



Legal Memorandum

**To: Cherise Imai, Executive Director, MIC3
John "Don" Kaminar, Commissioner, State of Arkansas**

From: Rick Masters, General Counsel, MIC3

Re: Senate Bill 638: Proposed Amendment to the Arkansas MIC3 Statute

Date: April 19, 2021

The State of Arkansas has submitted proposed language to revise the Arkansas compact statute by repealing the current compact statute and adding two (2) additional sections to the current compact language and "re-enact" the MIC3 language with the new sections combined into one "omnibus" bill.

Because this bill repeals the present compact and enacts a "new" agreement which contains two entirely new sections that are not part of the agreement enacted by all of the other member states the intent appears to be to enact conflicting legislation.

For that reason, Arkansas's status as a member state could be jeopardized. In the event that the MIC3 compact Commission concludes that the amended agreement constitutes a compact statute substantially different from the agreement of all the other states, the Commission has the obligation to enforce the compact and may be unable to continue to recognize the State of Arkansas as a signatory state. In the enforcement of interstate compacts both federal and state courts are constrained to effectuate the terms of the compacts as binding contracts. See West Virginia ex. rel Dyer v. Sims, 341 U.S. 22 (1951); New Jersey v. New York, 523 U.S. 767, 810-812 (1998) (As contracts interstate compacts must be interpreted and enforced within the "four corners" of the agreement). As such with respect to an interstate compact 'no court may order relief inconsistent with its express terms.' See Texas v. New Mexico, 462 U.S. 554, 564 (1983).

Based upon the above authorities an opinion was provided to the State of Arkansas that it would be advisable for the newly added sections to continue to stand alone so the potential for the above legal complication will be eliminated.

As a result of the notification of the above legal issues created by the proposed amendment, the Arkansas Legislature has determined that the current compact statute should be preserved and the two (2) proposed additional sections of the proposed bill will be separately enacted legislation.

I have compared the above-described proposed amendment to the language of the bill in question (SB638) the MIC3 compact in this regard. In my opinion the amendment contained in the new version of SB638 appears to have removed the model MIC3 language and the repeal language and therefore leaves the current MIC3 compact statute intact. As such the bill no longer appears to present a material deviation from the provisions of the compact statute enacted by the fifty (50) other compact member states and territories.

Please don't hesitate to advise if further discussion is needed in this regard.