INTRODUCTION/OVERVIEW
INTERSTATE COMPACTS

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.

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.