The Nature of Interstate Compacts

Compacts are agreements between two or more states that bind them to the compacts’ provisions, just as a contract binds two or more parties in a business deal. As such, compacts are subject to the substantive principles of contract law and are protected by the constitutional prohibition against laws that impair the obligations of contracts (U.S. Constitution, Article I, Section 10).

That means that compacting states are bound to observe the terms of their agreements, even if those terms are inconsistent with other state laws. In short, compacts between states are somewhat like treaties between nations. Compacts have the force and effect of statutory law (whether enacted by statute or not) and they take precedence over conflicting state laws, regardless of when those laws are enacted.

However, unlike treaties, compacts are not dependent solely upon the good will of the parties. Once enacted, compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves. Moreover, Congress and the courts can compel compliance with the terms of interstate compacts. That’s why compacts are considered the most effective means of ensuring interstate cooperation.

History of Interstate Compacts

Historically, compacts have been enacted for a variety of reasons, though they were seldom used until the 20th century. Between 1783 and 1920, states approved 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II.

Their purposes range from implementing common laws to exchanging information about common problems. They apply to everything from conservation and resource management to civil defense, emergency management, law enforcement, transportation, and taxes. Other compact subjects include education, energy, mental health, workers compensation and low-level radioactive waste.

Some compacts authorize the establishment of multistate regulatory bodies. The first and most famous of these is probably the New York-New Jersey Port Authority, which arose from a 1921 compact between New Jersey and New York. But other agreements are simply intended to establish uniform regulations without creating new agencies.

In recent years, compacts have grown in scope and number. Today, many are designed for regional or national participation, whereas the compacts of old were usually bistate agreements.

Recent efforts include the Emergency Management Assistance Compact, the Interstate Compact on Industrialized/Modular Buildings, Interstate Insurance Receivership Compact, and several low-level radioactive waste compacts, which were essentially mandated by Congress.

Creating Interstate Compacts

Compacts are essentially contracts between 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 number of states has adopted the pact, the “contract” between them is valid and becomes effective as provided. The only other potential requirement is congressional consent.

Determining Whether Congressional Consent is Required

Article I, Section 10 of the U.S. Constitution provides in part that “no state shall, without the consent of Congress, enter into any agreement or compact with another state.” Historically, this clause generally meant all compacts must receive congressional consent.

However, the purpose of this provision was not to inhibit the states’ ability to act in concert with each other. In fact, by the time the Constitution was drafted, the states were already accustomed to resolving disputes and addressing problems through interstate compacts and agreements. The purpose of the compact clause was simply to protect the pre-eminence of the new national government by preventing the states from infringing upon federal authority or altering the federal balance of power by compact.

Accordingly, the Supreme Court indicated more than 100 years ago in Virginia v. Tennessee, 148 U.S. 503 (1893) that not all compacts require Congressional approval. Today, it is well established that only those compacts that affect a power delegated to the federal government or alter the political balance within the federal system, require the consent of Congress.

Whether or not a proposed compact falls within one of these categories ultimately depends upon the purpose and effect of its terms. Compacts that potentially alter the balance within the federal system, and therefore require congressional consent, include boundary settlements and other pacts that arguably have a discriminatory impact against non-party states. For example, a river basin agreement between two or more states that might affect the water rights of non-party states would surely require congressional approval. Determining whether a compact affects federal powers is more difficult. Generally, any compact that touches on an area of mutual state-federal concern, or threatens to interfere with the doctrine of federal preemption, may be said to require congressional consent.

By example, it is almost easier to identify agreements that do not require congressional consent. Included among these are compacts concerning matters in which state authority is clearly pre-eminent. Education is one such area.

Compacts designed to facilitate interstate communication or promote cooperative studies also do not usually require congressional consent, but those that impose more substantive obligations often do.

Obtaining Congressional Consent

Fortunately, the consent requirement is not particularly burdensome. Though usually satisfied by means of a congressional resolution granting the states the authority to create a compact, the Constitution specifies neither the means nor the timing of the required consent. Over the years, the Supreme Court has held that congressional consent may be expressed or implied and may be obtained either before or after a compact is enacted.
Congressional consent may also be conditional, limited, or temporary, and is always subject to modification or repeal, even if this right is not expressly reserved when the consent is initially given. Thus, whether a compact requires consent or not, and regardless of the form that consent may take, no compact is immune from future invalidation by Act of Congress. Therefore, express congressional consent is sometimes considered desirable, even if it isn’t strictly required at the time the compact is created.

**Amending and Enforcing Compacts**

Once established, compacts can only be amended or terminated in accordance with the instruments themselves, or by mutual consent of the members by adopting identical substantive language. In other words, amending compacts requires the same process that is used to create them unless the compacts themselves specify other methods or mechanisms.

A violation of compact terms, like a breach of contract, is subject to judicial remedy. Since compacts are agreements between states, the U.S. Supreme Court is the usual forum for the resolution of disputes between member states. However, compacts can, and frequently do, include provisions to resolve disputes through arbitration or other means.

**Other Compact Components**

Typical compact language might include any or all of the following: a statement of purpose; a list of goals and objectives; a description of functions, powers and duties; substantive regulations; provisions for an administrative structure or an independent agency; financial participation requirements (e.g., dues); enforcement and construction guidelines; and other provisions governing entry into force, amendments, severability, withdrawal and termination. The specifics can vary.

**Timeframe Enacting Compacts**

Compacts are not always complicated, but they take time, especially if their subject matter is controversial.

A study of 65 interstate compacts conducted in the early 1960s indicated that the average amount of time required to launch a new compact was almost five years. But that study was admittedly skewed by the unusually long time required for the approval of several compacts that dealt with controversial natural resource issues. In fact, the average time required to enact 19 compacts covering river management and water rights was almost nine years.

Without these extremes, the prospects appear more manageable. In recent years, there have been some remarkable success stories. For example, in December 1989, a committee of the Midwestern Legislative Conference approved draft language for the *Midwestern Higher Education Compact* and began circulating it to lawmakers in the twelve Midwestern states that were eligible to participate. Just 13 months later, the compact became effective.

**Conclusion**

With a few exceptions, interstate compacts have served as useful tools in helping states deal with interstate, regional and multistate issues. They are also an attractive alternative to federal intervention and regulation since they offer the states an effective and enforceable means of addressing common problems without relinquishing authority to Congress.
OVERVIEW

General Purposes of Compacts
- Establish a formal, legal relationship between states to address common problems or promote a common agenda (e.g., the Emergency Management Assistance Compact and the Interstate Compact on Agricultural Grain Marketing).
- Create independent, multistate governmental authorities (e.g., commissions) which can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally (e.g., the New York - New Jersey Port Authority Compact and the Delaware River Basin Compact).
- Establish uniform guidelines or procedures for agencies in the compact’s member states (e.g., the Interstate Compact for the Supervision of Parolees and Probationers).
- Create economies of scale (e.g., the Western Higher Education Compact).
- Comply with or result from federal law (e.g., the interstate low-level radioactive waste compacts).
- Retain state sovereignty or preclude federal regulatory action (e.g., the Interstate Compact on Industrialized/Modular Buildings).
- Promote regional interests (e.g., the Southern Growth Policies Board).
- Settle interstate disputes (e.g., state boundary compacts).

Typical Compact Components in Articles or Sections
- Title or enacting clause.
- Statement of purpose or policy.
- Definitions.
- Description of administrative authority.
- Procedures.
- State dues.
- Entry into force.
- Withdrawal or termination of membership.
- Construction and severability.

Common Criticisms
- Member states must forfeit individual sovereignty.
- Compacts can be exclusionary.
- Administrative authority may not be clearly defined.