures in Colorado and North Dakota in 2013 enacted the Uniform Premarital and Marital Agreement Act, approved by the commission in 2012. Several states have statutes on premarital agreements and marital agreements based on different legal standards. The uniform act treats these two types of agreements under an identical set of principles and requirements.

The commission on Aug. 12, 2003, approved a Human Trafficking Act containing comprehensive human trafficking penalties, essential protections for human trafficking victims, and public awareness, training and planning processes needed to combat such trafficking.

The Council of State Governments' Suggested State Legislation Committee in 2013 approved three new uniform acts as suggested state legislation:
1. Uniform Certificate of Title for Vessels Act,
2. Uniform Deployed Parents Custody and Visitation Act, and
3. Uniform Faithful Presidential Electors Act, which provides a statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state. The acts are included in Volume 74 of Suggested State Legislation, published in 2014.

Reciprocity
Formal and informal reciprocity agreements among states are common, cover a wide range of subjects and have been particularly helpful in removing interstate trade barriers. Based on comity, each state and each Canadian province, for example, recognizes the registration of vehicles by other states and provinces. Reciprocity agreements relative to the professions of architecture, dentistry, embalming, engineering, law and pharmacy are common.

In 2013 The Presidents' Forum, The Council of State Governments (CSG), the Regional Higher Education Compacts and The Commission on the Regulation of Postsecondary Distance Education collaborated to develop an agreement designed to achieve interstate reciprocity in the regulation of distance education. This voluntary State Authorization Reciprocity Agreement (SARA) is intended to broaden the availability of and access to accredited online degree programs by reducing state regulatory barriers while ensuring strong consumer safeguards.

Associations of state and local government officers, regional associations, interest groups and citizen groups draft model state acts to guide state legislatures in enacting or revising statutes.
Interstate Compacts

Section 10 of Article I of the U.S. Constitution authorizes each state to enter into a compact with one or more sister states with the consent of Congress. The U.S. Supreme Court in 1893 (148 U.S. 503 at 520) held the consent requirement applies only to political compacts encroaching on the powers of the national government. More than 200 compacts were in effect by 1993.

Massachusetts and New Hampshire in 1957 entered into an interstate compact under which Massachusetts agreed to cover 70 percent of the cost of lost property tax revenue resulting from land taken to construct a series of dams and reservoirs to prevent major flooding along the Merrimack River. New Hampshire maintains Massachusetts owes it approximately $4.5 million. Massachusetts has been late in making the required payments; the last payment of $589,000 was made in 2006. New Hampshire is threatening to sue Massachusetts in the U.S. Supreme Court for the amount the commonwealth owes. Massachusetts reports it has been unable to obtain details from New Hampshire pertaining to how the state calculated its lost property tax value.

The Kentucky and the North Dakota legislatures in 2011 were the first to enact the Surplus Lines Insurance Multistate Compact, also known as SLIMPACT, which is a response to the congressional Dodd-Frank Wall Street Reform and Consumer Protection Act’s surplus lines provisions. Alabama, Indiana, Kansas, New Mexico, Rhode Island, Tennessee and Vermont joined the compact in 2013. SLIMPACT was developed jointly by CSG and the National Conference of Insurance Legislators (NCOIL). The act generally retains state regulation of insurance, but authorizes federal regulators to initiate action to prevent market meltdowns in the future by requiring corrective action or takeover of failing institutions—including an insurer—that are held to constitute a systemic risk. The act is designed to guarantee member states will receive their respective fair share of surplus line premium tax revenue, and addresses the solvency concerns of any state by means of uniform eligibility standards that will be drafted by the compact commission.

Congressional enactment of the Patient Protection and Affordable Care Act of 2010 prompted seven states—Georgia, Indiana, Missouri, Oklahoma, South Carolina, Texas and Utah—in 2013 to join the Health Care Compact, which is designed to transfer from the federal government to the member states the responsibility and authority for regulating health care.

The American Medical Association in 2013 announced its support for a medical licensing compact that would streamline the multi-state licensure process for physicians and improve patient access to health care. The Western Governors Association in the same year issued a report—Ten Year Energy Vision: Goals and Objectives—citing interstate compacts as a mechanism to promote a more robust energy infrastructure.

The Council of State Governments’ National Center for Interstate Compacts is developing a Transmission Line Siting Compact designed to facilitate the movement of power from where it is generated to where it is needed. The compact addresses application filing processes, application review processes, proposed line review and timeline, as well as the approval process.

Two compacts made news in the courtroom in 2013.

The California Appellate Court announced on Aug. 6 that it will review its July 2012 decision in Gillette Company et al v. Franchise Tax Board (147 Cal.Rptr.3d 603), holding California must allow taxpayers to apportion their respective multistate income based on the formula contained in the Multistate Tax Compact. The Multistate Tax Compact establishes income apportionment rules, tax base definitions and tax jurisdiction standards applicable to multistate and multinational corporations operating in the 50 states. The California State Legislature anticipated the court’s decision and voted to repeal the state’s membership in the compact. The legislative action may be ineffective because it was not approved by a two-thirds vote of each house as required by Proposition 26 for a revenue-raising bill.

Also in 2013, the U.S. Supreme Court settled an interstate water controversy in Tarrant Regional Water District v. Hermann by rejecting the claim of the Texas water district to access water in Oklahoma based on the Red River Interstate Compact. Fifty organizations in the same year called on the Delaware River Basin Commission, created by an interstate compact in 1962, to exercise jurisdiction over pipelines.

Interstate Administrative Agreements

Each state legislature has delegated broad discretionary authority to department heads to enter into administrative agreements with their counterparts in sister states. Numerous such agreements, written and verbal, are in effect, but it is impossible to determine the precise number.
**INTERSTATE RELATIONS**

The Kansas Division of Vehicles and the Oklahoma Department of Public Safety in 2011 signed a reciprocity agreement allowing “operators of farm vehicles licensed in either Kansas or Oklahoma to be exempt from the commercial driver’s license requirement when such operators are operating farm vehicles in the other participating state” provided such operation is consistent with the respective state law on farm vehicle exemptions to the commercial driver’s license requirement.

Indiana and Kentucky in 2011 entered into an agreement stipulating each state will provide one-half of the $2.6 billion construction costs of two new Ohio River bridges. Indiana will be responsible for the cost of constructing a bridge between Utica, Ind., and Prospect, Ky., including roads leading to the bridge. Kentucky will be in charge of approaches to the bridge on both sides of the river and for reconstructing Spaghetti Junction—where interstates 64, 65 and 71 meet—in Louisville, Ky.

Indiana, Kentucky, and Ohio in 2012 signed an agreement for an interstate water quality trading program, a market-based approach to achieving water quality goals for nutrients that allows permitted emitters to purchase nutrient reduction credits from another source, such as agriculture.

**Full Faith and Credit**

Section 1 of Article IV of the U.S. Constitution contains a mandate: “Full Faith and Credit shall be given in each state to the public acts, records, and judicial proceedings of every other State,” and grants Congress authority to “prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.” Congress exercised this authority in 1790, 1804, 1980, 1994, 1996 and 1999.

The 1996 clarification was prompted by the Hawaii Supreme Court’s 1994 decision in *Baechr v. Milke* (852 P.2d 44 at 57-72), opining the statutory provision and equal rights amendment to the state constitution. The case was remanded for a trial.

**Same-Sex Marriage**

Congress responded to the 1994 ruling of the Hawaii Supreme Court by enacting the *Defense of Marriage Act of 1996*, also known as DOMA, which defines a marriage as a union of one man and one woman and allows individual states to decline to extend full faith and credit to a same-sex couple who married in a sister state. Thirteen states, the District of Columbia and one Indian tribe allowed same-sex marriages as of September 2013.

The U.S. Supreme Court on June 25, 2013, by a 5-to-4 vote invalidated key sections of DOMA. The court opined married gay couples in states where such a marriage is legal are entitled to the same federal benefits—health care, Social Security, tax, et cetera—as those received by heterosexual couples (*United States v. Windsor*, 133 S.Ct. 2675). The court held the invalidated sections of the act violated the provision of the Fifth Amendment to the U.S. Constitution against the deprivation of liberty.

In addition, the court in *Hollingsworth v. Perry* (133 S.Ct.2652) struck down California citizen initiative Proposition 8 of 2008, which prohibited same-sex marriage. The court opined the initiative proponents lacked standing to defend Proposition 8 when California officers decided not to defend the proposition reversing the decision of the California Supreme Court allowing same-sex marriages.

Same-sex marriages first were recognized by a 2003 decision of the Massachusetts Supreme Judicial Court. This decision was followed by similar decisions by the Connecticut Supreme Court in 2008 and the Iowa Supreme Court in 2009.

In 2011, the New York State Legislature and the Tribal Council of the Suquamish Indian Tribe in Washington voted to allow same-sex couples to marry. Such marriages were sanctioned by law in 2012 in Washington, and in Delaware, Minnesota and Rhode Island in 2013.

The Maryland Supreme Court in 2012 opined same-sex couples could divorce in the state even though it does not allow same-sex marriages. Rhode Island Gov. Lincoln Chafee in the same year signed an executive order directing state departments and agencies to recognize same-sex marriages performed in sister states.

North Carolina in 2012 became the 31st state to ratify a state constitutional amendment banning same-sex marriages. Anchorage, Alaska, voters in 2012 rejected Proposition 5, which was designed to provide additional protections for people regardless of “sexual orientation or transgender identity.” Minnesota voters in the same year rejected a proposed constitutional amendment defining a marriage as involving a man and a woman. The New Hampshire House of Representatives in 2012 rejected a bill providing for the repeal of the state’s same-sex marriage act. New Jersey Gov. Chris Christie in the same year vetoed a same-sex marriage act enacted by the state legislature, and stated the question of authorizing same-sex marriage should be determined by the voters.
Civil Unions

The Vermont General Assembly in 2000 enacted the first law authorizing civil unions of same-sex couples, and its lead has been followed by five other states. A civil union law confers upon same-sex couples most of the legal rights of married couples. The Hawaii State Legislature in 2011 enacted a civil union law. The Colorado Legislature enacted civil union legislation that was signed by Gov. John Hickenlooper in 2013; Colorado became the sixth state with such a law. A Vermont court in 2006 dissolved the first civil union in the state.

Other Developments

Virginia’s freedom of information law grants residents of the commonwealth access to certain government documents. A resident of California and a resident of Rhode Island each filed a Virginia freedom of information request, but the requests were denied because they were not residents of the state.

The two citizens filed a suit in the U.S. District Court maintaining the Virginia law violated four fundamental privileges and immunities guaranteed by the U.S. Constitution, and also violated the dormant interstate commerce clause. The court rejected the suit and its decision was appealed to the U.S. Supreme Court, which in 2013 in McBurney et al. v. Young (133 S.Ct.1709) opined the Virginia policy did not abridge the petitioners’ fundamental privileges and immunities or impermissibly regulate interstate commerce.

Summary and Conclusion

Interstate relations continue to be generally cooperative as reflected by the enactment of uniform state laws, reciprocity agreements, and entrance into interstate compacts and administrative agreements. If states fail to harmonize their regulatory laws, Congress no doubt will enact additional pre-emption acts removing regulatory authority from the states.

About the Author

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