What is an interstate compact?

Interstate compacts are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters.

Interstate compacts are the most powerful, durable, and adaptive tools for ensuring cooperative action among the states. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure for collaborative and dynamic action, while building consensus among the states.

The very nature of an interstate compact makes it an ideal tool to meet the demand for cooperative state action: developing and enforcing stringent standards, while providing an adaptive structure that, under a modern compact framework, can evolve to meet new and increased demands over time.

General purposes for creating an interstate compact include:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact’s member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.

How prevalent are interstate compacts?

More than 200 interstate compacts exist today. On average, a state belongs to 25 interstate compacts.

There are 22 compacts that are national in scope, several with 35 or more member states and independent administrative commissions. More than 30 compacts are regional in scope, with 8 or more member states.
What types of interstate compacts exist?

Although there are many types of interstate compacts, they can generally be divided into three camps:

a. **Border Compacts**: agreements between two or more states that establish or alter the boundaries of a state. Once adopted by the states and approved by Congress, such compacts permanently alter the boundaries of the state and can only be undone by a subsequent compact approved by Congress or the repeal of the compact with Congress’s approval. Examples include the Virginia-Tennessee Boundary Agreement of 1803, Arizona-California Boundary Compact of 1963, the Missouri-Nebraska Compact of 1990, and the Virginia-West Virginia Boundary Compact of 1998.

b. **Advisory Compacts**: agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report to the respective states on their findings. Such compacts do not result in any change in the state’s boundaries nor do they create ongoing administrative agencies with regulatory authority.

c. **Regulatory Compacts**: broadest and largest category of interstate compacts may be called “regulatory” or “administrative” compacts. Such compacts are a development of the 20th century and embrace wide-ranging topics including regional planning and development, crime control, agriculture, flood control, water resource management, education, mental health, juvenile delinquency, child support, and so forth. Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact. Many regulatory compacts require congressional consent to be effective because they regulate areas that impact one of congress’s enumerated powers, such as interstate commerce, navigable streams, and extradition.

What are the advantages of an interstate compact?

The emergence of broad public policy issues that ignore state boundaries and the principles of federalism have presented new governing challenges to both state and federal authorities. Complex regional and national problems have shown little respect for the dual lines of federalism or the geographical boundaries of states. Thus, interstate compacts have reemerged not only as devices for adjusting interstate relations but also for governing the nation.

Interstate compacts provide an effective solution in addressing suprastate problems. Compacts enable the states—in their sovereign capacity—to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while respecting the view of Congress on the appropriateness of joint action. Interstate compacts can effectively preempt federal interference into matters that are traditionally within the purview of the states and yet which have regional or national implications.

Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process. Compacts enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time.

What are the disadvantages of an interstate compact?

Interstate compacts may often require a great deal of time to both develop and implement. While recent interstate compact efforts have met with success in a matter of a few years, some interstate compacts have required decades to reach critical mass.

Further, the ceding of traditional state sovereignty, particularly as required by several modern administrative compacts may be perceived as a disadvantage. The very purpose
of an interstate compact is to provide for the collective allocation of governing author-
ity between and among party states, which does not allow much room for individual-
ism. The requirement of substantive “sameness” prevents party states from passing dis-
similar enactments.

As the balance of power continues to realign in our federalist system, states may
only be able to preserve their sovereignty authority over interstate problems to the
extent that they share their sovereignity and work together cooperatively through
interstate compacts.

**How is an interstate compact created?**

Compacts are essentially contracts between or among states. To be enforceable, they
must satisfy the customary requirements for valid contracts, including the notions of offer
and acceptance. An offer is made when one state, usually by statute, adopts the terms of
a compact requiring approval by one or more other states to become effective. Other
states accept the offer by adopting identical compact language. Once the required num-
ber of states has adopted the pact, the “contract” among them is valid and becomes effec-
tive as provided. The only other potential requirement is congressional consent.

**What might the compact development process look like?**

The development of any interstate compact should be a state driven and state champi-
oned solution to a policy issue. Outlined below are key steps to the development process
of a regulatory compact, as experienced by CSG. These should be viewed as examples and
can be, based on the issue area, customized as needed.

- **Advisory Group:** Composed of state officials and other critical stakeholders, an
  Advisory Group examines the realm of the problem, suggests possible solutions and
  makes recommendations as to the structure of the interstate compact. Typically, an
  Advisory Group is composed of approximately 20 individuals, each representative of
  various groups and states. An Advisory Group would likely meet one or two times
  over a period of two to three months, with their work culminating in a set of recom-
  mendations as to what the final compact product should look like.

- **Drafting Team:** While an Advisory Group enjoyed thinking about the issue from a
  macro-level, a Drafting Team pulls the thoughts, ideas and suggestions of the Advisory
  Group into a draft compact. The Drafting Team, composed of 5 to 8 compact and
  issue experts, will craft the recommendations, as well as their own thoughts and
  expertise, into a draft compact that will be circulated to state officials for comment.
  The document will also be open for comments from a wide swath of stakeholders
  and the public. Following these comment periods, the compact will be revised as
  needed and released finally back to an Advisory Group for final review to ensure it
  meets the original spirit of the group’s recommendations. A Drafting Team would
  meet three to four times over a period of 10–14 months, with significant staff work
  and support between sessions.

- **Education:** Once completed, the interstate compact would be available to states for
  legislative approval. During this phase of the initiative, state-by-state technical assis-
tance and on-site education are keys to rapid success. A majority of state legislators
  have limited knowledge about interstate compacts and with such a major issue being
  addressed, leg work on the ground in each state is crucial. Previous interstate com-
  pact efforts have convened end-of-the-year legislative briefings for state officials to
  educate them on the solutions provided by the interstate compact. Education occurs
  before and during state legislative sessions.

- **Enactment:** A majority of interstate compacts did not become active right away.
  Rather, interstate compacts typically activate when triggered by a pre-set number of
  states joining the compact. For instance, the Interstate Compact for Adult Offender
  Supervision (Adult Compact) required 35 state enactments before it could become
  active. This number was chosen for two reasons. A membership of 35 ensures that a
  majority of states are in favor of the agreement and that a new compact would not
create two conflicting systems. Moreover, a sense of urgency for states was created because the first 35 jurisdictions to join would meet soon thereafter and fashion the operating rules of the compact. Most interstate compacts take up to 7 years to reach critical mass. However, the most recent effort managed by CSG, the Adult Compact, reached critical mass in just 30 months from its first date of introduction in 2000.

- **Transition** Following enactment by the required minimum number of states, the new compact becomes operational and, dependent upon the administrative structure placed in the compact, goes through standard start-up activities such as state notification, planning for the first commission or state-to-state meetings and, if authorized by the compact, hiring of staff to oversee the agreement and its requirements. A critical component of the transition will be the development of rules, regulations, forms, standards, etc. by which the compact will need to operate. Typically transition activities run for between 12 and 18 months before the compact body is independently running.

**What does a modern interstate compact look like, structurally?**

When developing the interstate compact mechanism, one needs to look at it as a human body—the compact itself is the skeleton, the rules, regulations and forms are the muscles and the bylaws are the skin. The compact should contain the minimum basics upon which it needs to operate, in terms of the agreement between states and the operation of a governing body. By using the compact as the broad framework, the rules can be adapted and adjusted as needed throughout the life the compact without the need to go back each time for legislative approval from the member states, subject to the legislative-delegated authority.

**Will my states constitution permit the creation and/or joining of a compact?**

Compact language is usually drafted with state constitutional requirements common to most state constitutions such as separation of powers, delegation of power, and debt limitations in mind. The validity of the state authority to enter into compacts and potentially delegate authority to an interstate agency has been specifically recognized and unanimously upheld by the U.S. Supreme Court in West Virginia v. Sims, 341 U.S. 22 (1951).

**How much does it cost to develop and operate an interstate compact?**

No two compacts are alike and therefore the issues addressed by one compact require different development considerations than do others. Some compacts have enjoyed massive federal support, such as the Adult Compact which received more than $1.2 million from the National Institute of Corrections. However, a more recent compact revision of the Interstate Compact for the Placement of Children will have resulted in a final compact in 10 months for approximately $100,000 (not counting education and transition costs). Cost depends largely upon the desired timelines, the level of external stakeholder involvement and the level of education desired within each state.