



Interstate Compacts

National Association of Secretaries of State

Administrative Codes and Registers Section

Summer Conference 2006





Why Interstate Cooperation?

- Effectiveness and efficiency
- Flexibility and autonomy compared to national policy
- Dispute settlement
- Threats of Federal / Congressional preemption or mandates



What is an Interstate Compact?

- Contract between states
- Creates independent, multistate authorities
- Establishes uniform guidelines, standards and procedures
- Creates economies of scale
- Responds to priorities with one voice
- Retains state sovereignty

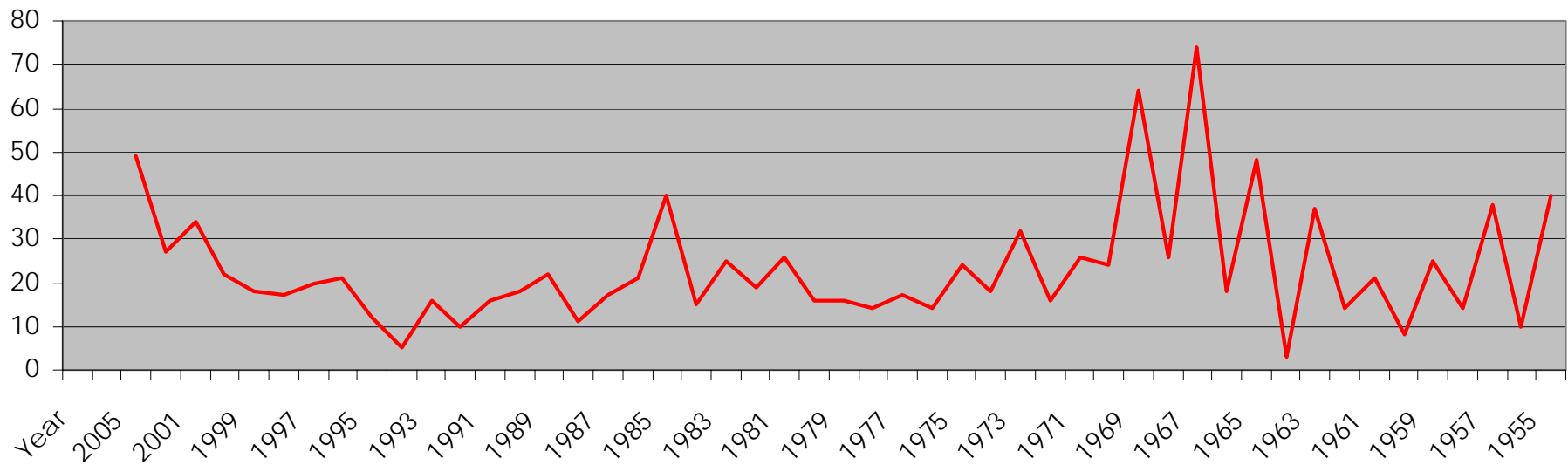


Trends in Interstate Compacts

- Different compacts developed / enacted – **200**
- Average state compact membership – **25**
- Compacts with a majority of states – **18%**
- Compacts with a regional emphasis – **20%**
- **49** compact bills enacted in 2005; most since 1969
- **20** compacts enacted in 2006; more than 100 bills pending
- **30** compact-related bills before 109th Congress



Interstate Compact Enactments, 1955 to 2005



<u>Year *</u>	<u>Compacts Enacted</u>	<u>Year *</u>	<u>Compacts Enacted</u>	<u>Year *</u>	<u>Compacts Enacted</u>	<u>Year *</u>	<u>Compacts Enacted</u>	<u>Year *</u>	<u>Compacts Enacted</u>
2005	49	1994	5	1986	21	1978	14	1970	24
2002	27	1993	16	1985	40	1977	17	1969	64
2001	34	1992	10	1984	15	1976	14	1968	26
2000	22	1991	16	1983	25	1975	24	1967	74
1999	18	1990	18	1982	19	1974	18	1966	18
1998	17	1989	22	1981	26	1973	32	1965	48
1997	20	1988	11	1980	16	1972	16	1964	3
1996	21	1987	17	1979	16	1971	26	1963	37
1995	12								

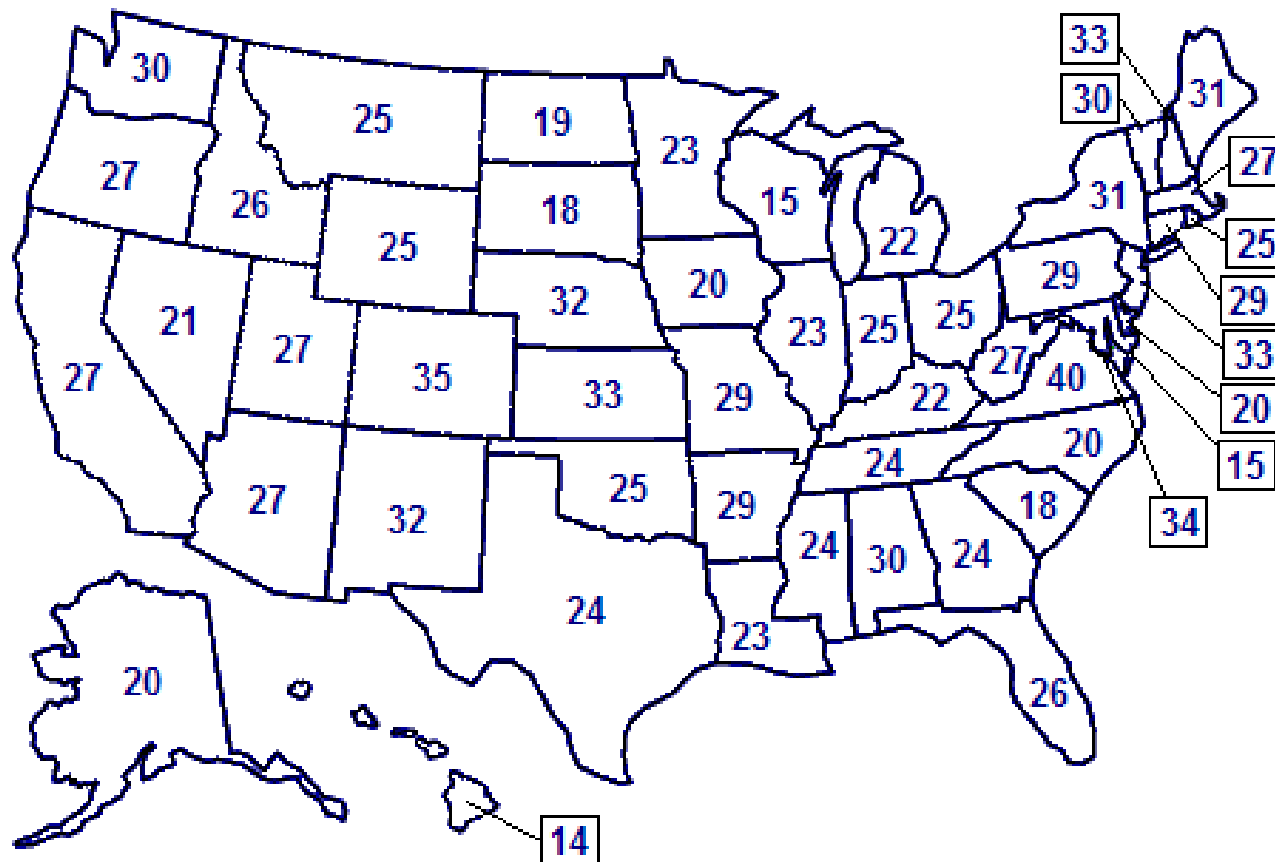
* no data for 2003, 2004



Notable Interstate Compacts

- Interstate Insurance Product Regulation Compact
- National Crime Prevention and Privacy Compact
- Interstate Compact for Juveniles
- Electoral College Interstate Compact
- Wildlife Violator Compact
- Midwest Interstate Passenger Rail Compact
- Interstate Pest Control Compact
- Great Lakes – St. Lawrence River Basin Water Resources Compact

State-by-State Compact Membership



Most: Virginia (40) / Least: Hawaii (14) / Avg: 25 compacts



U.S. Constitutional Provisions

Art I, Sec. 10, Clause 3 – Compact Clause

“No State shall, without the Consent of Congress...enter into any Agreement or Compact with another State, or with a foreign Power...”



U.S. Constitutional Provisions

Art III, Sec. 2 – Resolution of controversies between states

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...to Controversies between two or more States...between a State and Citizens of another State...between Citizens of different States...”



U.S. Constitutional Provisions

Art IV, Sec. 1 & 2 – Full Faith and Credit Clause / Privileges & Immunities

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.”

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”



Congressional Consent

Not required for every compact

- *Virginia v. Tennessee, 148 U.S. 503 (1893)*

Only required when:

- An agreement augments the balance of power between the federal government and the states; or
- intrudes on an area reserved or of interest to the central government



Obtaining Congressional Consent

- Implied after the fact when actions by the states and federal government indicate that congress has granted its consent even in the absence of a specific legislative act.
- Explicitly given after the fact, as in the case of border compacts, by enacting legislation that specifically recognizes and consents to the compact.
- Preemptively by congress passing legislation encouraging states to adopt compacts to solve particular problems.



Other Forms of Interstate Cooperation

- *Multistate Legal Actions*
 - Joint legal actions
 - Tobacco settlement by NAAG

- *Uniform State Laws*
 - National Conference of Commissioners on Uniform State Laws
 - No involvement with “collective action” per se

- *Administrative Agreements*
 - Executive agencies
 - Formal or informal



Compact Governing Structures

- **Administration by existing state agencies and officials**
 - *Colorado River Compact*
 - *Interstate Corrections Compact*
- **Administration by “compact administrator” and/or new state entity**
 - *Drivers’ License Compact*
 - *Interstate Compact on Mental Health*
- **Administration by Association**
 - *Interstate Compact on the Placement of Children*
 - *Emergency management Assistance Compact*
- **Administration by an Interstate Agency**
 - *New York & New Jersey Port Authority Compact*
 - *Interstate Compact for Adult Offender Supervision*



Administrative Procedures & Rulemaking

- Accountability

- Transparency

- APA use
 - *Federal*
 - *State*
 - *American Bar Association Compact APA Project*



Cases Relevant to APA and Rulemaking

- *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 31 (1951)
- *Organic Cow, LLC v. Northeast Dairy Compact Commission*, 164 F.Supp2d 412 (2001), vacated and remanded, *Organic Cow, LLC v. Ctr. for New England Dairy Compact Research*, 335 F.3d 66 (2d Cir. 2003)
- *Commonwealth of Pennsylvania Board of Probation and Parole et al vs. Interstate Commission for Adult Offender Supervision*, (Dist. DC 2004), appeal dismissed *Commonwealth of Pennsylvania Board of Probation and Parole v. Interstate Commission for Adult Offender Supervision*, 2005 U.S. App. LEXIS 3151 (D.C. Cir. 2005)



Enforcement of Compact Rules & Provisions

- Concurrently statutory and contractual
- Creations of states, but may function as a “law of the United States”
- Compacts generally function under contract law
- As a contract, enforcement and relief may not deviate from the provisions of the compact
- Interstate compacts and their rules take precedence over conflicting state laws
- States may delegate rulemaking and administrative functions to an interstate agency
- Compacts not granted congressional consent may have conflicting state interpretations
- Compact may provide for alternative dispute resolutions
- Remedies for courts may include injunctive relief, damages and monetary penalties



National Center for Interstate Compacts

Purpose:

- Information clearinghouse
- Provider of training and technical assistance
- Primary facilitator in revising and creating compacts
- Membership association for the interstate compact community



National Center for Interstate Compacts

Current / Recent Projects:

- Interstate Commission for Adult Offender Supervision
- Interstate Compact for Juveniles
- Interstate Compact for the Placement of Children
- Educating Military Children Compact
- Great Lakes – St. Lawrence River Basin Water Resources Compact
- Emergency Management Assistance Compact
- Midwest High-speed Passenger Rail Compact

Online Tools / Services:

- Interstate Compact Library & Document Repository
- Interstate Compact Activity Tracking: State & Federal
- Interstate Compacts Database
- Summit of the States on Interstate Cooperation



Resources

Evolving Use and the Changing Role of
Interstate Compacts: A Practitioner's Guide - ABA

State Activity

<http://www.csg.org/programs/ncic/state.aspx>

Federal Activity

<http://www.csg.org/programs/ncic/federal.aspx>

Compacts Database

<http://www.csg.org/programs/ncic/database/search.aspx>



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