



# **Bureau of Captive and Financial Insurance Products**

## **Delaware Captive Insurance Association Fall Forum - Regulator Update November 4, 2021**

**Steve Kinion**

**Director, Bureau of Captive and Financial Insurance Products  
Delaware Insurance Department**



**DELAWARE DEPARTMENT OF INSURANCE  
INSURANCE COMMISSIONER TRINIDAD NAVARRO**

*Bureau of Captive and Financial Insurance Products*

**Delaware is the 3<sup>rd</sup> Largest U.S. Captive Domicile  
and the World's 5<sup>th</sup> Largest Captive Domicile**

# Agenda for Presentation



- Delaware's Captive Status – Applications, Licenses, and Dissolutions
  - Statutory Changes
  - Application Mistakes
  - Examinations
  - Service Providers
  - Business Plan Considerations in Applications
  - Marketing Recognition & Initiatives
- 
- Kathleen Makowski Legal Update on IRS Litigation
  - Please use Captive Inbox [captive@delaware.gov](mailto:captive@delaware.gov) for official filings





# Thank You for Selecting Delaware!



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# Delaware's Captive Status



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# Delaware Licenses

as of September 30, 2021

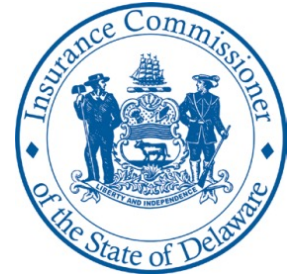


<u>License Types</u>	<u>Number Licensed</u>
Agency	2
Association	2
Cell	9
RRG	2
Industrial	2
Pure	254
Series	368
Special Purpose	42 (includes 35 LLC core)
Special Purpose Financial	6
Sponsored	3
<b><u>Total Active</u></b>	<b><u>750</u></b>



# Delaware Dormant Licenses

as of September 30, 2021

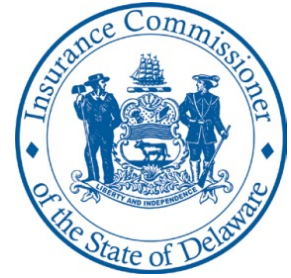


<u>License Types</u>	<u>Number Licensed</u>
Agency	1
Pure	23
Series	33
Special Purpose	3
<b><u>Total Dormant</u></b>	<b>60</b>



# 2021 Delaware Licenses

## as of September 30, 2021



New Applications Received in 2021	26	
Conditional Licensees	26	
Pure		4
Cell		1
Series		21
Standard Licensees	0	

### Comparison to 2019 & 2020

As of September 10, 2019, 18 applications had been received.  
In 2019, 56 new applications were received.  
As of September 23, 2020, 24 applications had been received.  
In 2020, 70 new applications were received.



# 2021 Delaware Dissolutions

## as of October 23, 2021



**Captive Dissolutions in 2020**

**86**

Pure	10
Series	73
Special Purpose	3

### Comparison to 2020

As of September 10, 2020, 101 captive insurers had dissolved.  
There were 177 captive dissolutions in 2020.

### Comparison to 2019

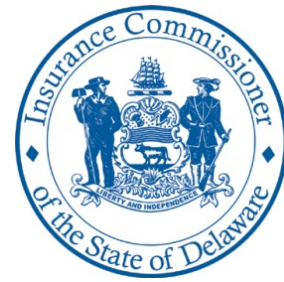
As of September 10, 2019, 68 captive insurers had dissolved.  
There were 117 captive dissolutions in 2019.





# 2021 Delaware Dissolutions

## as of October 23, 2021



### Top Reasons for Captive Dissolutions in 2021 Compared to 2020 & 2019

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Managing Risk Through Other Means	42	19	2
Perceived IRS Overreach	12	0	0
Owners are Closing the Captive	9	9	0
Result of IRS Settlement	5	5	0
Owner/Management Does not Wish to Continue Captive	2	9	3
Adverse IRS Audit	2	5	0
Do Not Need Captive Due to Current Market Conditions	2	5	3
Other 2021 Reasons Include			
Not Enough Capital to Fund Captive			
No Longer in Operations			
Change their Risk Management Profile			
No Longer Writing Policies or Conducting Insurance Policies			



# Global Captive Insurance 2013 to 2020



## TOTAL CAPTIVES WORLDWIDE



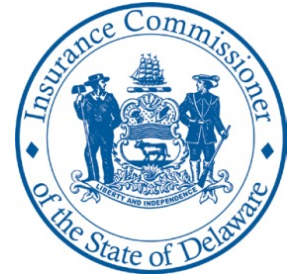
<sup>1</sup> Restated.

Source: BI survey



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# Top 5 Global Captive Domiciles in 2020



- Bermuda 680 captives



- Cayman 652 captives



- Vermont 589 captives



- Utah 396 Captives



- Delaware 288 captives →



Source: Business Insurance, March 2021



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# Top 5 U.S. State Captive Domiciles in 2020



- Vermont 589 captives



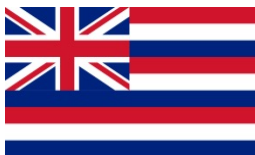
- Utah 396 captives



- Delaware 288 captives



- North Carolina 250 captives



- Hawaii 242 captives

Source: Business Insurance



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# **U.S. Captive Insurance**

## **Total Annual Premium Top 10 Domiciles**



- **2020**

1. Vermont \$27.7 billion
2. Hawaii \$9.9 billion
3. Arizona \$9 billion
4. Texas \$13 billion
5. Delaware \$5.4 billion
6. Missouri \$4.1 billion
7. South Carolina \$2.65 billion
8. Nebraska \$2.61 billion
9. Michigan \$2.2 billion
10. Utah \$1.6 billion

- **2019**

1. Vermont \$23.2 billion
2. Hawaii \$10.8 billion
3. Arizona \$9.2 billion
4. Texas \$ 7.3 billion
5. Delaware \$5.2 billion
6. Iowa \$3.6 billion
7. Missouri \$3.5 billion
8. South Carolina \$ 2.9 billion
9. Michigan \$2.2 billion
10. Tennessee \$1.5 billion

Source: NAIC



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# U.S. Captive Insurance

## 2020 Direct and Reinsurance Top 10 Domiciles



- 2020 Direct

1. Vermont \$11 billion
2. Hawaii \$1.9 billion
3. Arizona \$2.1 billion
4. Texas \$10.3 billion
5. Delaware \$743 million
6. Missouri \$843 million
7. South Carolina \$1 billion
8. Nebraska \$0
9. Michigan \$1.2 billion
10. Utah \$743 million

- 2020 Assumed/Reinsurance

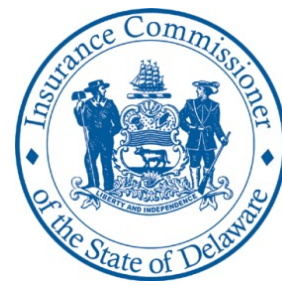
1. Vermont \$16.6 billion
2. Hawaii \$7.9 billion
3. Arizona \$7.1 billion
4. Texas \$2.6 billion
5. Delaware \$4.6 billion
6. Missouri \$2.3 billion
7. South Carolina \$1.6 billion
8. Nebraska \$2.61 billion
9. Michigan \$1 billion
10. Utah \$906 million

Source: NAIC

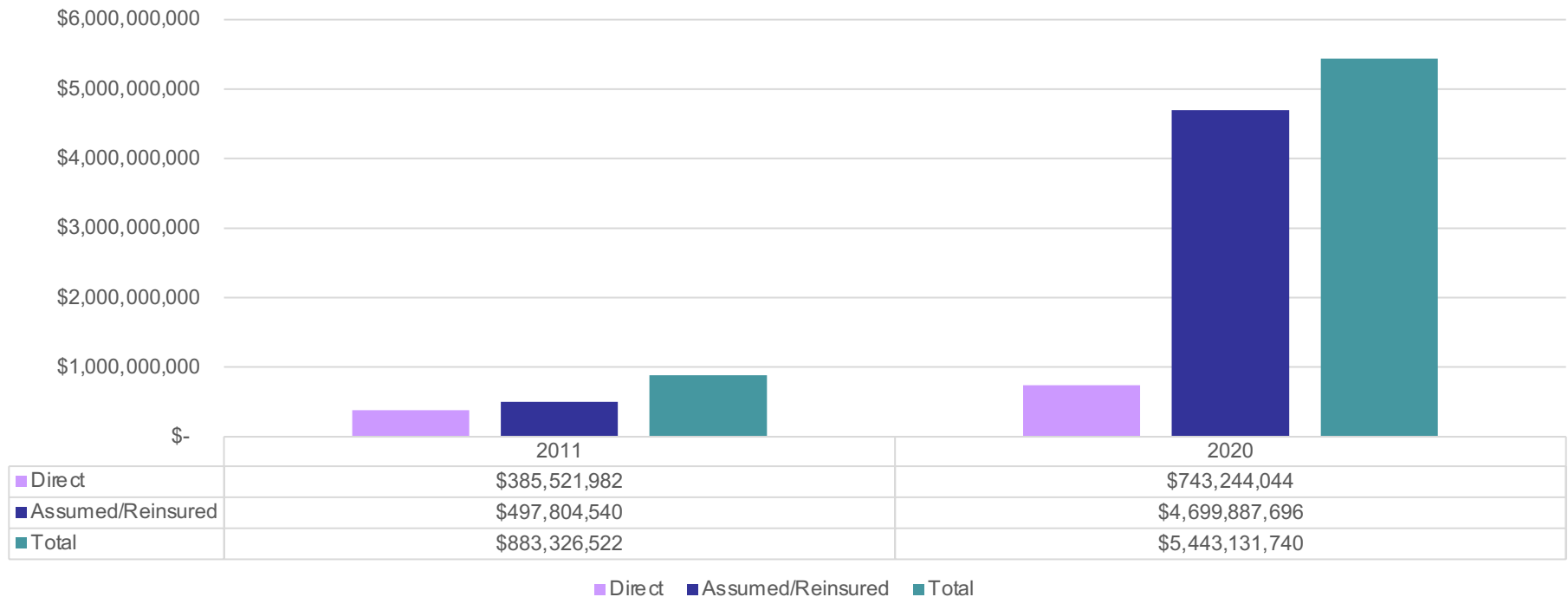


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# Premium Growth Comparing 2011 and 2020



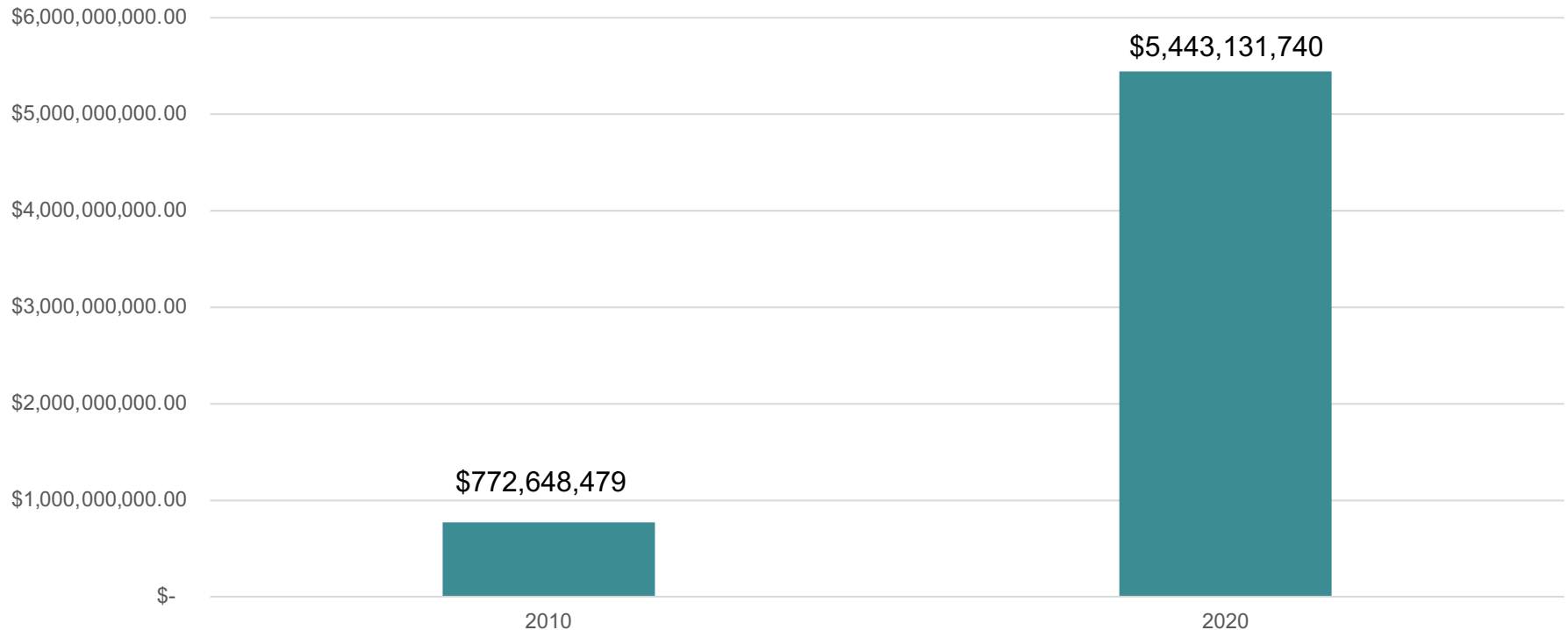
Delaware Ten Year Premium Growth  
Comparing 2011 and 2020



# Premium Growth Comparing 2010 and 2020 - 704% Growth



Delaware Total Premium Growth Comparing 2010 and 2020







# 2021 Statutory Changes



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# 2021 Statutory Changes



- **Changed the qualification period for dormancy from 12 calendar months to 12 continuous months**
- **Clarified the definition of pure captive so that it insures parent, affiliate, or controlled unaffiliated business**
- **Adding that the Code definitions for policy, premium, and insurable interest also apply to captive insurers**
- **Allow an agency captive to use the series form of business organization**
- **Allow series captive insurers to be registered series**





# Captive Application Mistakes



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# Application Mistakes



## Conditional license applications without the required information:

- Conditional license cover sheet missing
- Statement of Compliance missing
- No application for the conditional license was ever received in the captive resource mailbox [captive@delaware.gov](mailto:captive@delaware.gov) but application fee was submitted
- Application fee is sent to Dover
- Application to the captive resource mailbox – follow the arrow



# Application Mistakes



## Conditional license applications without the required information:

- **Incorrect Conditional License application fee submitted, \$3600 for Conditional License and \$3500 for Regular License**
- **Not completing all fields on both Application and Biographical Affidavit - especially on Bio Affidavit, if the owner is a company. List name, address, telephone and email address of company. This information is required on the Bio Affidavit**
- **[Application Process - Captive Insurance Program - State of Delaware](#)**

**Please read the directions on the website**





# Captive Exams



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# Examinations

## As of October 18, 2021



- Open exams YE 2019 and 2020 - 98 captives
- Draft exam reports being processed under the 30-day letter – 20 captives
- Completed exams by the examination team waiting to be processed for the final exam report – 38 (*under Deputy Commissioner's review or waiting to be published*)
- See handout for most common examination findings





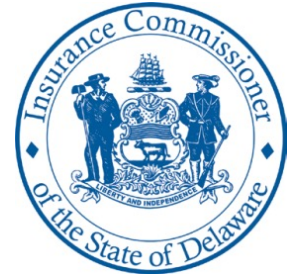
# Service Providers



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# **Delaware Captive Insurance Authorized Service Providers as of October 26, 2021**



## **Provider Types**

## **Number Authorized**

<b>Certified Public Accountants</b>	<b>93</b>
<b>Actuaries/Actuarial Firms</b>	<b>83</b>
<b>Captive Managers</b>	<b>99 (49 actively managing captives)</b>
<b>Self-Managed Captives</b>	<b>18</b>

**List of Service Providers available at <https://captive.delaware.gov/authorized-service-providers/>**



# Captive Manager Regulation



**The Department is drafting regulations/legislation allowing the Commissioner greater authority over captive managers:**

- **Establish criteria for authorizing and withdrawing authorization**
- **Initial draft under internal discussion and review**
- **Once internal review is complete, seek DCIA input and comments**
- **No set timeline for completion**





# Items to Consider for the Business Plan when Submitting an Application



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# Regulatory Review of Business Plans



**What the analyst looks for:**

- **Describe Pool or Reinsurance Arrangement. Include the applicant's participation percentage. Note how many participants are in the pool**
- **Describe how the captive intends to address risk transfer & risk distribution**
- **Please give details on claim handling procedure. This description should give a broad overview from date of reporting the claim to final disposition**
- **Disclosure of federal tax election**



# Regulatory Review of Business Plans



**The Department will confirm that the business plan specifically complies with the following sections of the Delaware Insurance Code:**

- **Type of certificate of authority sought pure, association, series, etc., captive. Confirm that the type satisfies the definition of the type of license sought in 18 *Del. C.* §§ 6902 and 6903**
- **Will the captive insurer applicant insure controlled unaffiliated business? See the definition of controlled unaffiliated business in 18 *Del. C.* § 6902**



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# Regulatory Review of Business Plans



- Confirm the captive insurer applicant's name satisfies the requirements in 18 *Del. C.* § 6904
- Confirm the captive insurer applicant's minimum capital and surplus satisfies the requirements in 18 *Del. C.* § 6905
- Confirm the business organization form of the captive insurer applicant satisfies the requirements in 18 *Del. C.* § 6906
- Confirm the captive insurer applicant's investment plan satisfies the requirements in 18 *Del. C.* § 6910



# Regulatory Review of Business Plans



- Confirm that reinsurance arrangements comport with 18 *Del. C.* § 6911
- Is the captive insurer applicant a member of a rating organization? See 18 *Del. C.* § 6912
- Is the captive insurer applicant a member of a guaranty association? See 18 *Del. C.* § 6913. The term “pool” in this section does not mean a reinsurance pool



# Regulatory Review of Business Plans



- Is the captive insurer applicant applying for a special purpose captive insurer certificate of authority? See 18 *Del. C.* § 6915A
- Describe how the maintenance of the captive insurer applicant's books, records, documents, accounts, vouchers and agreements satisfy the requirements of 18 *Del. C.* § 6923





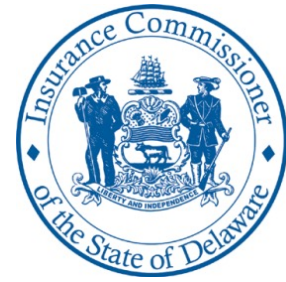


# Marketing, Recognition, and Initiatives



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# Marketing Recognition & Initiatives



- Captive insurance is a very competitive industry – this includes captive domiciles. Out of 56 jurisdictions that report captive premium to the NAIC, only 20 reported \$0 premium
- Work closely with DCIA's marketing committee
- Use marketing vendors to tell the Delaware captive story
- Initiatives include pairing fronting companies and captives – a B2B





# **Legal Issues**

## **Kathleen Makowski**

### **Deputy Attorney General**

### **Delaware Department of Insurance**



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# Questions & Answers

Steve Kinion, Director, Bureau of Captive and Financial Insurance Products

Delaware Department of Insurance

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302-577-5280 Wilmington Office

302-222-7181 Cell

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Please copy our office manager, Darlinda Moffett, [Darlinda.Moffett@delaware.gov](mailto:Darlinda.Moffett@delaware.gov)  
on all correspondence.

Please also use the Captive Inbox  
[captive@delaware.gov](mailto:captive@delaware.gov) for official filings



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