

Interstate Compacts in 2009 and Beyond: Opportunities for an Increased Diversity of Use

By Keith A. Scott

As our world shrinks and the enormity of specific policy issues grows, multiple states are finding themselves facing similar, if not identical, situations. While states must act to address current and emerging problems, they are not required to act alone. In fact, states may find that acting in cooperation with their neighbors affords significant opportunities for creative problem solving, economies of scale and the bolstering of state rights over a range of topics. Interstate compacts are not new, nor are they unfamiliar to the modern policymaker. However, the innovative ways in which interstate compacts may be used are evolving before us – seeking to tackle a host of issues not previously addressed by this interstate mechanism. As states struggle with nearly unparalleled financial downturns and revenue declines, interstate compacts are an efficient tool to promote cooperative regional or national action.

Background

States have historically used interstate compacts to settle boundary disputes. Examples include the Maryland-Virginia Compact of 1785, the Virginia-Kentucky Boundary (Kentucky & Virginia Jurisdiction Act of 1789), and the Virginia-North Carolina Boundary Agreement of 1791. In some instances, these compacts have been modified or updated,¹ and other compacts pertaining to boundaries have become the subject of legal actions. But these early examples of interstate cooperation not only proved to be effective methods for individual states to form lasting relationships on common issues, they also pioneered more comprehensive and diverse compacts.

The use of interstate compacts became more widespread, particularly in the 20th century, after states gained a protected right to use them.² On average, each state is a member of 27 different interstate compacts. While some of these are boundary compacts, many have been used in the areas of corrections, natural resources, energy, transportation or other regulatory fields.³ To a lesser extent, compacts as a form of multistate cooperation, have also been used to address other key topics, such as education, emergency management, mental health and multistate taxation.

While interstate compacts have been used to resolve multi-state problems shared among a group

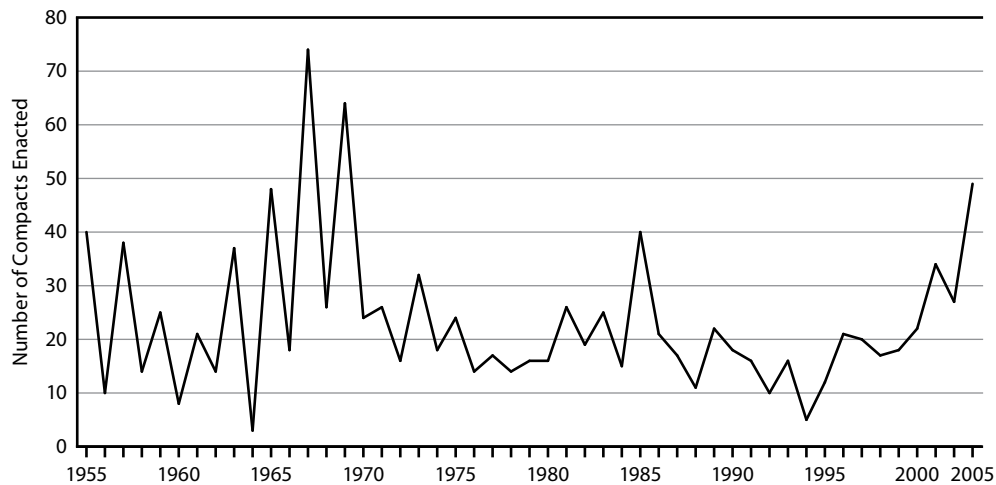
Table A: Interstate Compact Membership

State	Number of compacts	State	Number of compacts	State	Number of compacts	State	Number of compacts
Eastern Region		Midwestern Region		Southern Region		Western Region	
Connecticut	30	Illinois	25	Alabama	30	Alaska	20
Delaware	22	Indiana	26	Arkansas	29	Arizona	28
Maine	32	Iowa	21	Florida	27	California	27
Massachusetts	27	Kansas	35	Georgia	24	Colorado	36
New Hampshire	33	Michigan	23	Kentucky	23	Hawaii	14
New Jersey	33	Minnesota	23	Louisiana	23	Idaho	26
New York	31	Nebraska	32	Maryland	34	Montana	25
Pennsylvania	29	North Dakota	19	Mississippi	25	Nevada	21
Rhode Island	25	Ohio	25	Missouri	30	New Mexico	32
Vermont	30	South Dakota	18	North Carolina	21	Oregon	28
District of Columbia	34	Wisconsin	15	Oklahoma	26	Utah	27
Regional total	326	Regional total	262	South Carolina	18	Washington	30
				Tennessee	24	Wyoming	25
				Texas	24	Regional total	339
				Virginia	52		
				West Virginia	27		
				Regional total	437		

Source: National Center for Interstate Compacts.

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Figure A: Interstate Compact Enactments: 1955–2005



Year	Compacts enacted	Year	Compacts enacted	Year	Compacts enacted	Year	Compacts enacted
1955	40	1967	74	1979	16	1991	16
1956	10	1968	26	1980	16	1992	10
1957	38	1969	64	1981	26	1993	16
1958	14	1970	24	1982	19	1994	5
1959	25	1971	26	1983	25	1995	12
1960	8	1972	16	1984	15	1996	21
1961	21	1973	32	1985	40	1997	20
1962	14	1974	18	1986	21	1998	17
1963	37	1975	24	1987	17	1999	18
1964	3	1976	14	1988	11	2000	22
1965	48	1977	17	1989	22	2001	34
1966	18	1978	14	1990	18	2002	27
						2005	49

Source: National Center for Interstate Compacts.

Key:

(a) No data available for 2003 and 2004.

of jurisdictions, not every issue area is replete with agreements. In fact, some areas of public policy have been addressed purposefully via other interstate mechanisms, such as uniform state laws or formal/informal memorandums of understanding. This lack of use may be tied to the speed of development and implementation often associated with interstate compacts—typically five to seven years, though more recent efforts have been completed on far shorter schedules.

Although no state is a member of fewer than 14 interstate compacts—most states are members of many more. These instruments have facilitated inter-

state cooperation since well before the promulgation of the U.S. Constitution. Furthermore, the states' collective right to enter into compact agreements has been protected by that venerable document of fundamental laws and principles since 1789. Typically, states rely on three very different methods for multistate cooperation: interstate compacts, uniform laws and memorandums of understanding. The latter two, while sufficient for many purposes, do not have the same soundness of properties as compacts and therefore are not as complete and reliable.

Uniform laws, also referred to as *uniform state laws*, have been around since the late 1800s. Their

purpose is to seek enactment of identical laws among several states on a particular issue. That objective is similar to interstate compacts, but in practice, uniform state laws miss the mark of uniformity on a frequent basis.⁴ They often result in many different versions of the same law. Because they are not contractual agreements like interstate compacts, states enacting the laws are free to enact unilateral changes to their version of the law. If that law creates an unfavorable impact on another state or states, there is generally no enforcement mechanism available to the aggrieved state.

Memorandums of understanding generally are the least binding agreement as compared to both uniform state laws and interstate compacts. They frequently amount to a written agreement with no real legal enforceability. Therefore, while they express the intent of the parties, they often are not ideal instruments for legally memorializing binding multilateral agreements.

New Uses for Interstate Compacts

While several successful efforts have been undertaken to educate policymakers about the purpose and benefits of compacts, use of the tool in new areas is often slow to develop. While compacts have historically helped resolve multistate matters pertaining to boundary disputes, natural resources, corrections, multistate taxation, education and other important issues, they can be used to address a great number of problems states face today, including energy and infrastructure, prescription drug monitoring, and thoroughbred horse racing.

Energy and Infrastructure

States continue to experience a variety of issues under the broad umbrella of infrastructure. The ability to provide, for instance, adequate electrical power to the residents of one state sometimes depends on the willingness of neighboring states to permit the siting of transmission lines through their boundaries. The solution is typically not just a matter of where to place the lines as a function of geographical convenience, but rather may also have to do with environmental safety issues, as well as preservation of natural resources and the preferences of the residents of that state.

Finding a means of interstate cooperation is essential and failure to do so may mean that the transmission lines never get sited. This lack of state cooperation then raises the specter of federal intervention with national regulatory bodies controlling how electricity is distributed. An interstate compact

that encompasses these factors and issues may present states with the best opportunity to determine their own state-driven solutions to the problem. The federal Energy Policy Act of 2005⁵ specifically granted states the ability to craft regional interstate compacts related to transmission line siting—a rare pre-emptive permission and ‘nudge’ from Congress, but states have thus far not seriously pursued such agreements.

Prescription Drug Monitoring

Dangers derived from the use of illicit drugs are not restricted to the population of illegal drugs that fill the evening news. Drugs that are commonly prescribed for medical purposes can also be problematic if they are not carefully dispensed and monitored in terms of who is receiving them and where they are being distributed. Some states are experiencing difficulty with policing this activity and certain classes of drugs are finding their way into the wrong hands, posing a substantial danger of misuse and drug overdoses - impacting families, schools, places of employment as well as the medical community.

One solution successfully implemented in many states is the prescription drug monitoring program – intrastate databases tracking the dispensing of specific classed drugs and that alert officials to nefarious activities. While rarely ‘live’ or instantaneous in nature, the programs are effective at tracking dispensing, physician prescription writing habits, and patient abuse – essentially seeking to eliminate ‘doctor shopping,’ which is the seeking of multiple doctors for multiple prescriptions that can be filled from several pharmacies.

While states have done an excellent job in creating these systems within their boundaries, interstate cooperation that permits the sharing of this data across state lines is virtually non-existent. Small scale pilot projects have shown promise, but no effort has been undertaken on a multi-state or national scale allowing information systems to interface on a regular and accurate basis. There has been some rumbling of activity at the federal level, but this too has not proceeded far. States are in a unique position to facilitate and control such a national effort by being both the primary innovators of intrastate prescription data monitoring and the creators/beneficiaries of the interstate compact mechanism.

Thoroughbred Horse Racing

The thoroughbred horse racing industry has been the subject of increased scrutiny since the unfortunate death of *Eight Belles* at the 2008 Kentucky

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Derby. Since that time, the industry has taken upon itself the responsibility to look critically at the horse racing business and in doing so has identified several areas for potential reform. Despite previous efforts to standardize issues such as wagering and the medication of horses, this activity has occurred in a disparate fashion at the state level with many of the 35 industry states adopting different versions of such rules.

Despite saber-rattling to the contrary, federal intervention in this area is not necessarily expected and may depend on how well states seek to manage it themselves. Unlike other areas of interstate cooperation, the regulatory nature and need for constant cooperation between states in thoroughbred horse racing may serve as an ideal model for interstate compacts. Because there are divergent interests residing in the different states where horse racing takes place, it has become increasingly more difficult to establish uniformity. This is precisely where interstate compacts can assist as effective tools for identifying commonalities and creating cooperation and multi-state governance of an issue.

Conclusion

Interstate compacts have demonstrated their adaptability for more than two hundred years – taking on both traditional and non-traditional issues. Having evolved from a simple contract to an in-depth tool for policy regulation, interstate compacts

have emerged as an instrument uniquely suited for the rapidly changing world occupied by state governments. It is then incumbent upon state officials to think about interstate compacts as potential solutions to non-traditional and emerging policy areas, such as energy infrastructure, prescription drug monitoring and thoroughbred horse racing. The issues of today, and the interstate responses crafted, help states not only solve current policy dilemmas, but strengthen the common bonds between states and solidify the role of the states in governing critical issues within our federalist system.

Notes

¹For example, in 1958, the legislatures of Maryland and Virginia revisited the 1785 compact to remedy portions that had become obsolete. This culminated in the formation of the Potomac River Compact of 1958. ssl.csg.org/compact-laws/potomacriverof1958.html.

²U.S. Constitution, Article I, Section 10, Clause 3.

³<http://www.csg.org/programs/ncic/database/search.aspx>.

⁴<http://www.law.cornell.edu/uniform/uniform.html>.

⁵Energy Policy Act of 2005, Title XII (Electricity), Subtitle B, Sec. 1221; <http://www.doi.gov/iepa/EnergyPolicy-Actof2005.pdf>

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