The Evolution of Interstate Compacts

By Crady deGolian

First referenced in Article I, Section 10, Clause 3 of the United States Constitution, interstate compacts are the most formal mechanism available to policymakers seeking state-driven solutions to a wide range of policy challenges. Of all the tools available to state policymakers trying to work cooperatively across borders, interstate compacts are the most formal and perhaps the least understood.¹ Compacts hold a unique place in American history for several different reasons. First, while the use of interstate compacts dates back to the founding of the country, the frequency with which they are used has expanded considerably over the last half century. Second, compacts provide state policymakers with a sustainable tool capable of promoting interstate cooperation without federal intervention. Third, interstate compacts can be used to address a wide range of policy challenges, ranging from insurance reform to environmental regulation and virtually everything in between.²

Interstate compacts hold a unique place in American history. They were first referenced in Article I, Section 10, Clause 3 of the United States Constitution and still are the most structured and perhaps the least understood mechanism available to policymakers seeking state-driven solutions to a wide range of policy challenges. While the use of interstate compacts dates back to the founding of the country, the frequency with which they are used has expanded considerably over the past half century. Compacts provide state policymakers with a sustainable tool capable of promoting interstate cooperation without federal intervention. They also can be used to address a wide range of policy challenges, ranging from insurance reform to environmental regulation and virtually everything in between.³

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.⁴

Interstate compacts are contracts between two or more states creating an agreement on a variety of issues, including specific policy challenges, regulatory matters and boundary settlements. As such,

Table A:
Interstate Compacts: Advantages and Disadvantages

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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<tbody>
<tr>
<td>Flexible and enforceable</td>
<td>Lengthy and challenging process</td>
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<tr>
<td>Interstate uniformity without federal intervention</td>
<td>Lack of familiarity with the mechanism among state government officials and the public</td>
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<td>States maintaining collective sovereignty</td>
<td>Perceived loss of individual state sovereignty</td>
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<tr>
<td>Alternative to federal pre-emption</td>
<td>Delegation of state regulatory authority to an interstate agency</td>
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INTERSTATE COMPACTS

Interstate compacts are governed by the tenants 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.⁴

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 the member of the most compacts, adopting approximately 40 different agreements, while Hawaii is the member of the fewest agreements, with approximately 15 active compacts.⁵

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.⁶ 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 respective member states.⁷ 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.⁸ For the first time, states began using them 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 approximately 1955.

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**Figure A: Trends in Interstate Compacts, 1955 to 2011**

![Graph showing trends in interstate compacts, 1955 to 2011](image)

*Note: Data for 2003 and 2004 were not available.*
making significant gains in the number of gubernatorial seats held, and the number of 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 therefore 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 that 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 national office worked to develop 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 four of the U.S. 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. Frequently, administrative compacts 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. Given the changing nature
of today’s world, it is nearly impossible to predict what the future holds. 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.

By their very nature, interstate compacts ensure that states can act jointly to solve an immediate problem, while continuing to work cooperatively well into the future as the scope and nature of the problem change. While interstate compacts are not new, their evolution has provided state policymakers a sustainable and long-term solution to address complex cross-border challenges.

For more information about which compacts your state is a member of, visit the National Center for Interstate Compacts Database at www.csg.org/ncic.

Notes
1 The Evolving Use and the Changing Roll of Interstate Compacts: A Practitioners Guide. Broun, Buenger, McCabe, and Masters. Published by the ABA. p. 4.  
2 Ibid, p. 12.  
7 Ibid.  
9 Ibid.  
10 Ibid.