2011 NCSL LEGISLATIVE SUMMIT

Surplus Lines After SLIMPACT

August 9, 2011
SLIMPACT is an Interstate Compact

Agreements between states authorized under Article I, Section 10, Clause 3 of the U.S. Constitution – the “Compact Clause”

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

The U.S. Supreme Court has consistently held that Congressional consent is only required for compacts that tend to increase the political power of the states in a manner that encroaches upon or interferes with the just supremacy of the United States.

[U.S. Steel Corp. v. Multi-state Tax Commission, 434 U.S. 452 (1978)]
SLIMPACT is a recent addition to the approximately 200 compacts formed since the ratification of the United States Constitution in 1789.

On average each state is a member of 24 compacts.

SLIMPACT, like other compacts, provides a ‘power sharing’ approach which preserves state sovereignty by allowing joint regulation by the States rather than the federal govt.
3 Primary Purposes

- Resolve boundary disputes;
- Institutionalize and manage interstate issues pertaining to allocation of natural resources;

- Create on-going administrative agencies that have jurisdiction over a wide variety of concerns:
  - State transportation
  - Taxation
  - Environmental matters
  - Regulation
  - Education
  - Corrections
  - Public safety
Classic Indicia of an Interstate Compact:

- Establishment of a joint organization or governing body to regulate the activity of the Compact;

- Each state statute is conditioned on action by each subsequent state “accepts” the “offer” made by the first state to adopt the agreement by enacting the substantially similar terms of the compact statute;

* A member State is not free to modify its law unilaterally;

- The provisions of the compact ‘preempt’ conflicting state laws based upon the ‘Contract Clause’ the Constitution

Rule Making

A state legislature’s ability to delegate regulatory authority to an administrative agency is “one of the axioms of modern government”

-- Justice Felix Frankfurter

Extends to the creation of interstate commissions by compact

-- West Virginia ex rel. Dyer v. Sims, 341 U.S. 22 (1951)
Rulemaking Power of SLIMPACT

- Commission rules must be adopted in a manner that is substantially similar to the process of the Model State Administrative Procedures Act.
- Once adopted, the rules have the force and effect of statutory law and supersede any inconsistent state laws.
- Majority of state legislatures can reject a proposed rule.
Commission is a Multi-State Agency

* Authority to establish allocation formula
* Authority to establish uniform payment methods and reporting requirements
* Authority to establish uniform eligibility standards & single policyholder notice
* Authority to contract with third party vendors providing services such as Info./Tech.
Some Other Interstate Compacts with Similar Governing Structures

Interstate Insurance Product Regulation Compact
(36 states)

Interstate Compact on Educational Opportunity for Military Children
(35 states)

Interstate Compact for Adult Offender Supervision
(50 states)

Interstate Compact for Juveniles
(50 states)

Interstate Compact for the Placement of Children
(50 states)
SLIMPACT STATUS

Nine (9) States have enacted: AL, IN, KS, KY, NM, ND, RI, TN, VT, (compact effective except for rulemaking and commencement of clearinghouse)

July 15, 2011 – Inaugural meeting of Commission in conjunction w/ NCOIL

Preliminary Bylaws and rulemaking rules and tax allocation proposals were reviewed
Compact Commission continues to meet via Webinar on a bi-weekly basis.

Additional states expected to join SLIMPACT as ‘contracting states.

Both compact member and ‘contract’ states are counted toward the ten ‘10’ state threshold needed to adopt allocation rules and commence operation of the clearinghouse.
Questions