

CAPTIVES HELD STEADY IN 2019, READY FOR GROWTH IN 2020

Written By Karrie Hyatt



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verall in 2019 captive growth showed mixed results. Of the domiciles that have reported numbers for 2019, only six had gains in captive numbers, while the rest had static results or lost more captives than they formed. While there were a few outliers, garnering captive formations in the forties and fifties, most domiciles showed a more reserved year with formations under twenty.

2019 got off to a slow start, but as the year went on and the economy began to change, domiciles saw more activity in the captive sector. Many jurisdictions reported an uptick in captive formations in the last two quarters of 2019, and several domiciles have reported a number of captive formations already this year. This increase in captive formation reflects the hardening insurance market, which will likely affect the industry for at least the next 18 months.

Delaware had the most captive formations last year with 56. Followed by Utah (42) and Montana (40). Vermont retained its top spot as the largest U.S. domicile with 585 captives. Utah follows Vermont with 435, and Delaware is third with 359 captives. The remaining top ten are as follows: Nevada (298), Montana (293), North Carolina (235), Hawaii (231), South Carolina (179), District of Columbia (49), and Tennessee (140).

Vermont added 22 captives last year which is a little lower than average for the domicile. 559 of their captives are active while 29 are listed as inactive. Six of their new captives were redomiciled from other captive jurisdictions. In a statement released by Vermont's captive department, the new captives consisted of "14 pure captives, four sponsored captives, two risk retention groups (RRGs), one special purpose financial insurer, and one industrial insured captive." The domicile has reported that it already has several captive applications in the pipeline to approval.

In April 2019, the Vermont legislature updated their captive law with a variety of small changes that ranged from dividends for nonprofit incorporated protected cells to NAIC required statutory accounting for a specific type of captive. Highlights of the updated legislation are that captives need to be examined every five years, it clarifies the definition of an independent director, and it offers captives more flexibility in their investments. Vermont usually tweaks its captive law each year to keep on top of changes in the industry.

However, so far in 2020, the state legislature has not introduced any changes.

The second largest captive domicile, Utah, added 42 captives, including eleven cell captives, to their roster in 2019, but retired more leaving their total number of captives slightly lower than the year before. Utah plans to make a minor change to its captive law in 2020 to allow some captives to reinsure pure third-party risk with prior approval from the state's insurance commissioner.

Delaware's large increase of 56 captives was offset by the 118 captives that closed their doors, so the domicile's overall numbers were down for the year. Much of Delaware's success in 2019 was due to the legislative update to their captive law in late 2018 that allows for "conditional licensing"—a form of licensing that lets certain captive owners to obtain a license on the same day as applying. This form of licensing proved very attractive to captive owners in 2019 with 52 of Delaware's new captive forming through this process.

Montana added 40 new captives in 2019, according to a report by Captive.com. The domicile also retired 32 captives. Still, Montana saw a net increase in captives from 288 in 2018 to 293 at the end of 2019. The domicile also updated its captive law in 2019 to allow prospective captives to



Captive Growth in 2020

use letters of credit from banks outside of Montana to meet capital and surplus requirements. Prior to this update, captives were required to use a letter of credit from a Montana-chartered bank or one from a bank that has membership in the Federal Reserve system. As Montana had 26 new captives in 2018, the updated captive law may have provided further impetus for captives to domicile in the state.

North Carolina continues its steady growth adding 26 new captives in 2019, leading to a total of 298. This number is down slightly from 2018. North Carolina is also doing brisk business in cell and series captives, with 447 active, and 61 new cell or series captives added in 2019. The domicile reported at the end of January that it had already licensed two new captives and approved two cells, with three additional captive applications in the approval process.

Nevada added 21 new captives last year and closed 26, taking their total number down to 298. The District of Columbia had 149 captives at the end of the year, but despite 18 new captives, its total number of captives was down from 2018.

South Carolina also had 18 new captives last year which brought their year-end total from 171 in 2018 to 179 in 2019. Hawaii added eleven captives and had eleven withdraw leaving their total number at 231. Arizona added

nine captives and retired five taking their total number of captives to 128. Georgia, Texas, and Arkansas all had formations in the low single digits—five, four, and three respectively. However, for Arkansas, which is still trying to make its name as a captive domicile, three additional captives were a thirty percent increase in their total captive number. They now have nine captives.

Tennessee celebrated licensing its 200th captive in February, having already licensed four since the beginning of the year with six more captive applications already submitted. At the end of 2019, the domicile had 140 active captives. Last May, the governor signed into law Tennessee's latest update to its captive legislation. Tennessee was the earliest state to become a captive domicile—its original legislation became law in 1978—and its most recent updates are helping to keep it competitive in the captive marketplace. The updated law allows for protected cell captives to merge; allows premium payments and claims on insurance losses to be paid in foreign currency; and allows for the early licensing of captives among other small tweaks.

Illinois spent much of 2018 working to update its captive law. Originally passed in 1989, Illinois has not made much headway as a captive domicile. The state legislature passed the captive update during the middle of the year, but the governor vetoed the bill in August. The veto was overturned by a wide majority late November 2018 by both the House and Senate. The legislation was modeled on the captive laws of



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some of the most successful domiciles and is meant to make captives as welcome in Illinois as they are in Hawaii or Vermont.

In early 2019, Texas updated their captive law, shoring up their original laws with clarifications and procedures. The law allows the commissioner to waive a captive's annual report's actuarial opinion for captives with less than \$1 million of net premium or reinsurance; clarifies the DOI's role in approving dividends; and provides guidance for determining qualified jurisdictions and rating agencies for reinsurance transactions, among other minutia.

In April of last year, Georgia passed updated captive law that allows for the formation of cell captives and provides new rules for captives that request to go dormant.

Connecticut last updated its captive law in 2018, allowing for the formation of agency captives. The domicile is looking to update its law again this year. Ned Lamont, the governor of Connecticut, wants to update the law with innovative captive regulations to help attract captives to the state. One aspect of the governor's plan is to offer tax incentives to captive who chose to domicile, or redomicile, their captives in Connecticut. Legislation has not been introduced at this time.

While the state's captive department hasn't released numbers for 2019, Alabama's legislature has already been busy this year. Alabama is the first state to update its captive law in 2020. The legislation, passed in February, revises branch captive requirements allowing them to more closely match those of pure captives, removes the requirement that coastal homeowner captives have fronting carriers, clarifies how domestic captives can insure risks in foreign jurisdictions, and codifies a formal dormancy statute.

Captive legislative updates have averaged around five over the last two years and no new states have become captive domiciles in over five years. While Washington state is looking to implement captive legislation this year, it seems that the U.S. may have reached a saturation point for domiciles. ■

Karrie Hyatt is a freelance writer who has been involved in the captive industry for more than ten years. More information about her work can be found at: www.karriehyatt.com



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