

# COMPETING FOR CAPTIVES

*Regulatory landscapes becoming more favorable as states pull out all the stops to lure in more captive insurance companies*



Written By Bruce Shutan

**A**s captive insurance has grown through the years, efforts to capture this emerging alternative risk transfer business have intensified across a shifting regulatory landscape.

"Every state and every jurisdiction is competing for captive business," notes Mike Teichman, a director at Parkowski, Guerke & Swayze, P.A. "In part, that's to help the local business community and also generate tax revenue. And so, when the domicile grows, those premium tax revenues grow, and that's good for the insurance department and the state."

Perhaps no one knows this better than Alex Murray, a partner with Johnson Lambert LLP, which manages more than 450 captive clients across various states. "Domiciles can see what other domiciles are doing and say, 'Hey, that makes sense. Why aren't we doing that?'" he says, noting how a hardened commercial insurance market continues to drive interest in captives, especially on the medical stop-loss side as self-insured employers struggle to rein in health benefit costs.

Nuances in licensing, acceptable lines of business and other regulatory framework factors vary among domiciles, explains Lori Gorman, deputy commissioner of the North Carolina Department of Insurance. She says the reputation and experience of captive regulators can also have a significant impact on the size and activity of the domicile.



*Mike Teichman*

While most captive insurance statutes are very similar, Teichman says the responsiveness and flexibility of the regulator is how states distinguish themselves.

“Delaware has been really good about that, and I think that’s why we were able to grow the way we have,” explains Teichman, who’s also president of the Delaware Captive Insurance Association, Inc. “We have a regulator who is definitely willing to listen and consider the applicant on its merits and without any employment of desk-drawer rules, which is like an unwritten policy or regulation.”

When John Huth ran Montana's captive program from 2001 to 2007, he'd always ask each representative why they chose the state just out of curiosity. "And they all said, 'Well, you called us right back.' I guess that kind of surprised me because isn't that my job if you leave a voicemail that I'm supposed to call you back? And they said, 'That's not a typical response!'"

Now chairman of the Montana Captive Insurance Association, Huth also credits his state’s reputation and commitment to

fairness as key elements that have kept Montana competitive. Another explanation is the passage of SB 60, which tiered premiums and tax rates and allows for the treatment of increasingly popular protected cells and series structures to be tailored.

### EMULATING VERMONT

When Montana developed its captive industry, the objective was to become the western version of Vermont, which has long been known as the captive king. “We’ve never had a captive bill go down,” Huth reports, noting legislative support on both sides of the political aisle, including the governor and the insurance commissioner.

“Vermont obviously has a history of being one of the early adopters, and they have an incredibly strong department, and I think South Carolina does as well,” observes Murray, who’s also president of the South Carolina Captive Insurance Association.

The number of U.S. domestic captives increased slightly to 3,466 in 2024 from 3,365 the previous year, according to a recently released report from AM Best, with Vermont leading the pack at 683 and followed by Utah at 462, North Carolina at 293, Delaware with 285, and Hawaii at 272 (see accompanying graphic, which shows other high-ranking states).

In SIIA’s fifth annual captive insurance industry survey of nearly 70 industry professionals, a bullish sentiment was reported for the fourth straight year. One critical finding suggests more captives moving from offshore to onshore domiciles. Common sites for the 34 captives that were redomiciled included Tennessee, North Carolina and Vermont, whose regulatory environments respondents describe as increasingly captive-friendly.



*Alex Murray*

Onshoring a captive certainly has its advantages over offshoring one. While making an 831(b) plan election for a small captive already invites IRS scrutiny, “forming a captive on an offshore domicile is just one more red flag,” Teichman observes.

“Whether or not it’s deserved, I think that’s causing managers to use an onshore jurisdiction, which weren’t as competitive with offshore jurisdictions



*John Huth*

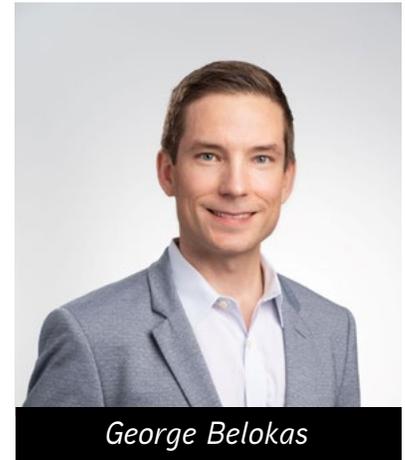
in the past,” he continues. “That’s changed both in terms of the flexibility of the regulator and the flexibility that’s built into the captive statute.”

South Carolina allows captives to redomicile from foreign jurisdictions, given the optics involving offshoring in years past. Murray says the state will handle Section 953(d) elections that allow foreign insurance companies to be appropriately treated and taxed as U.S. domestic corporations.

SIIA Captives Insurance Committee Chairman George Belokas says the reasons are diminishing as to why someone would want to pursue an offshore jurisdiction unless they want to take a trip to the Caymans every year, though he also doesn’t see a rush to move offshore captives onshore to the U.S. As captive insurance regulators become more knowledgeable and make their rules more favorable, he believes more captives will ultimately decide to form in the U.S.

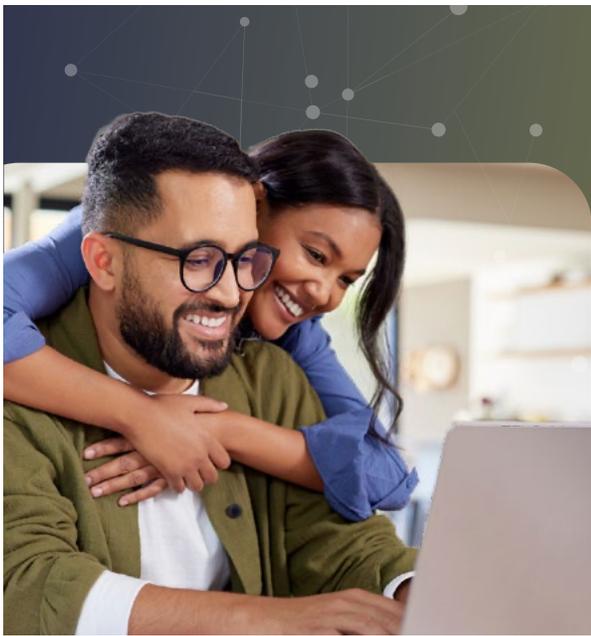
Belokas describes homogeneous group captives as stickier solutions that are more prone to growth, noting that self-insured employers joining an industry group tend to stick with the arrangement for the long haul.

“It just seems like you’re more likely to weather storms as opposed



*George Belokas*

to a heterogeneous group captive structure,” says Belokas, whose practice manages more than 3,000 captive insurance and reinsurance companies, including single parent, group and cell captives. Heterogeneous captives provide more opportunity “because they’ll accept almost anyone,” he adds.



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SIIA's Captives Insurance Committee has sought to improve the level of education for members who aren't familiar with captives, including creating videos to learn more about these vehicles and different types of structures.

## SHORING UP CELLS

Another effort involves offering comments for IRS and Treasury regulations involving small captives that were proposed in 2023 and then finalized earlier this year. The aim was to rein in some of the requirements that were considered more onerous than those that were issued in the final version. Increased use of cell structures enables smaller groups to enjoy the same benefits of captive insurance as larger employers. In Arizona, a reduction in the minimum capital requirement for a cell captive has drawn in more smaller and midsize groups to that state.

Murray points to some flexibility in the use of cell structures for smaller groups where an irrevocable election is made, and they're able to switch over to another cell rather easily or add another group of employers.

Gorman cites lower capitalization requirements, shared operating costs with available service providers, ease of set-up and access to reinsurance markets as among the benefits to forming a cell captive for small and midsize employers that face obstacles to finding affordable coverage in the traditional commercial insurance market.

"The ability to convert to a standalone captive from a cell structure may be especially appealing to those captive owners who wish to start with a small captive insurance program initially and expand to include additional lines of coverage while growing and maturing into a single parent captive over time," she adds.

At the end of 2024, North Carolina had more than twice the number of approved cells in the state than licensed captive insurers. North Carolina's modern captive law, enacted in 2013, allows its insurance commissioner a great deal of discretion in regulating captive insurers. This flexibility to meet the needs of the captive industry and philosophy of prudent regulation in a business-friendly environment has been foundational to the state's success as a leading captive domicile. North Carolina is ranked as the third-largest U.S. domicile by number of licensed captives.

"North Carolina has reasonable capital requirements that take into consideration each captive insurer's own unique risk profile," Gorman explains. "The state's Captive Insurance Act provides the commissioner with much discretion in regulating captives, and



Lori Gorman

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While many captives insure property and casualty lines, she says there’s significant interest in medical stop-loss captives among employers looking for more cost-effective methods to provide health insurance benefits to employees.

Noting how employee benefits are evolving to meet the demands of a changing workforce, Gorman explains that some companies are now offering supplemental health and life coverages through their captive insurance companies.

“A captive can often provide these benefits at a lower cost and, with its low overhead costs, can pass the savings onto the company’s employees,” she says. “Captive insurance can be a nimble risk transfer alternative to the traditional markets, and accordingly, we anticipate continued growth in captive space.”

## **ENORMOUS GROWTH**

Some states, such as Delaware and Arizona, have experienced eye-popping growth in captive insurance within their respective borders over the years. In Delaware, for instance, there were only seven captives domiciled there 20 years ago when Teichman joined the state captive association’s board because they were regulated like traditional insurance companies.

“So, we rewrote the statute and modernized it a bit,” he says, “but I think the more important thing that we did was convince the insurance department to create a special bureau to regulate captive insurance companies, which has worked out very well.” Delaware is now among the top-ranked states nationally, with many licensed entities involving series captives whose parent can have multiple cells or sub-entities that act as a separate captive insurer.

Those efforts dovetailed nicely into the state’s reputation for being a leading destination to incorporate businesses – a theme that regulators leaned into in touting the Delaware advantage. “It’s relatively easy to incorporate in Delaware,” Teichman says, adding that the state’s Court of Chancery is probably the premier forum to resolve business disputes.

Arizona was relatively flat from a captive insurance perspective for many years, reports Belokas, who’s also heads up the Arizona Captive Insurance Association and is president of GPW, which operates under the Beyond Risk umbrella. But since Victoria Fimea became the state’s chief captive analyst, new captive formations have significantly outpaced dissolving captives, and it’s now in the top 10 among states in terms of the number of domiciled captives and a leader in terms of premium volume. “Vicki really is trying to create an environment that makes captives even more favorable,” he says.

Arizona lawmakers passed HB 2193, which lowers capital requirements for protected cell captives, reduces compliance burdens for dormant captives and streamlines license renewals. Belokas says the legislation also helped clean up some of the language on LLC board structures and changed the timing of license fee payments. These steps allow the state’s insurance department better access to the funds that are generated from license fees to pursue more proactive outreach to captive owners and prospective captive owners in Arizona.

Laws and regulations in Arizona that are most favorable to captives include a low annual license fee of \$5,500, no premium taxes and the absence of triennial or five-year examinations seen in other domiciles, Belokas reports.

The state also introduced branch captive regulations wherein a captive that’s domiciled in another jurisdiction could set up a branch captive in the state of Arizona to operate as an extension of their existing captive. In addition, there’s a requirement that an annual board meeting be held in Arizona, which brings in tourism dollars.

“From a statutory perspective, the rules in Arizona are about as favorable as I think they can be while still allowing the government to properly regulate the captive insurance company,” he says.

## QUALITY OVER QUANTITY

A similar approach has played out in South Carolina, which passed SB 210 to allow for regulatory flexibility and ease compliance requirements designed to support industry growth. "Rather than a one-size-fits-all approach, if you're a pure or single-parent captive, \$250,000 is the minimum," Murray explains. "It really is focused on what the exposure of the entity is because at the end of the day, you want to make sure that they have enough capital and they're liquid enough should claims come – that they do have that surplus handy."

He lauds Andy Noga, the recently appointed director of captives at the South Carolina Department of Insurance, who has "made it very evident through his words and actions about how we can modify what we've been doing to help grow the industry." However, he hastens to add that South Carolina is concerned with quality over quantity when it comes to captive growth.

Whatever developments might alter the regulatory landscape for captives in the future, Murray doesn't expect the formation of captives to slow down anytime soon, noting remarkable growth over the past three or four years. "I've always kind of thought that at some point everybody's going to have a captive," he adds. ■

*Bruce Shutan is a Portland, Oregon-based freelance writer who has closely covered the employee benefits industry for more than 35 years.*

## TOP 10 STATES FOR CAPTIVES

Rank	Domicile	Number of captives
1	Vermont	683
2	Utah	462
3	North Carolina	293
4	Delaware	285
5	Hawaii	272
6	South Carolina	231
7	Arizona	201
8	Tennessee	175
9	District of Columbia	132
10	Montana	93

*Note: Figures reflect the number of captive licenses at the end of 2024 and are based on a survey by Business Insurance as aggregated by other sources.*