



Frequently Asked Questions on the Congressional Consent Position Statement

Question 1: What is the Interstate Insurance Product Regulation Commission?

The Interstate Insurance Product Regulation Commission (Commission or Compact) was created and established as a “joint public agency” by Compacting States that enacted the Interstate Insurance Product Regulation Compact (Compact Statute). The Compact Statute delegates to the Commission the power to develop and adopt Uniform Standards, rules and filings requirements constituting the exclusive provisions applicable to the content and approval of such products, rates, and advertising on behalf the Compacting States. The Compact Statute further delegates to the Commission a limited regulatory function to accept, review, and approve or disapprove eligible insurance products in accordance with the Uniform Standards.

Question 2: What is an interstate compact?

An interstate compact is a contract or agreement between states that allows states to cooperate on multi-state or national issues while retaining state control. Interstate compacts are specifically mentioned in the U.S. Constitution. Historically used to address border disputes and water rights, the use of interstate compacts has expanded significantly in recent decades to cover professional licensing, supervision of offenders, educational reform, adoption, driver licensing and emergency management. More than 200 interstate compacts currently exist, and on average every state belongs to at least 25 compacts.

Question 3: Why did the Compacting States develop and join an interstate compact to apply Uniform Standards rather than state-specific requirements to certain insurance products?

In the late 1990s and in connection with the Gramm-Leach-Bliley Act, state insurance regulators were challenged to improve speed-to-market for asset-based insurance products or risk pre-emption by the federal government. The Compact was developed as a state-based solution where the Uniform Standards and other requirements are driven by expert state regulators, maintaining state control while modernizing some aspects of rate and form review. The Compact Statute drafters and state legislatures, experienced with interstate compacts, understood that Uniform Standards for a specific product component could not match every Compacting State’s law. The Compact Statute was endorsed by the National Conference of State Legislatures, the National Council of Insurance Legislators and the American Legislative Exchange Council, and there was collaboration with the National Association of Attorneys General to preserve consumer rights.

Question 4: What brought about the need for the Commission to take a position on congressional consent to the Insurance Compact?

On April 27, 2020, [the Colorado Supreme Court issued an opinion](#) in *Amica Life Insurance Co. v. Wertz*, finding that the General Assembly could not delegate to an administrative commission the power to approve insurance policies sold in Colorado under a standard that differs from Colorado statute. The ruling

is based on Colorado's constitutional non-delegation doctrine restricting legislative power to the legislature and to administrative agencies as directed by the legislature. The Court did not follow the progeny of cases that enforce binding interstate agreements among states. Other states have similar non-delegation doctrines that could be applied in subsequent litigation. While the *Amica* ruling is limited in its immediate effect, subsequent independent analysis has identified the potential for broader erosion of one of the Compact's linchpins as a binding, enforceable interstate agreement among sovereign states as a material risk to the continued viability of the Compact. The binding nature of the agreement was a state-based solution to the risk of federal regulation of life insurance and other asset-based insurance products.

Question 5: Did the Amica ruling address congressional consent?

The U.S. District Court for the District of Colorado and the Colorado Supreme Court both stated that the Compact possessing congressional consent would have had a strong bearing and may have swayed their decisions firmly in favor of the Commission. Neither court was presented with meaningful argument in support of congressional consent to the Compact.

Question 6: Why did the Commission not argue in the Amica litigation that it had congressional consent?

The Commission had not discussed or developed a position on congressional consent at that time. The Commission's activities are governed by its membership of state regulators. Until the *Amica* ruling, the Commission had not encountered a challenge where its status on congressional consent was decisive. More information about this backdrop is in Question 10.

Question 7: What is the advantage of implied congressional consent to the Compact?

As the lower and appellate courts that considered *Amica* recognized, the advantage of the Compact having implied congressional consent is that congressional consent transforms regulations established by an interstate compact with congressional consent into federal law. Federal law prevails over inconsistent state law pursuant to the Supremacy Clause. It is well-established in compact case law that regulations adopted pursuant to an interstate compact with congressional consent can override conflicting state law. As such, congressional consent would result in all provisions of the Compact standards and rules having the force and effect of law and being binding in the Compacting States in accordance with Article IV, Section 2 of the Compact Statute, notwithstanding the contrary non-delegation doctrines in any Compacting States.

Question 8: What congressional action is the basis for recognizing implied congressional consent?

Public Law 109-356 specifically authorized the District of Columbia to enter the Insurance Compact and, as part of that, approved the delegation of authority necessary for the Commission to achieve the purposes of the Compact. This public law was enacted with the signature of President George W. Bush in October 2006 in an omnibus authorization measure for the District of Columbia. The relevant portion provides as follows:

AUTHORITY TO ENTER INTO INTERSTATE INSURANCE PRODUCT
REGULATION COMPACT.

(a) In General. The District of Columbia is authorized to enter into an interstate compact to establish a joint state commission as an instrumentality of the District of Columbia for the purpose of establishing uniform insurance product regulations among the participating States.

(b) Delegation. Any insurance product regulation compact that the Council of the District of Columbia authorizes the Mayor to execute on behalf of the District may contain provisions that delegate the requisite power and authority to the joint State commission to achieve the purposes for which the interstate compact is established.

Question 9: What is the legal effect of the position statement?

A position statement issued by the Commission would be a public document and could be cited by litigants, scholars, and courts. The proposed position statement recognizes that Congress conferred implied consent for the Compact, which provides further support for the Commission and Compacting States to enforce the Compact Statute as written and enacted.

Question 10: Has the Commission taken a position on congressional consent before now?

No. The developers of the Compact Statute had the understanding that congressional consent was not required because the McCarran-Ferguson Act delegated regulation of the business of insurance to the states, which under compact case law indicates congressional consent is not required for the Compact to carry out its purposes and authorities. Based on an independent [Governance Assessment](#) conducted in 2020, the Commission learned that implied congressional consent occurred through the 2006 measure referenced in Answer 8. The Commission is recognizing in the position statement that the Compact has implied congressional consent even though the Compact's subject matter is in an area of jurisdiction retained by the states.

Question 11: Would adoption of the proposed advisory opinion change how the Insurance Compact operates today?

No. The development of Uniform Standards and other functions of the Commission will continue to be driven by the Compacting States in collaboration to protect consumers and promote speed-to-market for eligible products. Likewise, the Commission's professional staff will continue to apply the Uniform Standards in transparent, prompt, consistent and quality reviews.

Question 12: What else is the Commission doing to limit the effect of the Amica decision?

Recognizing that the Insurance Compact has implied congressional consent is one step to address weaknesses identified in the *Amica* litigation. The Commission members are taking other steps to limit the impact of the decision on other Compact member states and potential conflicts with other state statutes, including minimizing conflicts in key product requirements and providing states with more tools to avoid conflict between state statute and Uniform Standards.