In the first half of 2015, six states have already passed legislation that updates their captive law.

U.S. captive domiciles are working behind the scenes to stay competitive in the current captive insurance marketplace. So far this year, the state legislatures for six domiciles have updated captive laws and three additional state legislatures are working to introduce new captive legislation. With more than thirty-five states that have enacted captive law, U.S. captive domiciles have to keep their laws up-to-date to stay competitive in the onshore market.

What’s Old is New Again
U.S. States began passing captive law as early as 1978 when Tennessee became the first state to do so. During the 1980s, especially towards the
some new laws have been enacted to reduce premium taxes. Often captive law is changed to make it less onerous for captives to be set up or to expand the types of captives allowed to form. Another reason legislatures change captive laws is to correct oversights and loopholes inadvertently placed in previous iterations, as well as to modernize laws that have been on the books for a long period. This is especially true for domiciles that have had captive law for a few decades or more and are looking to gain a foothold in the market.

**Domiciles Making Changes**

Georgia updated its captive law in May when Governor Nathan Deal signed legislation that reduces premium taxes for captives. Georgia first passed captive law in 1989. While the state initially pursued captives, since the late 1990s the state had not been particularly active in the captive arena. With HB 552, Georgia is looking to reactivate its captive program. The new law, set to go into effect on July 1st, will drastically reduce premium taxes for a captive from 4.75% to 0.4% on the first $20 million in premiums and then 0.3% for premiums over $20 million. The new law also lowers the aggregate maximum premium tax.

Since Montana first enacted captive legislation in 2001, it has been an active player in the captive industry. This past April, the state legislature passed two laws, subsequently signed by Governor Steve Bullock, which helps to clarify its existing captive law. This is not the first time that the domicile has updated its captive law. This legislative sessions’ changes were made due to conflicting state statutes. The impetus for the first law, HB 536, came when a public entity applying for a group captive was denied due to an existing state law. This new law amends those statutes to allow for public entity captives. HB 537 amends a loophole in the state’s corporate laws to allow for captive limited liability companies (LLCs).

In the last three years South Dakota has been quietly working to make its captive law more competitive. The state has been a domicile for captives since the 1990s, but had only a handful of operating captives. In 2013, the state amended its law to expand the types of captives allowed in the state, including sponsored and cell captives. In 2014, the law was adjusted to update the incorporation procedures. This year the state’s legislature once again amended the law to define and include agency captives. The latest update was signed by the governor in February.

Texas has only recently enacted a captive insurance program. Their law was passed in 2013 and the domicile accepted its first captive in March 2014. By the end of last year, Texas had eleven captives on its roster. This year the state legislature has passed legislation that will allow for captive risk pools to be formed. In addition, the law clarifies how dividends are to be paid to captive owners. As of early June, the law was waiting for a signature from the governor. In addition, the Texas House of Representatives introduced HB 2557. This law would allow for hospital districts to form captive insurance companies. It has passed both legislative houses and is also waiting for the governor to sign.

Since Utah jumped into the captive marketplace in 2003, it has made a name for itself by rapidly expanding its roster of captives, primarily with the smaller enterprise risk captives (or 831(b)s). The changes made this year to the domicile’s law are technical updates – the inclusion of LLCs and a provision regarding required minimum capital. The amendment increases the captive exam cycle from every three years to
every five years. The new legislation also clarifies provisions regarding cell captives. The capitalization requirements a cell captive sponsor remains at $1 million, but the sponsor is only required to pay a minimum of $350,000 with the balanced paid by the cell companies. Within the sponsor of a cell captive risk pooling will now be an option and cell captives are required to pay an annual license fee of $1,000. The new provisions go into effect on July 1, 2015.

Vermont is the top captive domicile in the United States. Almost every year the state passes legislation to improve its captive law and 2015 is no different. In May, Governor Peter Shumlin signed into law updated this year’s new provisions. One of the main provisions will reduce the minimum capital requirement for cell captives from $500,000 to $250,000. The new law also allows for “marketable securities” to be used to meet minimum capital requirements, in addition to cash, trust and letters of credit. To be consistent with other provisions of Vermont law, the number of incorporators was reduced from three to one. There are technical provisions regarding protected cell and incorporated cell captives. Finally, the new legislation adopts several guidelines recommended by the NAIC as regards captives and risk retention groups.

Additionally, Oklahoma, Illinois and North Carolina are states that are looking to update their captive law in 2015. Oklahoma originally passed its captive legislation in 2004, but it wasn’t until the law was revised in 2013 that the state really began entertaining potential captives. At the same time the Oklahoma Captive Insurance Association was formed to help foster captive growth in the state. At the end of 2014, the new domicile already had 47 captives on its roster. North Carolina just enacted captive law in 2013 and already has more than 50 captives domiciled in the state. Illinois has been a captive domicile since 1989 and is looking to reduce taxes for captives with legislation that has already passed in the state senate.

As the domicile options for captives increase – both onshore and offshore – captive domiciles will have to continue to work to make themselves more competitive. There is a good reason that Vermont is the top captive domicile in the U.S. – the state has always stayed on top of changes in the marketplace. Captive numbers keep growing and in order to get a piece of that growing business, captive domiciles will have to work hard to stay competitive through sound regulation and up-to-date captive law.

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