ASSEMBLY, No. 247

STATE OF NEW JERSEY

INTRODUCED MARCH 23, 1942

By Messrs. AMLICKE and GLICKENHAUS

Referred to Committee on Judiciary

AN ACT concerning discovery in aid of execution upon or for the collection of the amounts due upon certain judgments by and for the benefit of corporations, and amending sections 2:26–148, 2:26–149, 2:26–151, 2:26–161, 2:26–162 and 2:26–164 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2:26–148 of the Revised Statutes is amended to read as follows:

2:26–148. When a judgment has been recovered or docketed in the Supreme Court or in the Circuit Court or in the court of common pleas, in and for any county in this State, or from any of the district courts in this State, any judge of the court in which such judgment has been recovered or, if docketed, of the court in which it has been docketed, shall, in term or vacation, on application by the judgment creditor, his or its executor, administrator, successor or assignee, made as provided by section 2:26–149 of this Title, make order requiring the judgment debtor whether such debtor be an individual or a corporation to appear and make discovery on oath, concerning his or its property and things in action, before such judge or Supreme Court commissioner or Master in Chancery of this State, to be designated in such order at a time and place in such order specified. Such order may be served upon any corporate judgment debtor in the

same manner as a summons is served upon a corporate defendant in an action at law and shall be responded to by the treasurer or other officer of the corporation having the custody of, supervision or control over its books of accounts, and financial records, who shall appear and make discovery concerning the property and things in action of the corporation pursuant to said order.

2. Section 2:26–149 of the Revised Statutes is amended to read as follows:

2:26–149. The judgment creditor, his or its executor, administrator, successor or assignee, before he shall be granted the order mentioned in section 2:26–148 of this Title, shall present to the judge mentioned in said section 2:26–148 a petition, verified by the oath of such creditor, his or its executor, administrator or assignee, or the agent or attorney of such creditor, **[**his executor,**]** administrator, successor or assignee, in which **[**he**]** shall be **[**state**]** stated the amount due on such judgment, and **[**his**]** affiant's belief that such judgment debtor has property or money or things in action due to him or it, or held in trust for him or it, where the trust has been created by, or the fund held in trust has proceeded from himself or itself, over and above such property as is or may be reserved by law.

3. Section 2:26–151 of the Revised Statutes is amended to read as follows:

2:26–151. Upon presentation of the petition mentioned in section 2:26–149 of this Title, the order mentioned in section 2:26–148 of this Title shall be made, and the judge shall further, on allegation in such petition, or in one supplementary thereto, and proof by the oath of the party or his or its agent or attorney or of any other person of fact and circumstances, showing that any person owes such debtor, or holds money or property in possession or action in trust for him or it, or for his or its use as aforesaid, make order forbidding the payment of such debt, or the transfer of such property or money by or to such debtor, or any third person until further order to be made by such judge.

4. Section 2:26–161 of the Revised Statutes is amended to read as follows:

2:26–161. When application shall be made by the judgment creditor of a judgment debtor for an order requiring the judgment debtor to appear and make discovery on oath concerning his or its property and things in action, and it shall appear by affidavit to the satisfaction of the judge to whom the application shall be made that such judgment debtor is a nonresident, has absconded, or his whereabouts are unknown, although reasonable inquiry for the same has been made, or is a corporation not incorporated under the laws of this State nor authorized to transact business within this State, the judge shall either, at the time of granting the order for discovery, or afterwards, prescribe the method of service of the order on the judgment debtor, which service may be upon the judgment debtor's attorney of record in the cause in which the judgment was obtained, or by advertisement, or by mailing, or in such other manner as shall, under the circumstances, seem proper to the judge.

5. Section 2:26–162 of the Revised Statutes is amended to read as follows:

2:26–162. Upon proof of service of the order in the manner directed the proceeding shall continue in the same manner as though the order had been personally served on him or it; and a receiver may be appointed as provided by section 2:26–158 of this Title, whether or not the judgment debtor appears as by the order directed.

6. Section 2:26–164 of the Revised Statutes is amended to read as follows:

2:26–164. If any party, corporation, officer responding for any corporate judgment debtor, or witness shall disobey any order of the judge, or any subpœna, issued in proceedings for discovery in aid of execution and duly served, and the fees of such witness paid, or shall refuse, on attendance, to answer and testify, such party, corporation, officer responding for any corporate judgment debtor, or witness may be punished by the judge as for a contempt of the court whereof he is such judge.

No proceedings for contempt for not obeying an order of the judge issued pursuant to section 2:26–148 of this Title shall be instituted against a judgment debtor unless it shall appear that the order was served upon the judgment debtor personally or if a corporation, upon one of its officers or directors.

7. This act shall take effect immediately.

STATEMENT

The object of this bill is to remedy the defect in the discovery proceedings statute pointed out by Justice Heher in *Priestman et al.* vs. *Miller Built Homes, Inc., et al.*, 65 N. J. L. J., p, 86, and consequently to authorize discovery proceedings against corporations by amending the discovery proceedings statute accordingly. In order to clarify the statute certain additional language has been added to insure that discovery proceedings may be had by a corporate judgment creditor as well.

The enactment of this legislation is recommended by the Commission on Statutes.

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Such order may be served upon any corporate judgment debtor in the

same manner as a summons is served upon a corporate defendant in an action at law and shall be responded to by the treasurer or other officer of the corporation having the custody of, supervision or control over its books of accounts, and financial records, who shall appear and make discovery concerning the property and things in action of the corporation pursuant to said order.

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2:26–149. The judgment creditor, his or its executor, administrator, successor or assignee, before he shall be granted the order mentioned in section 2:26–148 of this Title, shall present to the judge mentioned in said section 2:26–148 a petition, verified by the oath of such creditor, his or its executor, administrator or assignee, or the agent or attorney of such creditor, administrator, successor or assignee, in which shall be stated the amount due on such judgment, and affiant's belief that such judgment debtor has property or money or things in action due to him or it, or held in trust for him or it, where the trust has been created by, or the fund held in trust has proceeded from himself or itself, over and above such property as is or may be reserved by law.

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2:26–151. Upon presentation of the petition mentioned in section 2:26–149 of this Title, the order mentioned in section 2:26–148 of this Title shall be made, and the judge shall further, on allegation in such petition, or in one supplementary thereto, and proof by the oath of the party or his or its agent or attorney or of any other person of fact and circumstances, showing that any person owes such debtor, or holds money or property in possession or action in trust for him or it, or for his or its use as aforesaid, make order forbidding the payment of such debt, or the transfer of such property or money by or to such debtor, or any third person until further order to be made by such judge.

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No proceedings for contempt for not obeying an order of the judge issued pursuant to section 2:26–148 of this Title shall be instituted against a judgment debtor unless it shall appear that the order was served upon the judgment debtor personally or if a corporation, upon one of its officers or directors.

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