

*board to the credit union, (1) if the person obtaining the loan shall have been in default in required payments for a period of not less than two years, or (2) at such time as the Department of Banking shall require the credit union to charge the amount of the loan against the reserve fund of such credit union. Any person who shall have pledged such rights as security for a loan from a credit union and, on whose behalf the retirement board shall have made any payment by reason of that person's default, may not thereafter pledge or assign such rights to a credit union.*

Section 10. This act shall take effect immediately.

Act effective immediately.

APPROVED—The 1st day of December, A. D. 1959.

DAVID L. LAWRENCE

—  
No. 606

AN ACT

To provide for the incorporation of Business Development Credit Corporations to assist, promote, encourage, develop and advance the business prosperity and economic welfare of the Commonwealth; defining the powers, restrictions, limitations, purposes and functions of such corporations; conferring powers on certain corporations and financial institutions in connection therewith, and conferring certain powers on the Department of Banking.

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Business  
Development  
Credit Corpora-  
tion Law.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the “Business Development Credit Corporation Law.”

Section 2. Definitions.—The following words, as used in this act, shall have the meanings herein assigned to them, unless the context clearly indicates otherwise:

(1) “Corporation” means a corporation which may be formed under this act.

(2) “Financial institution” means any national banking association, State-chartered bank, bank and trust company, or savings bank, Federal savings and loan association, State-chartered building and loan association or credit union, or any stock insurance company, including any stock life or limited life, stock fire, stock marine, stock fire and marine, or stock casualty company, any mutual insurance company, including any mutual life or limited life company or any surety company, title insurance company, Lloyds association, or inter-insurance exchange, which is authorized by law to transact the business of insurance in Pennsylvania.

(3) “Lending agreement” means an agreement between a corporation and any financial institution, under which agreement such financial institution agrees to lend funds to the corporation in accordance with the provisions of section 6 of this act.

(4) “Region” means the area of operation of a corporation as reasonably defined and specified in its articles of incorporation as provided in section 9 of this act, and any such region may encompass all or any \*\*part of the territory of the Commonwealth.

(5) “Shareholder” means a registered owner of shares in a corporation formed under this act.

(6) “Shares” are the units into which the shareholders’ rights to participate in the control of a corporation, in its surplus or profits, or in the distribution of its assets are divided.

Section 3. Purposes.—

The purposes of a corporation formed hereunder shall be to assist, promote, encourage and, through the cooperative efforts of its shareholders and the institutions

\* “Unissued Securities and” in original.

\*\* “part” in original.

which from time to time shall become parties to lending agreements therewith, develop and advance the business prosperity and economic welfare of this Commonwealth and the various regions thereof; to encourage and assist in the location of new business and industry in this Commonwealth, and to rehabilitate existing business and industry, to stimulate and assist in the expansion of all kinds of business activity, which will tend to promote the business development and maintain the economic stability of the Commonwealth, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of the Commonwealth; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of industrial, commercial, agricultural and recreational development in the various regions of the Commonwealth; to furnish money and credit to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity in the various regions of the Commonwealth, thereby establishing a source of capital and credit not otherwise readily available therefor.

#### Section 4. General Powers.—

Corporations formed hereunder shall have all of the powers, rights, privileges and immunities conferred on business corporations by the act of May 5, 1933 (P. L. 364), as amended, known as the "Business Corporation Law," and in addition thereto and subject to the restrictions and limitations hereinafter set forth, shall have the following general powers:

(1) To borrow money and otherwise incur indebtedness for any of its purposes, to issue its bonds, debentures, notes, other evidences of indebtedness, whether secured or unsecured therefor, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges, of every kind and nature, or any part thereof.

(2) To lend money to and to guarantee, endorse or act as surety on the bonds, notes, contracts or other obligations of, or otherwise assist financially, any person, firm, corporation, joint stock company or association, and to establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith. It is not the intention, hereof, to take away the opportunity to make requested loans or commitments from financial institutions in the region in which a person, firm, corporation, joint stock company or association desires financial assistance. Before a corporation formed hereunder may provide any loan or assistance, it shall be necessary for the applicant to provide satisfactory

evidence of his inability to obtain the desired financial assistance from the financial institutions in the region. If the region in which a person, firm, corporation, joint stock company or association desires financial assistance is not the same as that of a corporation from whom the assistance is requested, the applicant must give satisfactory evidence of his inability to obtain the desired assistance, not only from the financial institutions in such former region, but also from a Business Development Credit Corporation therein, if one exists.

(3) To purchase, receive, hold, lease or otherwise acquire, and to sell, convey, \*mortgage, lease, pledge or otherwise dispose of, upon such terms and conditions as its board of directors may deem advisable, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto, and the use thereof, including but not restricted to any real or personal property acquired by such corporation from time to time in the \*\*satisfaction of debts or enforcement of obligations.

(4) To acquire the good will, business rights, real and personal property and other assets or any part thereof, of such persons, firms, corporations, joint stock companies or associations as may be in furtherance of the corporate purposes provided herein, and to assume, undertake, guarantee or pay the obligations, debts and liabilities of any such person, firm, corporation, joint stock company or association; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon, or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and in furtherance of the corporate purposes provided herein, to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, lease or otherwise dispose of industrial plants or business establishments.

(5) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company or association \*\*\*and while owner or holder thereof to exercise all the rights, powers and privileges of ownership including the right to vote thereon.

(6) To accept grants, loans, subsidies and other aids from and to enter into agreements or other transactions with any Federal agency.

\* "mortgage" in original.

\*\* "satisfaction" in original.

\*\*\* "and" not in original.

(7) To cooperate with, and avail itself of, the facilities of the State Department of Commerce and any other government agencies, and to cooperate with and assist and otherwise encourage other organizations in the various regions of the Commonwealth in the promotion, assistance and development of the business, prosperity and economic welfare of such regions and of the Commonwealth.

Section 5. Capital Stock.—

(1) The capital stock of a corporation shall be not less than one hundred thousand dollars (\$100,000) to be evidenced by ten thousand shares, having a par value of ten dollars (\$10), each. At least ten per cent of the capital stock of any such corporation shall be paid into its treasury in cash before it is authorized to transact any business other than such as relates to its organization.

(2) The holders of capital stock of such corporations shall not have any preemptive or preferential right to purchase or subscribe for any part of the unissued or new issue of capital stock of such corporations, whether now or hereafter authorized or issued, and shall not have any preemptive or preferential right to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of such corporations, now or hereafter authorized or issued.

Section 6. Loans by Financial Institutions.—

(1) Any financial institution is hereby empowered to make a lending agreement with a corporation. Notwithstanding the provisions of any other law, the notes or other interest-bearing obligations of a corporation, issued in accordance with and by virtue of this act and the by-laws of a corporation, shall be proper investments for the financial institutions which become parties to a lending agreement, up to, but in no event exceeding, the loan limits established hereinafter.

(2) The financial institution, which is a party to a lending agreement, shall lend funds to a corporation as and when called upon by it to do so, but the total amount on loan by any such financial institution at any one time shall not exceed the following limit to be determined as of the effective date of the lending agreement. Moreover, such amount shall thereafter be re-adjusted, annually, in the event of any change in the base of the loan limit of such financial institution, which is as follows:

(a) National banking association, State-chartered bank, bank and trust company, savings bank or credit union, two per centum of capital and surplus.

(b) Building and loan association, two per centum of its undivided profits and general reserve funds.

(c) Stock insurance company, two per centum of capital and surplus.

(d) Surety and \*casualty company, two per centum of capital and surplus.

(e) Mutual insurance company, two per centum of guaranty funds or of surplus, whichever is applicable, and

(f) Comparable limits for other financial institutions as established by the board of directors of a corporation, subject to the approval of the Department of Banking. The total amount on loan by any financial institution which is a party to a lending agreement shall not exceed, at any one time, five hundred fifty thousand dollars (\$550,000). All loan limits shall be established at the thousand dollars nearest to the amount computed on an actual basis. All calls of funds which such financial institutions are committed to lend to a corporation shall be prorated by a corporation among the financial institutions which are parties to its lending agreement in the same proportion that the lending agreement commitment of each bears to the aggregate lending agreement commitments of all financial institutions of a corporation. Upon six months prior written notice to the board of directors of a corporation, any financial institution may withdraw from and terminate the lending agreement effective at the end of such six month period and after the effective date of withdrawal such financial institution shall be free of obligation hereunder, except those accrued or committed by the corporation prior to the effective date of withdrawal.

(g) At no time shall the total obligations of any such corporation exceed twenty times the amount of its paid-in capital and surplus.

#### Section 7. Participation.—

Notwithstanding any other rule or provision of law or any provision in their respective charters, agreements of association, articles of organization, certificates or articles of incorporation:

(1) All business corporations organized for the purpose of doing business within this Commonwealth, including, without implied limitation, any railroad or transportation corporation or other public utility, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, \*\*mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by or the shares of the capital stock of a cor-

\* "casualty" in original.

\*\* "mortgage" in original.

poration, and while owners of the stock, to exercise all the rights, powers and privileges of ownership without the approval of any regulatory authority of this Commonwealth.

(2) All financial institutions are hereby authorized to become parties to lending agreements with a corporation and to make loans to a corporation as provided herein.

(3) Each financial institution which becomes a party to a lending agreement with a corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness issued by the corporation or, and to the extent not otherwise prohibited by law, to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any shares of its capital stock, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of this Commonwealth. The amount of the capital stock of a corporation which may be acquired by any party to a lending agreement with a corporation pursuant to the authority granted herein shall not exceed ten per centum of the loan limit of that party. The amount of capital stock of the corporation, which any party to a lending agreement with a corporation is authorized to acquire pursuant to the authority granted herein, shall be in addition to the amount of capital stock in corporations other than a corporation created by this act, which such party may otherwise be authorized to acquire.

#### Section 8. Board of Directors.—

(1) All of the corporate powers of a corporation shall be exercised by a board of directors, consisting of fifteen persons, who shall all be at least twenty-one years of age and be citizens of the United States and of whom two-thirds shall be residents of the region of the Commonwealth in which the corporation is organized.

(2) At the first meeting of the shareholders of a corporation and at each annual meeting thereafter, six members of the board of directors shall be elected by the shareholders in the manner provided by the Business Corporation Law or the by-laws of the corporation. At each such meeting, eight members of the board of directors shall be elected by the financial institutions which are, at the time of any such election, parties to a lending agreement or agreements with such corporation. In each such election for directors, each such financial institution shall have one vote for each one thousand dollars (\$1,000) loan obligation of such

financial institution under its lending agreement with the corporation.

(3) The Secretary of Commerce of the Commonwealth shall be an additional director ex officio, with all the authority of a director, but without any liability except for gross negligence or wilful misconduct.

(4) The first meeting of the shareholders of the corporation shall be held at a time and place to be fixed by the temporary board of directors, which shall be as soon as reasonably possible after the Department of Banking has approved the articles of incorporation under the provisions of section 9 of this act, the Department of State has issued a certificate of authorization in the manner provided in section 10 of this act, following the payment into the corporate treasury, in cash, of a minimum of at least ten per cent of the par value of the capital stock of any such corporation, and in addition, a minimum of five financial institutions shall have become parties to lending agreements as hereinbefore provided. Such meeting shall be called in such manner as shall be provided by the temporary board of directors formed as directed by the provisions which \*follow.

(5) Notwithstanding the foregoing provisions of this section, until the first meeting of the shareholders of a corporation and the election of a board of directors as in this act provided, all of the corporate powers of such corporation shall be exercised by a temporary board of directors. Such board shall consist of fifteen members who shall all be at least twenty-one years of age, citizens of the United States and residents of the region in which the corporation was formed. Eight of the members shall be designated by incorporators of a corporation upon the filing of the articles of incorporation in the manner hereinafter provided. Six members shall be designated in the following manner after the articles of incorporation of a corporation have been approved by the Department of Banking under the provisions of section 9 of this act: two shall be designated by the Governor; two shall be designated by the President pro tempore of the Senate; and two shall be designated by the Speaker of the House of Representatives. Each designation shall be, in writing, signed by the officer making it, and transmitted by him to the Secretary of the Commonwealth who shall make and record in his office a copy of such designation and deliver the original to the designee who, if he accepts such designation, shall notify the Secretary of the Commonwealth of the fact in writing, and thereupon shall record such acceptance in his office. Following the approval of the articles of incorporation, the Secretary of Com-

\* "follows" in original.



merce of the Commonwealth shall serve as an additional director ex officio of such corporation, but without any liability except for gross negligence or wilful misconduct. Upon the election and qualification of a board of directors pursuant to subsections (1), (2), (3) and (4) of this section, the temporary board of directors shall be deemed dissolved.

Section 9. Method of Incorporation.—

(1) A corporation may be formed by five or more natural persons of full age and either sex, married or single, all of whom shall be residents of the Commonwealth of Pennsylvania and citizens of the United States and who each subscribe to at least one share of stock of the corporation.

(2) The articles of incorporation shall set forth:

(a) The name of the proposed corporation which shall include the words "Development Credit Corporation."

(b) The purpose for which it is to be formed which shall be within the purposes and powers set forth in this act.

(c) The region of the Commonwealth in reasonably defined terms in which the corporation will conduct its business and in which the principal place of business is to be located and the mailing address of its office.

(d) The term of its existence, which shall be perpetual.

(e) The authorized capital stock of the proposed corporation.

(f) The names and addresses of the incorporators and the amount of their capital stock subscriptions.

(g) The names and residences of eight of the persons chosen for the temporary board of directors.

(h) The name and residence of the treasurer.

(i) The names and addresses of five financial institutions who shall all be parties to a contract theretofore made to execute a lending agreement with the corporation at the time of its incorporation.

(j) Any other provisions not inconsistent with law which the proposed corporation may see fit to adopt governing the relation and conduct of its affairs.

(3) Notice of the intention to apply for a charter shall be advertised, one time in a newspaper of general circulation, and one time in a legal newspaper printed in the region in which the proposed corporation is to be formed. Advertisement shall appear at least three days prior to the day the articles are to be presented to the Department of Banking, and shall set forth briefly:

(a) The name of the proposed corporation.

(b) A statement that the proposed corporation is to be organized under the provisions of this act.

(c) The purpose or purposes of the proposed corporation.

(d) The time when the articles will be presented to the Department of Banking.

Section 10. Approval of Articles of Incorporation by the Department of Banking; Issuance of Certificate of Incorporation.—

A. The incorporators shall deliver, or cause to be delivered, to the Department of Banking, the articles of incorporation required by this act, proof of publication of the advertisement of their intention to file articles of incorporation, and two copies of the proposed by-laws for their general conduct of the corporation. The department shall examine the proof of publication and the articles to determine whether they contain all the information and are in the form required by this act.

B. Within sixty days after the receipt of the articles of incorporation and after all fees and charges established by the Department of Banking have been paid, the Department of Banking shall approve or disapprove the articles of incorporation.

(1) If the Department of Banking shall disapprove the articles because the requirements of section 9 of this act have not been complied with, it shall forthwith give notice thereof to the proposed incorporators, stating in detail its reasons for doing so and indicating how the incorporators can remedy their non-conformance with the provisions of this act. Upon remedying the defect or defects, the incorporators may, in the same manner, refile the articles as new or amended articles, whichever the particular case may require.

(2) If the Department of Banking finds that the articles of incorporation and proof of publication are in form prescribed by this act or have been made to conform therewith, the Department of Banking shall conduct such investigation as it may deem necessary to ascertain from the best sources of information at its command:

(a) Whether the name of the proposed corporation is likely to mislead the public as to its character or purposes;

(b) Whether the convenience and advantage of the public will be served by the proposed corporation;

(c) Whether the economic condition of the region in which the proposed corporation is formed and may be expected to do most of its business affords reasonable promise of adequate support for the activities of such corporation; and

(d) Whether the responsibility, character and general fitness for the business of the incorporators, directors, and officers named in the articles are such as to command the confidence of the community and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted, in accordance with the intent and purpose of this act.

(3) If the Department of Banking shall, upon the basis of the facts disclosed by the investigation provided by this section, find that the proposed incorporation meets all the requirements of this act, it shall approve the articles and endorse its approval thereon and forward the same to the Department of State.

(4) If the Department of Banking shall, upon the basis of the facts disclosed by the investigation provided by this section, find that the proposed incorporation does not meet all the requirements of this act, it shall disapprove the articles and return them to the proposed incorporators stating in detail its reasons for doing so.

C. Immediately upon receipt of the approved articles of incorporation from the Department of Banking, the Department of State shall file the articles, and shall issue to the incorporators a certificate of incorporation in form similar to that issued to a business corporation in this Commonwealth, which shall incorporate the subscribers thereto and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen. Said articles of incorporation shall be recorded in the office of the Department of State in a book to be kept for that purpose. Certified copies of the records thereof shall be competent evidence for all purposes in the courts of this Commonwealth.

Section 11. Certificate of Authorization to Commence Business.—

(1) A corporation formed under this act shall not begin the transaction of any business, except such as shall be incident to its organization or to the obtaining of subscriptions to or payment for its shares, until it shall receive from the Department of State a certificate of authorization which shall not, however, be issued until there shall have been paid into the corporate treasury in payment for its capital stock a minimum of ten per cent of the par value of the capital stock of such corporation.

(2) When a corporation has received such minimum amount, an affidavit to that effect, signed by either the secretary or the treasurer of the corporation and by at least a majority of the board of directors, shall be prepared and filed with the Department of State. If it shall appear to the Department of State that the affidavit is in proper form and contains all the information re-

quired by this act, the Department of State shall endorse its approval thereon and forthwith transmit it to the Department of Banking. If it shall appear to the Department of Banking that the provisions of this section have been complied with, it shall endorse its approval thereon and shall then return it to the Department of State. Immediately upon receipt of the approved affidavit from the Department of Banking, the Department of State shall file the affidavit and shall issue to the corporation a certificate of authorization, a copy of which shall be sent to the Department of Banking.

Section 12. Surplus and Depositories.—

(a) A corporation shall set apart, as an earned surplus, all of its net earnings in each and every year, until such earned surplus shall equal twice the total of the capital and paid-in surplus then outstanding. The earned surplus shall be held in cash, invested in United States government bonds or such other securities as may be legal investments under the act of May 26, 1949 (P. L. 1828), as amended, known as the "Fiduciaries Investment Act of 1949," and shall be kept and used to meet losses and contingencies of such corporation, and whenever the amount of earned surplus shall become impaired it shall be built up again to the required amount in the manner provided for its original accumulation.

(b) A corporation shall not deposit any of its funds in any banking organization unless such banking organization has been designated as a depository by a vote of the majority of the directors of the corporation, exclusive of any director who is an officer or director of the depository so designated. A corporation shall not receive money on deposit. A corporation shall not make any loans, directly or indirectly, to any of its officers or to any firms in which any of its officers is a member or officer.

Section 13. Financial Institutions as Agents for Corporations.—

Any financial institution which is a party to a lending agreement with a corporation formed under this act is hereby authorized and empowered to act as agent for such corporation in the carrying out of the purposes for which such corporation was formed, and any such financial institution is further authorized and empowered to contract with such corporation to render to such corporation such administrative auditing, collecting and other related fiscal services as shall be deemed necessary for the proper and efficient operation and management of the corporation.

**Section 14. Supervision and Reports.—**

The Department of Banking shall have the power to supervise, examine and control a corporation in the same manner as banking organizations are so supervised, examined and controlled by it pursuant to law, except that it shall not be the duty of the department to supervise the investment or lending policies of a corporation. The cost of such supervision and examination shall be borne by a corporation. A corporation shall make an annual report of its condition to the Governor, Legislature and Secretary of Banking on or before March first of each year.

**Section 15. Reorganization.—**

Whenever a compromise or arrangement or any plan of reorganization of a corporation is proposed between a corporation and its creditors, parties to a lending agreement, or shareholders, the court of common pleas of any county within the region in which the corporation was organized, by virtue of its general equity powers, may, on application of the corporation or of any creditor party to a lending agreement or shareholder thereof or on the application of any receiver or receivers appointed for the corporation, order a meeting of such creditors, parties or shareholders, as the case may be, as may be affected by the proposed compromise or arrangement or plan of reorganization, which shall be called in such manner as the court directs. If, at such meeting, such compromise or arrangement or plan of reorganization is agreed to by, or on behalf of, the creditors, if affected thereby, holding two-thirds in amount of the claims against such corporation and by, or on behalf of, the shareholders, if affected thereby, holding the majority of capital stock and by, or on behalf of, the parties to a lending agreement with a corporation, if affected thereby, holding two-thirds in amount of the outstanding notes or other interest-bearing obligations of such corporation, as provided for in section 7 of this act, and if the agreement shall be further evidenced by the written acceptance of said creditors, shareholders and parties duly filed in the court, the compromise or arrangement or plan of reorganization shall, if approved by the court as just and equitable, be binding on all creditors, shareholders or parties, as the case may be, who are affected thereby, and also on the corporation. All persons who become creditors or shareholders of, or parties to, a lending agreement with the corporation shall be deemed to have become creditors, shareholders or parties respectively subject in all respects to this section, and the same shall be absolutely binding upon them. For the purpose of this subsection only, parties to a lending agreement shall not be deemed

to be creditors and shall act under this subsection as a separate class.

Section 16. Advisory Council.—For the purpose of formulating and recommending uniform policies and practices relating to the operations of the business development credit corporations of the Commonwealth and of sharing and coordinating information concerning the economic condition and investment opportunities in the various regions, there shall be established an advisory council of the business development credit corporations to be formed after the organization and authorized operation of two or more corporations. Such council shall consist of one representative from each corporation, the Secretary of Commerce who shall serve as permanent chairman and the Secretary of Banking. Such council shall hold its meeting at least annually or more often as the chairman or the resolutions of the council shall direct.

Act effective immediately.

Section 17. Effective Date.—This act shall take effect immediately.

APPROVED—The 1st day of December, A. D. 1959.

DAVID L. LAWRENCE

No. 607

AN ACT

Amending the act of May 17, 1921 (P. L. 682), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," permitting purchase or investment in shares of business development credit corporations.

The Insurance Company Law of 1921.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 404, act of May 17, 1921, P. L. 682, added May 9, 1947, P. L. 201, amended by adding a new clause (s).

Section 1. Section 404, act of May 17, 1921 (P. L. 682), known as "The Insurance Company Law of 1921," added May 9, 1947 (P. L. 201), is amended by adding, at the end thereof, a new clause to read:

Section 404. Investment of Capital and Reserves.—Subject to the provisions of section four hundred six, point one, the capital and not less than three-fourths ( $\frac{3}{4}$ ) of the reserves of any life insurance company,