Solutions for States: Interstate Compacts as a Tool
by
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Interstate compacts serve a multitude of functions within state governments. They regulate state boundaries, water rights, educational standards, health-care functions, criminal justice and corrections concerns and natural resource use. They address transportation, civil defense and disaster relief, pollution and environmental concerns and taxation. Serving as one of the most useful and critical components of overall state government policy, interstate compacts themselves are relatively unknown, yet more than 200 exist today.

Interstate compacts are one of the oldest legal tools used within the United States, reserved exclusively to the states and dating back to the founding of our nation. Interstate compacts are a tool for state governments to address regional or national policy concerns…they are not a solution per se…rather they allow a state to enter into a contract with other states to perform a certain action, observe a certain standard or to cooperate in a critical policy area.

Prior to the 1920s, interstate compacts were typically bi-state agreements, addressing boundary disputes and territorial claims. In fact, only 36 interstate compacts were formed between 1783 and 1920. It is only in this century that interstate compacts have risen to such prominence and power in and among the states. Actually, interstate compacts as a mechanism are one of the oldest legal tools granted to and reserved for the states, under Article I, Section 10, Clause 3 of the U.S. Constitution, “No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.” Compacts actually preceded the formation of our own Constitution, having been used in colonial times to resolve boundary disputes between colonies.

Interstate compacts are contracts between states and carry with them the force and effect of statutory law. While most interstate compacts are rudimentary in function (regulating boundaries and water rights) and have signatories numbering below fifteen, several interstate compacts maintain membership of all 50 states (or close to it) and have administrative/regulatory agencies that oversee the functionality of the compact between states. The Drivers’ License Compact and its American Association of Motor Vehicle Administrators regulate and allow states to recognize drivers’ licenses issued in other states. The Interstate Compact for Education and its Education Commission of the States maintain close cooperation and understanding among executive, legislative, professional, educational leadership on a nationwide basis at the State and local levels.

Likewise, there are several interstate compacts that regulate small state-by-state and regional issues, such as Waterfront Commission Compact between New Jersey and New York that regulates the practices in handling waterfront cargo in the Port of New York. The Bi-State Development Agency Compact between Illinois and Missouri regulates the planning and development of St. Louis. Whether large or small, interstate compacts play a role in everyday state relations and activities.
Interstate compacts enjoyed wide usage prior to the late-1970s and early-1980s. However, during this period, the use of interstate compacts and the formation of new compacts came to an utter stand still. It has only been in the last few years that interstate compacts have begun to enjoy resurgence in the states as a mechanism for solving issues that cross state-lines. Several high profile interstate compacts have been developed and/or updated over the last few years: the Emergency Management Assistance Compact (EMAC), the Interstate Compact on Juveniles, the Interstate Compact for Adult Offender Supervision, the Interstate Compact on Industrialized/Modular Buildings and the Interstate Insurance Receivership Compact, to name a few.

The law and use of interstate compacts is not particularly complex...like any contract, the language of a compact needs to be identical in intent and context, if not identical in exact verbiage between the states. Compacts are almost always statutory, and when not strictly the case, carry the force and weight of law. It is important to note that interstate compacts, for the most part, do not enjoy a bulging history of case law or administrative review...rather compacts have existed over the life of our nation with relatively few challenges.

Many question the need for interstate compacts when confronted with a powerful federal government. Why not leave such regulation to the feds? In our federalist society, certain powers are obviously delegated to specific levels within the government. As such, interstate compacts are a tool reserved to the states and approved by Congress. This fact has been affirmed time and again by the U.S. Supreme Court, itself the single most widely used enforcement tool for interstate compacts. **West Virginia, ex. rel. Dyer vs. Sims, 341 U.S. 22 (1951)** specifically referred to the state legislature’s adoption of and delegation of power to an interstate compact agency made up of its’ sister states as “one of the axioms of modern government” and as “a conventional grant of legislative power.” Additional U.S. Supreme Court cases, **Cuyler vs. Adams, 449 U.S. 433 (1981)** and **U.S. Steel Corporation vs. Multistate Tax Commission, 434 U.S. 452 (1978)** reinforce the role of interstate compacts in the relationships between states, as a tool to be used by the states and approved by Congress.

As the public policy issues become more complex and affect more states in our boundary-less world, new interstate compacts could prove to be the answer to several multi-state, regional and national policy problems: prescription drug pricing, regional/national drug enforcement, electricity use and regulation/deregulation, zoning and urban sprawl, regional and national codes of construction, emerging environmental issues, internet taxation and privacy enforcement/regulation, to name a few.

Furthermore, several interstate compacts are ripe for amendment and revision. Having been drafted and passed by the states in the 1930s, 1940s and 1950s, few compacts were able to anticipate the changes experienced in our world. Technology and the Internet now make the sharing of information seamless and immediate, yet several interstate compacts are plagued by inadequate administration. The growth of transportation and the shrinking of travel time globally have made several mechanisms within existing compacts unable to cope with increased loads. And enforcement tools within interstate compacts need to utilize more of the mediation/arbitration services that have become increasingly popular in the last few years and
develop additional self-contained enforcement mechanisms, rather than relying solely on the crowded docket of the U.S. Supreme Court.

Interstate compacts are a distinctively American invention, allowing our state governments to work across political and geographic boundaries to address a multitude of critical public policy areas. Their popular use in the first two-thirds of the 20th century laid the groundwork for unprecedented state-to-state cooperation. As we enter the 21st century, this age old tool for states is enjoying resurgence in areas that are uniquely fitted to the states: corrections, juvenile justice, emergency management, and probation and parole. States should further utilize this tool to address new problems and create new methods of cooperation among themselves. If not, federal preemption in certain policy areas is a distinct possibility…as the saying goes, “If you don’t use it, you lose it.”

For more information on interstate compacts, please visit CSG’s Interstate Compact Internet Website at www.csg.org.
Fun Facts, Tables, Etc.

Fast Facts

200+ Interstate Compacts in operation
36 compacts developed prior to 1920
150-160 compacts developed since 1920
13 interstate compacts have 25 or more members

By the Numbers

42 - largest number of interstate compact memberships (NH & VA)
14 - smallest number of interstate compact memberships (HI & WI)
27 - average number of compacts each state belongs to