

# Interstate Compacts in South Dakota

Issue Memorandum

2024-03



## Introduction

As a sovereign entity, the State of South Dakota may exercise all powers not prohibited to it, nor delegated to the federal government, by the United States Constitution.<sup>1</sup> The U.S. Constitution speaks to interstate compacts in two ways—one expressed, one inferred. The Compacts Clause of the Constitution expresses that states are prohibited from entering "into any Agreement or Compact with another state" without "the Consent of Congress."<sup>2</sup> Over the last 130 years, the United States Supreme Court has taken this language to mean that where states attempt to use a compact to erode federal supremacy under the Constitution, or to alter the balance of power between compacting and non-compacting states, only the consent of Congress can authorize the compact.<sup>3</sup>

For other agreements between states that do not infringe on federal supremacy or create imbalances among the states, the Court has taken an approach, based on the Tenth Amendment's reservation of powers to the states,<sup>4</sup> that states may enter into agreements with one another without Congressional approval.<sup>5</sup> There are two legal requirements for these compacts: the substantive requirement that the compact does something a state could accomplish lawfully on its own,<sup>6</sup> and the procedural requirement that the compact is "enacted by state legislatures that adopt reciprocal laws that substantively mirror one another."<sup>7</sup>

In this way, all interstate compacts have characteristics of both statutory law and contractual agreements. Each state's enactment is motivated by the other states' similar participation, creating in effect a contract that limits each participating state's sovereign authority, and in exchange, each state realizes some collective good.<sup>8</sup> In other words, the participating states enforce compact terms as law, while binding and thereby limiting themselves to compact provisions as if they were parties to a contract. The collective good achieved by this limitation on state sovereignty is "dealing with a problem that transcends state lines,"<sup>9</sup> but cannot effectively be, is not being, or is otherwise preferred not to be, addressed by the federal government.

Recently, several interstate compacts have been entered into or repealed by the South Dakota Legislature.<sup>10</sup> Given this interest in compacts, this memorandum summarizes the case law on compacts and surveys the compacts

---

<sup>1</sup> U.S. Const. amend. X.

<sup>2</sup> U.S. Const., art. I, § 10, cl. 3. The terms "agreement" or "compact" are substantively one-and-the-same—any binding terms between states fall under this constitutional authorization and limitation. See Virginia v. Tennessee, 148 U.S. 503, 520, 13 S. Ct. 728 (1893) ("Compacts or agreements—and we do not perceive any difference in the meaning, except that the word 'compact' is generally used with reference to more formal and serious engagements than is usually implied in the term 'agreement' ...."). Such agreements or compacts may be formally written, as well as informal. U.S. Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 470-71 & n.23, 98 S. Ct. 799 (1978).

<sup>3</sup> Virginia v. Tennessee, 148 U.S. 503, 517-21, 13 S. Ct. 728 (1893). And even then, Congress can only authorize what it has the Constitutional authority to legislate in the first place. See Cuyler v. Adams, 449 U.S. 433, 440 & n.8, 101 S. Ct. 703 (1981).

<sup>4</sup> See New York v. O'Neill, 359 U.S. 1, 6, 79 S. Ct. 564 (1959).

<sup>5</sup> U.S. Steel, 434 U.S. at 468-69.

<sup>6</sup> See *id.* at 473.

<sup>7</sup> In re Alexis O., 157 N.H. 781, 784, 949 A.2d 176 (2008).

<sup>8</sup> See *id.*

<sup>9</sup> P. Hardy, *Interstate Compacts: The Ties That Bind* 2 (1982).

<sup>10</sup> Seven bills that established interstate compacts or adopted statutes proposed by a compact body were introduced in the 2024 legislative session—[HB 1012](#), [HB 1013](#), [HB 1015](#), [HB 1017](#), [HB 1091](#), [HB 1211](#), and [SB 58](#). All were enacted into law.

currently in South Dakota law—the number and subject areas of compacts, and description of each. Included in this treatment are the common elements of these different types of compacts.<sup>11</sup>

### Compacts Approved by Congress

Once created, an interstate compact approved by Congress becomes a matter of federal law.<sup>12</sup> The compact is now a creature of the federal Constitution and memorialized in an Act of Congress, even if its precise terms may have been initially negotiated by the states. There is also a practical element to this, as a federal court is often the only non-party venue for states to resolve any controversy over a compact.<sup>13</sup>

Congress may approve a compact by either creating the framework for the compact in law, "or by giving expressed or implied approval to an agreement the States have already joined."<sup>14</sup> Express approval takes the form of legislation, in which Congress can impose additional terms on the compacting states.<sup>15</sup> Conversely, implicit approval can be shown by a compact specifying terms to which the federal government acquiesces through its operations or lawmaking over a period of years. One example is a state compact setting boundaries between states, and the federal government acquiescing to the compact by making appointments of federal officers and settling their jurisdictional boundaries on the compact boundaries over many years.<sup>16</sup>

Federal case law provides the guidance on what a Congressionally approved compact is, its enforceability, how controversies are resolved, and how party states may remove themselves from a compact. Federal courts view any interstate compact as a contract, or "a legal document that must be construed and applied in accordance with its terms."<sup>17</sup> Any "surrenders of sovereignty" in a compact are particularly strictly construed—they must be "too plain to be mistaken."<sup>18</sup> Once those terms are established, however, no state participating in the contract "may enact legislation that would impose burdens upon the compact absent the concurrence" of the other participating states.<sup>19</sup> This means the other states must enact legislation that expressly approves of the burdening act of the state in order for the burdening act to be lawful.<sup>20</sup> In this way, a state party to a compact is not "free to modify or repeal its law unilaterally," unless the express or implied-in-contract-law terms of the compact permit it.<sup>21</sup>

<sup>11</sup> As a final introductory note, the Council of State Governments - National Center for Interstate Compacts is a resource for providing technical assistance on interstate compacts, with the avowed purpose of helping "states collaborate on complex public policy issues to strengthen economies, protect public health and safety, and champion state sovereignty." Council of State Governments, National Center for Interstate Compacts, <https://compacts.csg.org/> (last accessed May 22, 2024). The Council appears to be focused on occupational licensure compacts in particular.

<sup>12</sup> New Jersey v. New York, 523 U.S. 767, 811, 118 S. Ct. 1726 (1998).

<sup>13</sup> Reflecting this concern, of the United States Supreme Court's three grounds to assert original jurisdiction to hear cases (i.e., cases not heard on appeal but which are tried directly to the Court), one involves controversies where a state is a party. U.S. Const., art. III, § 2, cl. 2. See also Texas v. New Mexico, 583 U.S. 407, 412, 138 S. Ct. 954 (2018).

<sup>14</sup> Cuyler, 449 U.S. at 441.

<sup>15</sup> See Petty v. Tenn.-Mo. Bridge Comm'n, 359 U.S. 275, 280, 79 S. Ct. 785 (1959).

<sup>16</sup> Virginia, 148 U.S. at 522.

<sup>17</sup> Texas v. New Mexico, 482 U.S. 123, 128, 107 S. Ct. 2279 (1987).

<sup>18</sup> Int'l Union of Operating Eng'rs, Local 542 v. Del. River Joint Toll Bridge Comm'n, 311 F.3d 273, 280 (3d Cir. 2002).

<sup>19</sup> KMOV TV, Inc. v. Bi-State Dev. Agency of Mo., 625 F. Supp. 2d 808, 812 (E.D. Mo. 2008).

<sup>20</sup> *Id.* at 813.

<sup>21</sup> Waterfront Comm'n of N.Y. Harbor v. Murphy, 429 F. Supp. 3d 1, 11 (D.N.J. 2019) (quoting Ne. Bancorp, Inc. v. Bd. of Governors of the Fed. Reserve Sys., 472 U.S. 159, 175, 105 S. Ct. 2545 (1985)). However, a compact that is silent on withdrawal, but which calls for ongoing performance on an indefinite basis, permits a state to unilaterally withdraw from the compact. New York v. New Jersey, 598 U.S. 218, 226, 143 S. Ct. 918, 925 (2023). This is in keeping with equivalent contracts and contract law in general. *Id.*



Unilateral actions not permitted by the compact may be considered unlawful under the Contracts Clause of the United States Constitution, which prohibits any state from passing laws "impairing the Obligation of Contracts."<sup>22</sup>

### States' Reciprocal Legislation

Where Congressional consent is not required, a compact is merely "statute in each of the jurisdictions that are party to it" and therefore is interpreted using state courts' statutory construction.<sup>23</sup> As state statute, then, provisions of a compact can be challenged if they conflict with state constitutional law, unless there is a supervening federal authority that justifies the provision.<sup>24</sup> In many cases, the reciprocal legislation involves putting the entire language of the compact into statute, as with many professional licensing compacts.<sup>25</sup> For other compacts, including the tax apportionment and driving offenses compacts, the actual terms of the compacts do not exist in law but instead bind the compacting states to create new law or make revisions to existing law, or to verify with the compact entity that existing law aligns with the requirements of the compact.<sup>26</sup>

Most compacts nationwide appear to be reciprocal legislation compacts because of the myriad forms they take and their diverse subject matters. For instance, issues involving boundary land and water use are often resolved through the use of reciprocal legislation (see [SDCL ch. 46A-16](#)).<sup>27</sup> Indeed, compacts may involve any other issue that could be a point of controversy between sovereign states. Reciprocal legislation compacts, can therefore address problems between states proactively (i.e., addressing an issue that is arising or is anticipated to arise) or reactively (i.e., settling a controversy that would otherwise go before the United States Supreme Court).<sup>28</sup>

In a court case involving a compact, a reviewing court will first look to the plain language of the compact to discern meaning.<sup>29</sup> If the controversy involves a breach of contract by a state, the legal challenge is likely to implicate the Compacts Clause or Contracts Clause.<sup>30</sup>

### Intergovernmental Agreements and Compacts

In some cases, it is difficult to distinguish the concept of intergovernmental agreements between states from compacts. While the terms of compacts are enforceable as law, intergovernmental agreements may only be authorized in statute, without their terms existing in statute or rule.<sup>31</sup> Despite the imprecise boundary between intergovernmental agreements and compacts, there does not appear to be a case where an intergovernmental agreement was challenged as not being a properly constituted compact.<sup>32</sup> This would appear to suggest, then, that intergovernmental agreements can bind purely administrative cooperation between states, without the need to enforce terms against or uphold the rights of third parties as with law. One example—the Multi-State Lottery

<sup>22</sup> U.S. Const., art. I, § 10, cl. 1. See also *Green v. Biddle*, 21 U.S. 1, 4, 8 Wheat. 1 (1823).

<sup>23</sup> *In re Alexis O.*, 157 N.H. at 784-85.

<sup>24</sup> See *State ex rel. Dyer v. Sims*, 341 U.S. 22, 32, 71 S. Ct. 557 (1951).

<sup>25</sup> In South Dakota statute, many of these compacts comprise one large section, the style and formatting of which deviate greatly from the LRC GUIDE TO LEGISLATIVE DRAFTING. See, e.g., [SDCL 36-4-44](#) (Interstate Medical Licensure Compact). This deviation is the result of the need for uniformity among the compacting states. Less frequently, some compact language permits LRC stylistic and small section revisions. See [SDCL ch. 36-31A](#) (Interstate Compact on Occupational Therapy Licensure).

<sup>26</sup> See, e.g., Streamlined Sales Tax Governing Board, Inc., South Dakota Certificate of Compliance (July 25, 2023), <https://sst.streamlinedsalestax.org/CC/Form/14507>.

<sup>27</sup> See generally *Sioux City Boat Club v. Mulhall*, 79 S.D. 668 (1962); *Dailey v. Ryan*, 71 S.D. 58, 21 N.W.2d 61 (1945).

<sup>28</sup> *Id.* at 31; see also *supra* note 12.

<sup>29</sup> See *Dailey*, 21 N.W.2d at 63; see also *Mauricio v. Daugaard*, 2017 S.D. 22, ¶ 19, 895 N.W.2d 358, 365.

<sup>30</sup> See *Mauricio*, 2017 S.D. 22, ¶¶ 11-21.

<sup>31</sup> See, e.g., [SDCL 42-7A-4\(13\)](#) (authorizing entering into interstate lottery compacts); see also [SDCL 1-2-1](#) (authorizing boundary commissions); [SDCL 1-24-20](#) (authorizing interstate reciprocal law enforcement agreements).

<sup>32</sup> See Jeffrey B. Litwak, *State Border Towns & Resiliency: Barriers to Intergovernmental Cooperation*, 50 IDAHO L. REV. 193, 201 (2014).



Agreement—has its terms enforceable against third parties by the contract created in purchasing a ticket, arguably making further enactment in law unnecessary. Yet because state law requires the South Dakota Lottery to adopt rules for lottery games,<sup>33</sup> the state is required to promulgate rules to comply with the game terms set through the Agreement.<sup>34</sup> At the furthest end of the spectrum are instances where a compact essentially exists without any underlying written agreement. For example, the state is required to enact in law the standards promulgated by the National Association of Insurance Commissioners or risk having its domestic insurance producers be prohibited from engaging in interstate commerce, despite no compact or agreement declaring this to be the case.<sup>35</sup>

## Entities Created by Compact

Many compacts are not fully self-executing by their own terms. In those instances, the compact terms create an entity that oversees the operation of the compact and its enforcement by party states. The resulting entity is executive or administrative in nature, much like a state agency.<sup>36</sup> As with a state agency, the Legislature is permitted to delegate administrative and enforcement authority and "quasi-legislative" rulemaking authority, to assist the compact entity in carrying out its purpose, so long as the Legislature provides "intelligible standards" to guide the exercise of these twin authorities.<sup>37</sup> Often, the language of a compact lays out the purpose, staffing, resources, and rulemaking authority and standards of the compact entity.

Under this theory, then, the compact may, by its plain terms, authorize a compact entity to perform acts that conflict with existing statute, because the newer compact statute supervenes.<sup>38</sup> However, if the compact is merely reciprocal legislation, and not Congressionally approved, a Legislature is likely not constitutionally permitted to authorize the compact entity to promulgate rules that override state law.<sup>39</sup> The compact entity's rulemaking authority is akin to the rulemaking authority of state agencies, which is subservient to state statute.<sup>40</sup> Unless the compact is Congressionally approved (in which case federal law imbues the compact with authority),<sup>41</sup> the state constitution also bars the effectiveness of any unconstitutional rule promulgated under the compact,<sup>42</sup> or any unconstitutional action by the compact entity on behalf of the compacting state.

<sup>33</sup> See [SDCL 42-7A-21](#).

<sup>34</sup> See, e.g., S.D. Dep't of Revenue, Adoption of the Lotto America rules as set forth by the Multi-State Lottery Association, <https://rules.sd.gov/detail.aspx?id=688> (last accessed June 13, 2024).

<sup>35</sup> It should be noted that South Dakota adopted a compact in 2024 that was promoted by the National Association of Insurance Commissioners and is specific to regulatory approval of asset-based insurance products. See [HB 1091](#), 2024 Legislative Session.

<sup>36</sup> It is not a legislative entity, as the organic legislative power of the state may not be delegated to another body. *State v. Outka*, 2014 S.D. 11, ¶ 25, 844 N.W.2d 598, 606.

<sup>37</sup> Cf. *id.*

<sup>38</sup> See [SDCL 2-16-16](#).

<sup>39</sup> See *Amica Life Ins. Co. v. Wertz*, 462 P. 3d 51, 56-59 (Colo. 2020).

<sup>40</sup> See *id.* at 57; see also *Citibank, N.A. v. S.D. Dep't of Revenue*, 2015 S.D. 67, ¶ 17, 868 N.W.2d 381; *Div. of Human Rights v. Prudential Ins. Co. of Am.*, 273 N.W.2d 111, 114 (S.D. 1978).

<sup>41</sup> *Amica Life Ins. Co.*, 462 P.3d at 58. In response to the *Amica* ruling, the Interstate Insurance Product Regulation Commission—created by the compact in question—has sought opinion on whether the fact that Congress approved the District of Columbia's joining of the Insurance Compact means that there is now implicit Congressional approval of the compact (see *supra* note 15 and accompanying text), which would nullify the *Amica* ruling. See Jeffrey B. Litwak & John Mayer, "Developments in Interstate Compact Law and Practice," 51 URB. LAW 99, 122 (2021).

<sup>42</sup> *Supra* note 23.



The nature of a compact entity should be specified in the compact language. Often, a compact entity is declared an agency or instrumentality of each of the participating states,<sup>43</sup> with a controlling board or commission comprised of representatives from the participating states who are often executive branch officials and experts. Staff are then employed to run the day-to-day operations. Funding for these operations may be obtained from participating states, per terms specified in the compact,<sup>44</sup> or it may be generated from private sources or by the compact's operation, if the compact carries out proprietary or business-like functions.<sup>45</sup> Where the funding is generated from the participating states, unless Congressionally approved, the compact entity is likely beholden to state constitutional law on appropriations, but the entity may assert rights under Contracts Clause protections, if and when entitlement to the funding is vested in the entity.<sup>46</sup>

## Compacts in South Dakota

State law on compacts generally involves the adoption of compacts, with a few notable exceptions. A handful of statutes prohibit executive agencies from participating in certain compacts.<sup>47</sup> Given that an interstate compact, to have the force of law, requires the enactment of a statute, these prohibitions may be targeted at non-statutory forms of cooperation between state agencies in this state and those in other states.<sup>48</sup> Indeed, South Dakota statutes use the term "compact" to describe any manner of agreement between governmental entities, even those between local governments in this state.<sup>49</sup>

Another example of a statute that pertains to compacts but does not enact compact language per se is one that declares compacts to be exempt from other state laws to prevent conflict, or for the compact to supersede in the event of any conflict.<sup>50</sup>

South Dakota has enacted at least 47 interstate compacts. Below is a listing of these compacts. Compacts with yellow-highlighted entries indicate the compact's authorizing language, or the compact as a whole has been repealed. Compacts with green highlight are those compacts with provisions not in statute.

<sup>43</sup> See, e.g., [SDCL 36-9-98](#)(Art. VII)(a)(1)).

<sup>44</sup> See [SDCL 36-31A-9](#)(F)(3) ("The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff.").

<sup>45</sup> See [Hess v. Port Auth. Trans-Hudson Corp.](#), 513 U.S. 30, 45-46 (1994).

<sup>46</sup> See [SDCL 13-53C-1](#)(Art. V); see also [Buchholz v. Storsve](#), 2007 S.D. 101, ¶ 22, 740 N.W.2d 107, 113. It is unclear to what extent the funding entitlement becomes vested for many of South Dakota's licensing compacts, which require funds to be secured prior to any obligations being incurred (and, with the obligations, the benefits of the contract). See, e.g., [SDCL 36-10-17.1](#)(§ 7)(F)(3).

<sup>47</sup> See, e.g., [SDCL 32-28-21](#) (prohibiting participation in a compact that would allow the transfer of information to impose fines from red light or speed cameras).

<sup>48</sup> The "compact" at issue in [Mauricio v. Daugaard](#), 2017 S.D. 22, 895 N.W.2d 358, involved a memorandum of understanding between the state Department of Education and a California state entity on Common Core standards. The Court was only willing to assume, for argument's sake, that this was a compact, but expressed its "doubts as to whether this arrangement amounts to an interstate agreement."

<sup>49</sup> See [SDCL 24-11-4.1](#) (allowing local governments to enter "an area jail or juvenile detention facility compact").

<sup>50</sup> See, e.g., [SDCL 26-7A-111](#) (specifying the Interstate Compact on Juveniles and Interstate Compact on Placement of Children provisions supersede any conflicting state statutes regarding child abuse and neglect, children in need of supervision, and delinquent children); [SDCL 36-1C-22](#) (declaring the complaint and background check process for professional licensure in chapter 36-1C to not override any similar provisions in existing compacts).



Figure 1. Table of Interstate Compacts Enacted in South Dakota<sup>51</sup>

TYPE	NAME & STATUTE	PURPOSE	YEAR ENACTED	CONGRESS CONSENT?
Boundary Issues	South Dakota-Nebraska Boundary Compact (SDCL <a href="#">1-2-8</a> , <a href="#">1-2-9</a> )	Establishes the border between the states despite the fact that the Missouri River served as the border, but has shifted in its course over time from the Compact boundary established in 1905.	1989	YES
	Cheyenne River Compact (SDCL <a href="#">ch. 46-31</a> ) <b>REPEALED</b>	Provided for the "most efficient use of the waters of the Cheyenne river basin," sought "an equitable division of such waters," and facilitated the "control of floods." The compact provided S.D. 80% of the unallocated water use and Wyoming with the remainder.	1949 (repealed 1977)	YES
	South Dakota-Minnesota Boundary Waters Commission (SDCL <a href="#">ch. 46A-16</a> )	Creates a plan for artificially controlling and regulating water levels for the most beneficial use of, and encourages water protection and rehabilitation projects for, boundary waters.	1990	
	Bell Fourche River Compact (SDCL <a href="#">ch. 46A-17</a> )	Provides for the "most efficient use of the waters of the Belle Fourche River Basin," seeks "an equitable division of such waters," and facilitates the "control of floods." The compact provided S.D. 90% of the unallocated water and Wyoming with the remainder.	1943	YES
Energy	Southwestern Low-Level Radioactive Waste Disposal Compact (SDCL <a href="#">34-21B-3</a> )	Establishes and operates facilities for regional management of low-level radioactive waste and provides "the most ecological and economical management of low-level radioactive wastes."	1989	YES
	Interstate Compact to Conserve Oil and Gas (SDCL <a href="#">ch. 45-10</a> ) <b>REPEALED AUTHORITY ONLY<sup>52</sup></b>	Required adoption of laws by member states to prevent inefficiencies, waste, the creation of unnecessary fire hazards, and proper capping of wells associated with oil and gas production.	1955 (statute repealed 2013)	YES
Tax Apportionment	Streamlined Sales and Use Tax Agreement (SDCL <a href="#">ch. 10-45C</a> )	Creates a framework for collecting sales tax for sales conducted online, and decreases the burden for collection on retailers.	Agreement in 2005	
	Interstate Fuel Taxation Agreements (SDCL <a href="#">10-47B-147</a> to <a href="#">10-47B-149</a> , inclusive)	Fuel taxes are intended to pay for the wear on roads occasioned by interstate trucking. As trucks go through multiple states, this agreement helps to apportion the tax revenue based on roads used by the taxed truckers. Truckers are licensed for tracking purposes.	1995	YES
	Multistate Tax Compact (SDCL <a href="#">ch. 10-54</a> ) <b>REPEALED</b>	Created in the 1960s to prevent federal intervention into the collection of corporate income tax, and to ensure proper apportionment to the states. South Dakota does not have a corporate income tax, and the small amount of resources in the compact for sales tax were addressed by the Streamline Sales and Use Tax Agreement.	1976 (repealed 2013)	NO (U.S. <i>Steel v. MTC</i> )

<sup>51</sup> See Nat'l Ctr. For Interstate Compacts, Database - South Dakota, <https://compacts.csg.org/state/south-dakota/> (last accessed June 13, 2024).

<sup>52</sup> South Dakota is still listed as a member state of the compact. Interstate Oil & Gas Compact Comm'n, Member States, <https://oklahoma.gov/iogcc/member-states.html> (last accessed June 13, 2024).





TYPE	NAME & STATUTE	PURPOSE	YEAR ENACTED	CONGRESS CONSENT?
Education	Midwestern Board for Medical and Allied Health Education ( <a href="#">SDCL ch. 13-50A</a> ) <b>REPEALED</b>	Created in 1971, this entity promoted "the education and training of doctors" particularly in general practice and for rural communities. It also looked at the need for doctors in the Upper Midwest and necessary facilities for educating doctors.	1971 (repealed 1975)	
	Midwest Education Compact ( <a href="#">SDCL ch. 13-53A</a> ) <b>REPEALED</b>	This entity was intended to provide "coordinated educational programs and services" in higher education, both public and private, for citizens in participating states.	1977 (repealed 1983)	
	Tuition Reciprocity - Minnesota ( <a href="#">SDCL ch. 13-53B</a> ) <b>ENDED BY BOR WITHDRAWAL</b>	Applied to both public universities and technical schools, and allowed citizens of both states to be treated as citizens of either state for purposes of admissions, tuition, and fees.	1978 (ended in 2024)	
	Midwestern Regional Higher Education Compact ( <a href="#">SDCL ch. 13-53C</a> ) <b>REPEALED</b>	Created in 1990 and originally consisting of the states of Kansas, Michigan, Minnesota, and Missouri, the compact created an entity designed to study higher education needs, and facilitate student exchanges and provide education services across state boundaries.	2008 (repealed 2024)	
	Western Regional Education Compact ( <a href="#">SDCL ch. 13-53D</a> )	Created in 1951 and intended for the participation of all states west of South Dakota, the compact contracts for use of "graduate or professional education" services or facilities by its members and assists in the placement of graduate and professional students in a coordinated fashion among the participating states.	2008	YES
	State Authorization Reciprocity Agreement <b>NOT IN STATUTE</b>	By virtue of South Dakota's participation in the Western Regional Education Compact, South Dakota institutions of higher education are eligible to participate in this Agreement, which focuses on "establish[ing] comparable national standards for interstate distance education program offerings" via reciprocity agreements.	2014	
	Interstate Compact on Educational Opportunity for Military Children ( <a href="#">SDCL ch. 13-53E</a> )	Requires credit be given to children of military families for completing similar coursework in other states, ensures continuity of program and extracurricular placement, grants more flexibility with absences when a parent is deployed, and facilitates on-time graduation.	2010	
	Interstate Library Compact ( <a href="#">SDCL ch. 14-7</a> )	Permits the creation of interstate library districts to operate library facilities and services. It does not create a single entity, but authorizes the creation of a body in each district.	1975	YES
Other	Multistate Lottery Agreement <b>NOT IN STATUTE</b>	Authorizes joint action by state regulators and pooling of game revenues for prizes, operating costs, and prize pools. Requires uniform administration of games; authorizes independent audits.	1990	YES
	Uniform Unclaimed Property Act ( <a href="#">SDCL ch. 43-41B</a> )	Specifies the procedures whereby unclaimed property is obtained in this state, but the apparent owner of the property is located in another state. Authorizes joint agreements, information exchange, and joint enforcement with other participating states.	1992	
	Interstate Insurance Product Regulation Compact ( <a href="#">SDCL ch. 58-49</a> )	Develops uniform standards for asset-based insurance products, provides more uniform review of insurance products and advertising, and improves coordination of regulatory resources between states.	2024	



TYPE	NAME & STATUTE	PURPOSE	YEAR ENACTED	CONGRESS CONSENT?
Law Enforcement	Interstate Agreement on Detainers ( <a href="#">SDCL ch. 23-24A</a> )	Ensures the "expeditious and orderly disposition" of untried indictments, informations, or complaints in order to secure speedy trials, and provides cooperative procedures among states to determine the proper status of these detainees.	1972	YES
	Interstate Parolee Supervision Compact ( <a href="#">SDCL ch. 24-16</a> ) <b>REPEALED</b>	Authorized a probationer or parolee to reside in a state other than the state of conviction, with the other state assuming supervision, and with the officers of the convicting state authorized to enter the other state and apprehend on violations.	1947 (repealed eff. 2002)	YES
	Interstate Compact for Adult Offender Supervision ( <a href="#">SDCL ch. 24-16A</a> )	Adopts uniform protocols "to track the location of offenders, transfer supervision authority . . . and . . . return offenders to the originating jurisdictions" using standard protocols involving notice to victims, offender registration and compliance, violation and return procedures, and restitution collection, and clarifying the level of supervision in the receiving state.	Effective 2002	YES
	Interstate Compact for Juveniles ( <a href="#">SDCL 26-12-1 to 26-12-14</a> ) <b>REPEALED</b>	Adopted the equivalent protocols for interstate adult offender supervision, except for juveniles. This original compact was created in 1955 and by 1986, all 50 states had adopted it.	1961	YES
	Continued Interstate Compact on Juveniles ( <a href="#">SDCL 26-12-15</a> )	Serves the same purpose as the compact immediately above, but was comprehensively updated to create a compact entity that could promulgate rules and enforce compliance—the Interstate Commission for Juveniles.	Effective 2008	
	Nonresident Violator Compact (SDCL <a href="#">32-12-49</a> (7), <a href="#">32-12-56.1</a> )	Requires that nonresident motorists receiving minor moving violation citations be treated in the same manner as resident motorists.	1980	YES
	Driver License Compact ( <a href="#">SDCL 32-12-56.1</a> )	Intended to establish "one person, one record" on driver's histories, wherein the state of residence treats a driver's out-of-state moving violations as if they were committed in the state of residence.	1986	
	National Guard Mutual Assistance Counter-drug Activities Compact ( <a href="#">SDCL 33-9-15</a> )	Similar to the National Guard Mutual Assistance Compact, but with the purpose of "drug interdiction, counter-drug, and demand reduction activities," in order to supplement law enforcement agencies.	1994	
	Interstate Wildlife Violator Compact ( <a href="#">SDCL ch. 41-15A</a> )	Creates a reciprocal program for fair and impartial treatment of wildlife violators, in which nonresident violators are treated the same as resident violators in the citation-issuing state.	2004	





TYPE	NAME & STATUTE	PURPOSE	YEAR ENACTED	CONGRESS CONSENT?
Licensing	Interstate Agreement on Qualifications of Educational Personnel ( <a href="#">SDCL 13-42-18</a> )	Authorizes agreements for licensing of educators between states, with the participating states permitted to maintain their educator qualifications.	1969	
	Emergency Medical Personnel Licensure Interstate Compact ( <a href="#">SDCL ch. 34-11C</a> )	Provides verification of competency and regulation of interstate licensed emergency medical services personnel, thereby increasing public access to emergency services by allowing information sharing between the states and license reciprocity, to decrease barriers to entry.	2021	YES
	Interstate Medical Licensure Compact ( <a href="#">SDCL 36-4-44</a> )	Permits physicians a "streamlined process" by which to become licensed in multiple states while ensuring the safety of patients, specifying that the state where care occurred is the state with jurisdiction.	2015	
	Nurse Licensure Compact ( <a href="#">SDCL 36-9-98</a> )	Encourages cooperation between states in nurse licensure and regulation; facilitates information exchange on licensing, investigations, and discipline; and permits interstate practice under uniform licensure requirements.	2016	
	Advanced Practice Registered Nurse Compact ( <a href="#">SDCL ch. 36-9D</a> )	Encourages cooperation between states in advanced practice registered nurse licensure and regulation; facilitates information exchange on licensing, investigations, and discipline; and permits interstate practice under uniform licensure requirements.	2024	
	Physical Therapy Licensure Compact ( <a href="#">SDCL 36-10-17.1</a> )	Facilitates "interstate practice of physical therapy with the goal of improving public access to physical therapy services," while protecting public health and safety, and requires background checks, adverse action information sharing, and demonstration of continuing competence for renewal.	2020	
	Social Work Licensure Compact ( <a href="#">SDCL ch. 36-26A</a> )	Improves "public access to competent Social Work Services" by permitting multistate practice, facilitating the exchange of licensure and disciplinary information, allowing the use of telehealth, and authorizing discipline by all compact members.	2024	
	Psychology Interjurisdictional Compact ( <a href="#">SDCL ch. 36-27B</a> )	Regulates the "day to day practice of telepsychology" across state boundaries, facilitates the recognition of psychologists licensed in other states, and ensures the exchange of information on licensure, disciplinary action, and licensee background.	2024	
	Interstate Compact on Occupational Therapy Licensure ( <a href="#">SDCL ch. 36-31A</a> )	Facilitates "the interstate practice of occupational therapy" by authorizing multi-state occupational therapy practice, requiring information sharing on licensees, and regulating "telehealth technology" use.	2023	
	Counseling Licensure Compact ( <a href="#">SDCL ch. 36-32A</a> )	Allows the use of telehealth, creates uniform licensure requirements between participating states, encourages information sharing, and eliminates the need for multiple licenses.	2024	



TYPE	NAME & STATUTE	PURPOSE	YEAR ENACTED	CONGRESS CONSENT?
Welfare	Interstate Compact on Adoption and Medical Assistance ( <a href="#">SDCL ch. 25-6A</a> )	Ensures that children transitioning between participating states remain entitled to medical, developmental, childcare, or other social services benefits. Similarly ensures child protection and adoption assistance services.	1986	YES
	Interstate Compact on Placement of Children ( <a href="#">SDCL ch. 26-13</a> )	Requires notice and proof of suitability for the placement of children in homes, with the sending state retaining authority on custody, supervision, care, and treatment; requires due process for delinquent children placed in institutional care; and authorizes joint actions of party states for operations and services.	1974	
	Interstate Compact on Mental Health ( <a href="#">SDCL ch. 27A-6</a> )	Ensures the prompt and proper care of persons with mental illness or developmental disabilities regardless of their residency and provides a framework for joint agreements for the provision of mental health services.	1959	YES (implicit)
Emergency Management	National Guard Mutual Assistance Compact (SDCL <a href="#">33-9-12</a> to <a href="#">33-9-14</a> )	Provides the mechanisms for seeking mutual aid in utilizing national guard units to deal with emergencies, promoting flexibility and efficiency in such coordinated use, and protecting the rights of National Guard personnel serving in participating states.	1969	
	Interstate Compact for the Prevention and Control of Forest Fires ( <a href="#">SDCL 34-35-20</a> )	Permits coordination and joint action to prevent, control, and suppress wildland fires, and assists with recovery activities. Requires each member to maintain adequate wildland fire protection resources.	2006	YES
	Uniform Emergency Management Assistance Compact ( <a href="#">SDCL 34-48A-53</a> )	Provides "mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor," and "mutual cooperation in emergency-related exercises, testing, or other training activities," which may include "use of the state's National Guard forces."	1996	YES
	State and Province Emergency Management Assistance MOU ( <a href="#">SDCL 34-48A-54</a> )	Provides "the possibility of mutual assistance among the participating jurisdictions in managing any emergency or disaster" and "planning mechanisms" and "mutual cooperation" in preparedness exercises and training.	2018	

In addition to the interstate compacts described above, there are gaming compacts between the State of South Dakota and tribal governments located within the boundaries of the state. These compacts are the result of the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, and entail agreements with all nine tribal governments in South Dakota.<sup>53</sup> Each of these compacts is published in the *Federal Register* as federal regulation, after having been reviewed by the Department of Interior for compliance with the Act, and ultimately filed with the South Dakota Secretary of State. Each compact lays out how gaming is to be regulated cooperatively by the tribe and state with at least the level of stringency found in state statute and rules, what entities have jurisdiction over enforcement and inspection, and for what purposes the gaming proceeds may be used, among other concerns. These compacts loosely impact state administrative rule on lottery games.<sup>54</sup>

<sup>53</sup> U.S. Dept. of the Interior, Gaming Compacts, <https://www.bia.gov/as-ia/oig/gaming-compacts> (last accessed June 12, 2024).

<sup>54</sup> See, e.g., ARSD [48:01:05:01](#), [48:01:05:04](#), [48:03:05:01](#), and [48:01:05:04](#).



## Legal and Policy Takeaways

- Interstate compacts are contracts between states.
- The primary cost-benefit analysis associated with compacts is whether the cost to a state of curtailing a portion of its sovereignty or limiting an assertion of right is outweighed by the policy outcome created through cooperation that could not otherwise be achieved.
- Interstate compacts can be created in two ways: by express or implicit Congressional consent; or by reciprocal action of the states.
- If the compact terms are placed into statute or rule, the compact is enforceable as law by states. This may be helpful if the compact is needed to enforce duties or prosecute violations against third parties.
- If a party-state does not enforce the terms of the compact, or otherwise violates the compact, the state may be subject to a breach of contract action.
- In any compact breach or other controversy interpreting the terms of the compact, the court will apply contract law and canons of contract interpretation.
- Compacts remain subject to the United States Constitution, and, depending on the circumstances, each participating state's constitution.
- Entities that administer the compact will have their nature, powers, and means of funding specified in the compact. They are often described in the compacts in South Dakota law as having the status of a state agency of each of the participating states.

The Legislative Research Council provides nonpartisan legislative services to the South Dakota Legislature, including research, legal, fiscal, and information technology services. This issue memorandum is intended to provide background information on the subject. For more information, please contact Justin Goetz, Code Counsel.

