

#63

10/5/66

Memorandum 66-60

Subject: Study 63(L) - The Evidence Code (Agricultural Code Revisions)

A tentative recommendation on this subject (dated June 30, 1966) was widely distributed by the State Department of Agriculture to all interested persons and organizations. The department has advised us that a number of favorable comments were received. Objection was made to the proposed revision of only one section.

At the August meeting, the Commission directed that a technical, nonsubstantive change be made in various sections of the tentative recommendation. We have made this change and prepared a revised recommendation (dated October 1, 1966). Two copies of the revised recommendation are attached. Please mark your suggested revisions on one copy and return it to the staff at or before the October meeting.

Exhibit II (yellow) contains the comments of **Fredrick** H. Hawkins and these comments represent the views of the Cannery League.

Mr. Hawkins does not object to the deletion of the reference to "courts in this state" so long as there is some official legislative history showing that this deletion was made to remove unnecessary language. Our Comments to the various sections will provide this official legislative history and will, we anticipate, be printed by the code publishers under the pertinent sections.

Mr. Hawkins objects to the revision of Section 763.5. He believes that the presumption should be one affecting the burden of producing evidence, rather than the burden of proof. He points out, and the State Department of Agriculture confirms, that the inspections are made by the State, not by the canner.

Professor Degnan's comments are attached as Exhibit III (green). He questions why most presumptions affecting the burden do not apply in a criminal action. You will recall that we adopted this policy because we were advised that the presumptions were drafted with civil actions in mind and that they are not used in criminal actions.

Professor Degnan also questions the deletion of language from Section 438 (relating to administrative investigations). The department concluded that this was a desirable deletion and the staff strongly believes that it is a desirable deletion.

In view of a comment in Professor Degnan's letter, we plan to revise all of the Comments relating to provisions concerning samples to delete any implication that those provisions create a hearsay exception. We will, however, retain the portion of the Comment to the sections that make inspection certificates prima facie evidence to indicate that those sections create a hearsay exception for the certificate.

There are a few technical errors in the revised recommendation which we will pick up when we prepare it for the printer. For example, the words "prima facie evidence" should not be deleted in Section 1040.

We have been advised by the consultant to the Senate Fact Finding Committee on Agriculture that the Committee does not plan to include any of our revisions in its recodified Agricultural Code because I could not assure the Committee in a letter I wrote to them that the changes were nonsubstantive changes that made no change in existing law. This creates no serious problem since we can make conforming amendments in the recodified Agricultural Code in our bill. We do not propose, however, to include such conforming amendments in the proposed legislation that will be contained in our

recommendation to the Legislature. We can request that the Legislative Counsel draft the conforming amendments after the recodified Agricultural Code bill has been introduced and the Commission can, at that time, determine whether a special legislative committee report is needed to make the comments contained in our report evidence of legislative intent.

Respectfully submitted,

John H. DeMully
Executive Secretary

August 16, 1966

Mr. W. J. Hunt, Jr., Chief,
 Division of Dairy Industry
 Department of Agriculture
 1220 "N" Street
 Sacramento, California

Dear Mr. Hunt:

This letter will serve as Dairy Institute's reply to (1) your request and (2) Mr. DeMouilly's request contained in his letter of August 10, 1966, for comment upon the California Law Revision Commission's "Tentative Recommendation Relating to the Evidence Code (Agricultural Code Revisions)".

So far as Dairy Institute is concerned we fully endorse Mr. DeMouilly's introductory four page explanation and feel that he has treated particularly well (in the second complete paragraph of page 3 of his explanation) the Commission's classification of certain Agricultural Code presumptions as between actions for civil enforcement and criminal actions. You already have copies of Dairy Institute's brief submitted to the Commission at a hearing in Long Beach, California, on July 21, 1966. Mr. DeMouilly also previously received a copy. However, for the convenience of your respective files I enclose an additional copy of this brief for each of you. The enclosed brief fully supports the Commission's recommendations as to revision of two sections of the Agricultural Code in which Dairy Institute is vitally interested, namely, Section 651 (Section 9 of the Commission's recommendations) and Section 4135 (Section 311 of the recommendations).

So far as the remainder of the Commission's recommendations are concerned Dairy Institute would think it appropriate to indicate that it will be in accord with whatever position the Department recommends as to such sections. All of these remaining sections are of course of great importance to the Department.

Mr. W. J. Hunt, Jr.
August 16, 1968
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However, in day-to-day enforcement of the codes in respect to the dairy industry they do not assume importance to the dairy industry in the same manner as Section 651 and Section 4135. Accordingly, Dairy Institute fully supports the proposed recommendations.

I believe all the foregoing should sufficiently take care of your request and that of Mr. DeKaully. If either of you need anything further please let me know. In the meanwhile I again express appreciation to Mr. DeKaully and to the Commission for the courtesies shown me at the hearing and for the Commission's response to Dairy Institute's brief and presentation.

Very truly yours,

Amiel Steck, T.

ES:pm

Enclosure

cc: R. J. Beckus
John R. DeKaully

Memo 66-60

EXHIBIT II
LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
STANDARD OIL BUILDING
225 BUSH STREET
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE 421-6133
AREA CODE 415

August 12, 1966.

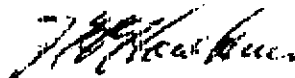
Canners League - Agricultural
Code Amendment Proposed by
California Law Revision
Commission

Mr. W. G. Slawson, Chief,
Bureau of Market Enforcement,
Department of Agriculture,
1220 N-Street,
Sacramento, California.

Dear Bill:

Attached are my comments on the proposals for amendment to the Agricultural Code proposed by the California Law Revision Commission. I have discussed this matter with Bob Marsh of the Canners League who agrees with the enclosed comments and will therefore not answer you separately.

Yours very truly,



Fredrick H. Hawkins

Enc.

cc: Mr. Robert J. Marsh

ES	
AES	
AC	
AA	

COMMENTS ON PROPOSALS FOR AGRICULTURAL
CODE AMENDMENTS BY CALIFORNIA
LAW REVISION COMMISSION

Section 18 - No objection

Sections 115, 124 and 152 - No interest

Section 160.97 - No objection

Sections 332.3, 340.4, 438, 651, 695 and 746.4 - No interest

Section 751(b) - We have no objection to the deletion of the reference to "courts in this State" so long as there is some official legislative history showing that this deletion was made to remove unnecessary language. The possible difficulty is that under some California cases any change in the language of a statute is assumed to change the meaning. The result might be that admissibility would be confined to administrative hearings only. Obviously, the Law Revision Commission does not intend this result. This same comment applies to sections 782 and 920.

Section 763.5 - The present law would seem to charge the canner for delays in inspection without regard to the fact that inspection of tomatoes is done by the State. The Law Revision Commission's suggestions would seem to strengthen this mistake in the law by requiring a canner to convince the trier of the fact that an undue delay in the inspection was the canner's fault.

We therefore object to the proposed amendment and suggest that the underscored sentence in the middle of page 26 be changed to read as follows:

"The presumption established by this paragraph is a presumption affecting the burden of producing evidence."

Section 768 - No objection

Section 772 - No interest

Section 782 - No objection

Sections 796, 841, 892.5 and 893 - No interest

Section 920 - No objection

Section 1040 - No objection

Section 1300.5 - No objection

Sections 4135 and 4148 - No interest


Fredrick H. Hawkins

Memorandum 66-60

EXHIBIT III

UNIVERSITY OF CALIFORNIA, BERKELEY

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SANTA BARBARA • SANTA CRUZ

SCHOOL OF LAW (BOALT HALL)
BERKELEY, CALIFORNIA 94720

September 8, 1966

Mr. John H. DeMouilly
California Law Revision Commission
30 Crothers Hall
Stanford University
Stanford, California

Dear John:

I received your letter of August 22 in Salt Lake just before I left, and I took it with me to Los Angeles where I participated in the C.E.B. summer program on Evidence. I have, therefore, just now had time to read the recommendations with some care and form opinions on them.

Commercial Code. I see here no change from the earlier memorandum you supplied to me and on which you have already received my comments.

Agriculture Code. The stated object here, as under the Commercial Code, was to make no substantive determination but merely to classify existing presumptions in accord with the apparent legislative intent. I do not attempt to second guess on the classifications made, and I certainly see none that strike me as wrong on the face of it. I do have some question about the reasons given for not making most presumptions affecting the burden of proof applicable in criminal actions, and even about a possible ambiguity in the wording. I take it from the general pattern of wording that those presumptions that affect only the burden/producing are intended to be applicable in criminal cases. It would be quite possible, I think, to preserve this scheme by making some presumptions operate as § 604 presumptions in criminal cases and as § 606 presumptions only in civil cases. But this is only a possibility I wish to mention; I do not recommend it as to any particular presumption. It would be a middle ground between

Mr. John H. DeMouilly

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having one operate as a strong presumption in a civil case and as no presumption at all in a civil case or administrative proceeding. There is something slightly anomalous in having weak presumptions extend to criminal cases but in giving strong presumptions no effect at all. Nor would this be unique; you will recall that the presumption that an arrest without a warrant is unlawful applies in both civil and criminal proceedings, but with different effect.

Another question I have about the Agriculture Code Recommendation relates to the comment to § 438. (See p. 17.) This indicates that no hearsay exception is needed to make investigative reports admissible in hearings conducted under the Government Code, since there is no exclusionary rule against hearsay in such proceedings. I agree that that is true, but there is a minor wrinkle. Under Gov. Code § 11513 hearsay is admissible, and it may help support a finding, but hearsay which would be inadmissible in a civil action (i.e., one under the Evidence Code) is not alone sufficient to support a finding. Thus I think I see a minor change in the law, if the report in question is one that would not otherwise be admissible. Probably it can be argued that there is really no change, because the stricken language creates only a hearsay exception for administrative proceedings, and not for court proceedings. Even if that be the correct construction, there is nevertheless a repeal of the language which on its face makes the reports of the director "prima facie evidence of the matters therein contained." We know from the past studies that sometimes prima facie means admissible as an exception to the hearsay rule, that it sometimes means more, enough to support a finding, and that it may go so far as to create a rebuttable presumption. By referring only to the question of admissibility (and correctly concluding that there is none), the comment here suggests silently that neither of the other two questions are covered by the existing language of § 438.

This may be entirely correct. I merely raise the question because I am without sufficient knowledge about the Agriculture Code in general or the operation of the department to have any strong feeling about answers.

I do want to emphasize, however, that the question of what hearsay is admissible under the Evidence Code does have meaning in administrative proceedings generally because of the limitation of Government Code § 11513 referred to above. It is one thing to say that Evidence Code sections do not apply of their own force to nonjudicial proceedings, and another to be sure that Evidence Code sections are not made applicable by the provisions of some other code.

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A third kind of question I have relates to provisions about samples. An example is § 920, treated on page 41. (See also § 796.) Section 920(a), as proposed, makes a sample (here of seed) taken in accord with established procedures admissible as evidence of the condition of the lot sampled, and provides as well that the sample creates a rebuttable presumption of the condition of the lot. Part (b) relates to a report of analysis of the sample. I probably show my own ignorance of the subject matter when I say that it seems to me that part (a) relates to the actual seeds taken, as a sample. It seems to me that it is those seeds, properly identified, that can be received in evidence. The present section functions not so much to make the sample admissible, which it would be anyway upon proper identification, but to make it evidence that the whole lot bore the same characteristics as the sample.

While the comment indicates that part (a) creates a needed hearsay exception, I don't see why one is needed if my analysis is correct. There is no hearsay. Part (b), making the report of analysis admissible, does require the hearsay exception, of course, and the section so states.

It is not clear to me why the part (a) presumption apparently does apply in a criminal action but the part (b) presumption expressly does not. Both affect the burden of proof.

These are the kinds of questions which the Recommendation raises in my mind. I talked to Mr. Herbert L. Cohen last week in Los Angeles, and I know from him that he worked with the Commission on making these proposals. He obviously has a lot of knowledge about the Agriculture Code and the department that I do not have, and some of the things which trouble me above probably have quite simple explanations.

Presumptions in Criminal Cases. I chose to discuss the Agriculture Code recommendations in the context of presumptions as they are presently classified in the Evidence Code without repeating my earlier argument that you cannot have a presumption which requires the jury to return a verdict of guilty if the defendant fails to produce contrary evidence. This does not mean that I have changed my mind. I have just decided to wait until the courts hold you unconstitutional. But to say that a presumption cannot have the effect that § 604 purports to give it does not mean that it can have no effect at all, and I have no doubt that a court can tell the jury that if the sample of seed was taken in accordance

with departmental regulations, and if there is no contrary evidence, **then** they may find that the sample was representative of the condition of the entire lot.

Sincerely,

Ronan E. Degnan
Professor of Law

RED:ma
cc: Herbert Cohen

#63(L)

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

RECOMMENDATION
relating to
THE EVIDENCE CODE

Number 2 - Agricultural Code Revisions

October 1, 1966

California Law Revision Commission
School of Law
Stanford University
Stanford, California

RECOMMENDATION
of the
CALIFORNIA LAW REVISION COMMISSION
relating to
THE EVIDENCE CODE

Number 2 - Agricultural Code Revisions

Upon recommendation of the California Law Revision Commission, the Legislature at the 1965 legislative session enacted the Evidence Code. At the same time, the Legislature directed the Commission to continue its study of the newly enacted code.

The legislation that enacted the Evidence Code also amended and repealed a substantial number of sections in other codes to harmonize those codes with the Evidence Code. One aspect of the continuing study of the Evidence Code is the determination of what additional changes, if any, are needed in other codes. The Commission has studied the Agricultural Code for this purpose and has concluded that a substantial number of changes should be made in that code to conform it to the Evidence Code.

A number of sections in the Agricultural Code create or appear to create rebuttable presumptions, but the Agricultural Code does not specifically indicate the procedural effect of these provisions. Some of these sections expressly create presumptions. Others provide that evidence of one fact is "prima facie evidence" of another. Under Evidence Code Section 602, the legal effect of these sections is to establish a rebuttable presumption: "A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."

Evidence Code Section 601 provides that every rebuttable presumption is

either a presumption affecting the burden of producing evidence or a presumption affecting the burden of proof. Generally, presumptions affecting the burden of producing evidence are those created solely to forestall argument over the existence of a fact that is little likely to be untrue unless actually disputed by the production of contrary evidence. See EVIDENCE CODE § 603 and the Comment thereto. Presumptions affecting the burden of proof, however, are designed to implement some substantive policy of the law, such as the stability of titles to property. See EVIDENCE CODE § 605 and the Comment thereto. Sections 604, 606, and 607 specify the procedural effect of these two kinds of presumptions. The Evidence Code classifies only a few presumptions, leaving to the courts the task of classifying other statutory and decisional presumptions in light of the criteria stated in Evidence Code Sections 603 and 605.

The general standards provided in the Evidence Code do not permit ready classification of all of the presumptions in the Agricultural Code. In the absence of legislative classification, it is likely that different courts would reach different conclusions as to the proper classification of some of the Agricultural Code presumptions. In any event, the effect of any particular presumption could be determined with certainty only after the courts had had occasion to determine the classification of the presumption under the criteria of Evidence Code Sections 603 and 605.

In order to avoid uncertainty and to obviate the need for numerous judicial decisions to determine the effect of the presumptions provisions of the Agricultural Code, the Commission recommends that the code be revised as hereinafter indicated. In making these recommendations, the Commission has made no effort to reevaluate the policies underlying the various presumptions

provisions in the Agricultural Code. The revisions recommended by the Commission are designed merely to effectuate the policies previously approved by the Legislature in the light of the subsequent enactment of the Evidence Code.

In some cases, the intended function of a particular presumption provision in the Evidence Code--i.e., how it would have been classified if the draftsmen of that provision had they been aware of and had been applying the Evidence Code distinction between presumptions affecting the burden of producing evidence and the presumptions affecting the burden of proof--is relatively clear. In many cases, however, the intended function of a presumption provision is not clear, and an educated guess must be made in light of what appears to be the legislative purpose sought to be accomplished by that part of the Agricultural Code in which the particular provision appears.

A number of the presumptions in the Agricultural Code are particularly difficult to classify and can be properly classified only if they are made inapplicable to criminal actions. The presumptions that are so limited in the recommended legislation appear to have been created to give stability to commercial transactions or to allocate the burden of proof in civil enforcement proceedings for economic offenses. It is unlikely that the draftsmen of these provisions had criminal actions in mind when the presumptions were created. Accordingly, the recommended legislation classifies these presumptions as presumptions affecting the burden of proof to give them the maximum effect in civil actions but makes them inapplicable in criminal actions.

Although most of the revisions of the Agricultural Code are needed to conform that code to the presumptions provisions of the Evidence Code, a few sections of the Agricultural Code require adjustment to conform to other provisions of the Evidence Code. The Commission's reasons for the revision of these sections are indicated in the Comments to the recommended legislation.

The Commission recommends the enactment of the following legislation :

An act to amend Sections 18, 115, 124, 152, 160.97, 332.3, 340.4,
438, 651, 695, 746.4, 751, 763.5, 768, 772, 782, 796, 841, 892.5,
893, 920, 1040, 1106.1, 1267, 1268.2, 1272, 1272.5, 1300.3-2,
1300.5, 4135, and 4148 of, and to repeal Section 1105 of, the
Agricultural Code, relating to evidence.

The people of the State of California do enact as follows:

SECTION 1. Section 18 of the Agricultural Code is amended to read:

18. In all matters arising under this code, proof of the fact of possession by any person engaged in the sale of a commodity is-prima-facie-evidence establishes a rebuttable presumption that such commodity is for sale. This presumption is a presumption affecting the burden of producing evidence.

Comment. Numerous sections of the Agricultural Code prohibit the sale of a commodity that is not in compliance with standards established by statute or regulation. "Sell" is defined in Agricultural Code Section 2(j) to include "have in possession for sale." The purpose of Section 18 is to facilitate proof that a commodity in possession of a person engaged in the sale of that kind of commodity is "in possession for sale." 17 OPS. CAL. ATTY. GEN. 154 (1951). Cf. 21 OPS. CAL. ATTY. GEN. 171 (1953).

The effect of a presumption affecting the burden of producing evidence is stated in Evidence Code Section 604: "The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate."

SEC. 2. Section 115 of the Agricultural Code is amended to read:

115. When any shipment of plants, or of anything against which quarantine has been established, is brought into this State and is found infested or infected or there is reasonable cause to ~~presume~~ believe that it may be infested or infected with any pest, the shipment shall be immediately destroyed by, or under the supervision of, the officer inspecting the same, at the expense of the owner or bailee thereof, unless:

(a) The nature of the pest is such that no detriment can be caused to agriculture in the State by the shipment of the plants out of the State. In such case, the officer making the inspection may affix a warning tag or notice to the shipment and shall notify the owner or bailee of said plants to ship the same out of the State within 48 hours, and such owner or bailee shall do so. The shipment shall be under the direction and control of the officer making the inspection and shall be at the expense of the owner or bailee. Immediately after the expiration of the time specified in the notice, said plants shall be seized and destroyed by the inspecting officer at the expense of the owner or bailee.

(b) Such pest may be exterminated by treatment or processing prescribed by the director, and it is determined by the inspecting officer that the nature of the pest is such that no damage can be caused to agriculture in this State, through such treatment or processing, or procedure incidental thereto. In such case, the shipment may be so treated or processed at the expense of the owner or bailee in the

manner, and within the time specified by the inspecting officer, under his supervision, and if so treated or processed, upon determination by the enforcing officer that the pest has been exterminated, the shipment may be released.

Comment. The word "believe" is substituted for "presume" in the introductory clause of Section 115 to reflect the obvious meaning of the section and to eliminate the improper use of the word "presume." No presumption is involved in the determination referred to in Section 115.

SEC. 3. Section 124 of the Agricultural Code is amended to read:

124. When any shipment of nursery stock, plants, or their containers, or ~~appliances~~, or any host or other carrier of any pest brought into any county or locality in the State from another county or locality within the State, is found to be infected or infested with a pest, or there is reasonable cause to ~~presume~~ believe that said shipment may be so infested or infected, the entire shipment shall be refused delivery and may be immediately destroyed by or under the supervision of the commissioner, unless the nature of the pest is such that no damage or detriment can be caused to agriculture by the return of said shipment to the point of shipment. In such case the officer who makes the inspection may affix a warning tag or notice to the shipment and shall notify in writing the owner or bailee thereof to return said shipment to the point of shipment within 48 hours after such notification. The owner or bailee shall, at his own expense, return said shipment under the direction and control of said commissioner, and if the owner or bailee fails to return it within the time specified, the commissioner shall destroy the same. If such pest may be exterminated or controlled by treatment or processing prescribed by the commissioner, and if it shall be determined by the commissioner that the nature of the pest is such that no damage can be caused to agriculture through such treatment, processing, or procedure incidental thereto, such shipment may be so treated or processed at the expense of the owner or bailee of said shipment in a manner and within a time satisfactory to

the commissioner, and under his supervision, and if so treated or processed, said shipment may be released to the consignee. If it shall be determined by the said commissioner that only a portion of said shipment is infested or infected with a pest, or that there is reasonable cause to ~~presume~~ believe that only a portion of said shipment may be so infested or infected, then only such portion of said shipment may be destroyed or returned to origin or treated or processed as hereinbefore provided.

Comment. The word "believe" is substituted for "presume" in Section 124 to reflect the obvious meaning of the section and to eliminate the improper use of the word "presume." No presumption is involved in the determination referred to in Section 124.

SEC. 4 . Section 152 of the Agricultural Code is amended to read:

152. All plants within a citrus white fly district which are infested with citrus white fly or eggs, larvae or pupae thereof, or which there is reasonable cause to ~~presume~~ believe may be infested with citrus white fly, are declared a public nuisance. The existence of any known host plant of citrus white fly within the boundaries of the district shall be deemed reasonable cause to ~~presume~~ believe said host plant to be infested with citrus white fly.

Comment. The word "believe" is substituted for "presume" in Section 152 to reflect the obvious meaning of the section and to eliminate the improper use of the word "presume." No presumption is involved in the determination referred to in Section 152.

§ 160.97

SEC. 5. Section 160.97 of the Agricultural Code is amended to read:

160.97. Any person suffering loss or damage resulting from the use or application by others of any pesticide, or of any substance, method or device for pesticidal purposes or for the purpose of preventing, destroying, repelling, mitigating or correcting any disorder of plants or for the purpose of inhibiting, regulating, stimulating or otherwise altering plant growth by direct application to plants must, within sixty (60) days from the time that the occurrence of such loss or damage became known to him, or in the event a growing crop is alleged to have been damaged, prior to the time fifty percent (50%) of said crop shall have been harvested, provided, such loss or damage was known, file with the county commissioner of the county in which the loss or damage, or some part thereof, is alleged to have occurred, a verified report of loss setting forth so far as known to the claimant the following: name and address of claimant, type, kind and location of property allegedly injured or damaged, date the alleged injury or damage occurred, name of pest control operator allegedly responsible for such loss or damage, and name of the owner or occupant of the property for whom such pest control operator was rendering labor or services.

The filing of such report or the failure to file such report need not be alleged in any complaint which might be filed, and the failure to file the report as herein provided for shall not be a bar to the maintenance of a civil action for the recovery of damages for such loss or damage.

Proof of the failure to file the report herein required shall create-a-rebuttable-presumption is evidence that no such loss or damage occurred.

"Pesticide" means any economic poison as defined in Section 1061 of this code.

Comment. A presumption is not an appropriate method of accomplishing the purpose of the third paragraph of Section 160.97. Under the Evidence Code, the only effect of a rebuttable presumption is to shift either the burden of proof or the burden of producing evidence. See Evidence Code Sections 601, 604, and 606 and Comments thereto. Since the person required to file the report under Section 160.97 already has the burden of proof and the burden of producing evidence, the third paragraph of that section can have no effect.

Prior to the enactment of the Evidence Code, the presumption that arose upon proof of failure to file the report was itself evidence that no loss or damage occurred. This resulted from the former rule that a presumption was evidence that had to be weighed against conflicting evidence. Smellie v. Southern Pac. Co., 212 Cal. 540, 299 Pac. 529 (1931). Section 600 of the Evidence Code abolished this rule. Hence, Section 160.97 has been revised to restore the substantive effect that it had before the Evidence Code was enacted.

SEC. 6. Section 332.3 of the Agricultural Code is amended to read:

332.3. In all suits at law or in equity, when the title to any animal is involved, proof of the brand or brand and marks of the animal shall be prima-facie-evidence establishes a rebuttable presumption that the owner of the brand or brand and mark was the owner of the animal at all times during which the brand or brand and mark was duly recorded as provided in this code. This presumption is a presumption affect the burden of proof.

The right of any person to use such brand or brand and mark may be established by a certified copy of the brand records on file in the Bureau of Livestock Identification.

Comment. The effect of a presumption affecting the burden of proof

is stated in Evidence Code Section 606: "The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

Classifying this presumption as a presumption affecting the burden of proof clarifies which of two possibly conflicting presumptions will prevail. The Section 332.3 presumption, being a presumption affecting the burden of proof, prevails over the presumption provided by Evidence Code Section 637 that the things which a person possesses are presumed to be owned by him.

SEC. 7. Section 340.4 of the Agricultural Code is amended to read:

340.4. Proof of possession or ownership of cattle with an unrecorded, forfeited, or cancelled brand is-~~prima-facie-evidence~~ establishes a rebuttable presumption that the person in possession or the owner of the cattle has branded them with such brand. This presumption is a presumption affecting the burden of proof.

Comment. Agricultural Code Section 340.1 provides that it is unlawful to use an unrecorded, forfeited, or canceled brand. Section 340.4 is designed to further the public policy against such brands by making it unlawful for a person to own or possess cattle with an unlawful brand unless he can establish that he was not the one who branded the cattle.

The offense under Sections 340.1 and 340.4 is analogous to the provision of the Dangerous Weapons' Control Law (Penal Code Section 12091) that makes possession of a firearm whose identification marks have been tampered with presumptive evidence that the tampering was done by the possessor. Penal Code Section 12091 requires the possessor to produce sufficient proof to raise a reasonable doubt that he tampered with the identification marks. People v. Scott, 24 Cal.2d 774, 151 P.2d 517 (1944). Under the Evidence Code, as under the previously existing law, Penal Code Section 12091 has the effect of making it a matter of defense for the person in possession of the firearm to show that he is not the one who tampered with the identification marks. Agricultural Code Section 340.4, as amended, has the same effect. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact.").

When Section 340.4 applies in a criminal case, the defendant can establish his defense by merely raising a reasonable doubt that he was the person who used the unlawful brand on the cattle owned or possessed by him. See Evidence Code Section 6C7 and the Comment thereto. In a civil case, the defendant would have to establish his defense by a preponderance of the evidence. See Evidence Code Section 115.

SEC. 8. Section 438 of the Agricultural Code is amended to read:

438. The director is authorized to make any and all necessary investigations relative to reported violations of this division, as provided by Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. ~~Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director shall be prima facie evidence of the matters therein contained, and may be admitted into evidence in any hearing pursuant to said article of the Government Code.~~

Comment. The second sentence of Section 438 has been deleted because it is unnecessary. The article referred to authorizes the director to conduct investigative hearings. The deleted sentence merely authorizes the admission of departmental records in such hearings. The sentence is unnecessary for this purpose since the Government Code does not limit the admission of evidence in investigative hearings. The authority to introduce such records in administrative hearings is based on Government Code Section 11513 and is unaffected by the amendment of this section.

SEC. 9. Section 651 of the Agricultural Code is amended to read:

651. As used in this division, "imitation milk product" means any substance, mixture or compound, other than milk or milk products, intended for human food, made in imitation of milk or any milk product. Proof that any fat or oil other than milk fat has been combined with any milk product and that the resulting substance, mixture, or compound has the outward appearance and semblance in taste and otherwise of a milk product and is sold for use without further processing ~~shall be prima facie proof~~ establishes a rebuttable presumption that such substance, mixture, or compound is an "imitation milk product." This presumption is a presumption affecting the burden of proof, but it does not apply in a criminal action. This section shall not apply to any substance, mixture, or compound in which the presence of oil or fat other than milk fat is expressly permitted and provided for in this division.

Comment. Under Evidence Code Section 606, the effect of a **presumption** affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

SEC. 10. Section 695 of the Agricultural Code is amended to read:

695. Proof of the use of any container, cabinet or other dairy equipment by any person other than the person, or association whose name, mark, or device shall be upon the same, and other than the members of any association registering the same, without the written consent provided for in Section 690, or of the possession by any junk dealer or dealer in second-hand articles of any such containers, cabinets or other dairy equipment, the description of the name, mark or device of which has been so filed and published as aforesaid ~~is presumptive evidence~~ establishes a rebuttable presumption of unlawful use of or traffic in such containers, cabinets or other dairy equipment. This presumption is a presumption affecting the burden of proof.

Comment. Section 695 is a part of a comprehensive statute designed to regulate use of containers and other dairy equipment marked with a registered brand. In substance, the statute requires that any person who finds or receives such equipment must return it to the owner within seven days (Section 692) and prohibits use or sale of such equipment by any person other than the owner without the owner's written permission (Section 693). Section 695 facilitates proof of a violation of the statute by creating a presumption that operates to place on the person who uses such container or equipment or upon the junk dealer or second-hand dealer in possession of such container or equipment the burden of proving that his use or possession is not unlawful. See EVIDENCE CODE § 606

("The effect of a presumption affecting the burden of proof is to impose on the party against whom it operates the burden of proof as to the non-existence of the presumed fact.").

When Section 695 applies in a criminal action, the defendant can establish his defense by merely raising a reasonable doubt as to the unlawfulness of his possession or use. See Evidence Code Section 607 and the Comment thereto. In a civil case, the defendant would have to establish that his possession or use was lawful by a preponderance of the evidence. See Evidence Code Section 115.

SEC. 11. Section 746.4 of the Agricultural Code is amended to read:

746.4 (a) All handlers, including produce-handlers, shall keep complete and accurate records of all milk fat which they purchase, or possession or control of which they acquire from producers in the form of unprocessed milk, cream, or in any other unprocessed form. Producer-handlers shall include their own production in such records. They shall also keep complete and accurate records of all milk fat utilized by them for processing. Such records shall be in such form and contain such information, relevant to the purposes of this chapter, as the director may, by order or regulation, prescribe, shall be preserved for a period of two (2) years, and shall be open to inspection at any time on the request of the director. The director may, by rule, order, or regulation, require every such handler and producer-handler to file with him returns on forms to be prescribed and furnished by him, giving the information, or any part thereof, of which said first handlers are required to keep records, as aforesaid.

(b) In the case of any failure of any handler or producer-handler to make adequate returns, when required, the director shall estimate the amount of delinquency from the records of the department, or from such other source or sources of information as may be available, and in any action by the director to recover fees hereunder, a certificate of the director showing the amount determined by it to be required to be paid by the person

§ 746.4

required to pay the fees ~~shall-be~~ is prima facie evidence of the fact of delinquency of the amount due. The presumption established by this subdivision is a presumption affecting the burden of proof.

Comment. Subdivision (b) of Section 746 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Since the presumption is a presumption affecting the burden of proof, the person who claims that the amount estimated by the director is not correct has the burden of proof to establish the correct amount. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact.").

SEC. 12. Section 751 of the Agricultural Code is amended to read:

751. (a) The director may investigate and certify to shippers or other financially interested parties the analysis, classification, grade, quality or condition of fruit, vegetable or other agricultural products, either raw or processed, under such rules and regulations as he may prescribe, including the payment of reasonable fees.

(b) Every certificate relating to the analysis, classification, condition, grade or quality of agricultural products, either raw or processed, and every duly certified copy of such certificate, ~~shall be received in all courts of the State of California as~~ is prima facie evidence of the truth of the statements therein contained, if duly issued either:

- (1) By the director under authority of this code; or
- (2) In cooperation between federal and state agencies, authorities, or organizations under authority of an act of Congress and an act of the Legislature of any state; or
- (3) Under authority of a federal statute.

(c) The presumption established by subdivision (b) is a presumption affecting the burden of proof, but it does not apply in a criminal action.

(d) Any certificate issued by the State under the provisions of this chapter or by any person shall truly state the grade,

quality and condition of the product or products certified, and a true copy of any such certificate shall be furnished to the director or to the commissioner of the county where the shipment originated; on demand made in writing.

(e) Nothing in this chapter applies to any investigation made or any certificate issued by any person, firm or corporation in respect to canned or dried fruit shipped, packed or stored by it or to any investigation made or any certificate issued by any bona fide chamber of commerce, board of trade or other bona fide nonprofit association of producers or merchants in respect to canned or dried fruit sold, shipped, packed or stored by any of its members or other persons for whom it may make any such inspection or issue any such certificate.

(f) The director is authorized to cooperate with the United States Department of Agriculture in carrying out the provisions of this chapter.

Comment. Subdivision (b) of Section 751 not only provides an exception to the hearsay rule and the best evidence rule but also establishes a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption.").

Subdivision (c) classifies the presumption established by subdivision (b) as one affecting the burden of proof. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact.").

The words "shall be received in all courts of the State of California" have been deleted as unnecessary.

SEC. 13 . Section 763.5 of the Agricultural Code is amended to read:

763.5. Each load of tomatoes offered for delivery by a grower to a canner in accordance with the terms of a contract between them shall be given such inspection as may be required without undue delay and within a reasonable time after such load arrives at the cannery or other point specified for such inspection.

Any load of tomatoes so offered for inspection and delivery that is rendered unsuitable for canning purposes as a direct result of unwarranted delay in inspection, wilfully or negligently caused or permitted by the canner, shall be paid for by the canner at the full price agreed upon for tomatoes suitable for canning purposes and on the basis that such tomatoes were of the grade, quality, and condition stipulated in the contract. If no price is stipulated in the contract, payment shall be made by the canner to the grower on the basis of the then prevailing market price for tomatoes of the grade, quality and condition specified in the contract.

In addition to any other remedy, the grower so offering for inspection and delivery any load of tomatoes who has incurred any added handling costs as a direct result of the unwarranted delay in inspection and delivery, wilfully or negligently caused or permitted by a canner, may recover the amount of such added handling costs by an action at law against such canner.

A delay in such inspection and acceptance for delivery for a period of six hours or more after a load of tomatoes is offered for inspection and delivery in accordance with the terms of a contract between the grower and the canner ~~shall be prima facie evidence that~~

~~such delay was~~ is presumed to be unwarranted and caused by wilfulness or negligence on the part of the canner; provided, however,
~~that~~ but during 15 24-hour peak periods in any tomato canning season ~~an delay in such inspection and acceptance of delivery shall~~
~~not be prima facie evidence that such delay was caused by wilfulness or negligence on the part of the canner~~ this presumption does
not apply unless such delay covered a period of more than 12 hours. Such peak periods shall be the periods of maximum delivery as shown by the records of the canner and shall be designated by the canners for each cannery or other specified inspection point promptly after the close of each tomato canning season by posting a notice of the peak periods for each cannery or inspection point in a conspicuous place at such cannery or inspection point. The presumption established by this paragraph is a presumption affecting the burden of proof.

No grower shall have any rights under this section unless he shall register each load of tomatoes with the canner at the time he offers such load for inspection and delivery. Such registration shall be made by obtaining from the canner a certificate, which such canner is hereby required to furnish, stating the time of arrival of the load at the cannery or other specified inspection point.

Comment. The presumption created by the fourth paragraph of Section 763.5 is a presumption affecting the burden of proof. As a result, when the grower establishes that a load of tomatoes was rendered unsuitable for canning purposes because it was not inspected within the time specified in the section, the canner has the burden of proof to

§ 763.5

establish that the delay was not willfully or negligently caused or permitted by him. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact.").

§ 768

SEC. 14. Section 768 of the Agricultural Code is amended to read:

768. The inspection certificate issued pursuant to the provisions of this chapter ~~shall be~~ is prima facie evidence of the percentage of defects according to the definition of such defects as defined in this chapter. The presumption established by this section is a presumption affecting the burden of proof, but it does not apply in a criminal action.

Comment. Section 768 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

§ 772

SEC. 15. Section 772 of the Agricultural Code is amended to read:

772. The certificates provided for in this chapter ~~shall be~~ are prima facie evidence ~~before any court in this State~~ of the true average soluble solids test of all the grapes in the lot or load under consideration. The presumption established by this section is a presumption affecting the burden of proof, but it does not apply in a criminal action.

Comment. Section 772 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

The phrase "before any court in this State" has been deleted as unnecessary.

SEC. 16. Section 782 of the Agricultural Code is amended to read:

782. The director and the commissioners of each county of the state, their deputies and inspectors, under the supervision and control of the director shall enforce this chapter. The refusal of any officer authorized under this chapter to carry out the orders and directions of the director in the enforcement of this chapter is neglect of duty.

The director by regulation may prescribe methods of selecting samples of lots or containers of fruits, nuts and vegetables on a basis of size or other specific classification, which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled; establish and issue official color charts depicting the color standards and requirements established in this chapter; and make such other rules and regulations as are reasonably necessary to secure uniformity in the enforcement of this chapter.

Any sample taken under the provisions of this chapter ~~shall be~~ is prima facie evidence in any court in this State, of the true conditions of the entire lot in the examination of which said sample was taken. The presumption established by this paragraph is a presumption affecting the burden of proof.

A written notice of violation, issued by a duly qualified representative of the director or by commissioners, their deputies and inspectors holding valid standardization certificates of eligibility as enforcing officers of this chapter, stating that a certain lot of produce is in violation of the provisions of this chapter and

§ 782

based upon the examination of such sample, ~~shall be~~ is prima facie evidence ~~in any court in this State,~~ of the true condition of the entire lot. The presumption established by this paragraph is a presumption affecting the burden of proof, but it does not apply in a criminal action.

Comment. The third paragraph of Section 782 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). The hearsay exception exists and the presumption arises when it is established that the sample was taken according to the method prescribed by regulation. Since the presumption is one that affects the burden of proof, it places on the person claiming that the sample is not representative of the entire lot the burden of proving that to be a fact. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."). Concerning the effect of the presumption in a criminal action, see Evidence Code Section 607 and the Comment thereto.

The last paragraph of Section 782 not only creates an exception to the hearsay rule but also a presumption. The presumption is a presumption affecting the burden of proof.

The phrase "in any court in this State" has been deleted as unnecessary.

SEC. 17. Section 796 of the Agricultural Code is amended to read:

796. Grapefruit shall be (1) mature, (2) free from serious decay, (3) free from serious damage by freezing or drying due to any cause, (4) free from serious injury due to any cause, (5) free from serious scars, including those caused by insects, (6) free from serious scale, (7) free from serious dirt, smudge stain, sooty mold, rot residues or other foreign material, (8) free from serious staining, (9) free from serious greenish or brownish rind oil spots, (10) free from serious spotting or pitting, (11) free from serious roughness, (12) free from serious aging, (13) free from serious softness, (14) free from serious sunburn, (15) free from serious sheepnose.

The following standards shall be applied in determining whether or not grapefruit meet the requirements of this section:

(1) Grapefruit are not mature unless (a) at the time of picking and at all times thereafter the juice contains soluble solids, as determined by a Brix scale hydrometer, equal to or in excess of five and one-half parts to every part of acid contained in the juice (the acidity of the juice to be calculated as citric acid without water of crystallization), except that in view of differences in climatic conditions prevailing in the desert areas, which result in the grapefruit grown in those areas having, at maturity, a higher percentage of soluble solids to acid than the mature grapefruit grown in other areas of the State, grapefruit produced in the desert areas are considered mature if at the time of picking and at all times thereafter, the juice contains soluble solids, as determined by a Brix scale

hydrometer, equal to or in excess of six parts to every part of acid contained in the juice (the acidity of the juice to be calculated as citric acid without water of crystallization), and (b) 90 percent or more of the grapefruit, by count, at time of picking and at all times thereafter have attained, on at least two-thirds of the fruit surface, at least a minimum characteristic yellow or grapefruit color, as indicated by Color Plate No. 19 L3 in "Dictionary of Color," Maerz & Paul first edition 1930. Grapefruit produced outside of this State under climatic conditions similar to those prevailing in the desert areas and offered for sale in this State shall meet the same maturity standard as that prescribed for grapefruit produced in desert areas. The geographical boundaries of the desert areas of the State of California shall be defined as Imperial County, the portions of Riverside and San Diego Counties located east of a line extending north and south through White Water, and that portion of San Bernardino County located east of the 115 meridian.

(2) Decay is serious if any part of the grapefruit is affected with decay.

(3) Damage by freezing or drying due to any cause is serious if 20 percent or more of the pulp or edible portion of the grapefruit shows evidence of drying or a mushy condition; and damage by freezing or drying due to any cause is very serious if 40 percent or more of the pulp or edible portion of the grapefruit shows evidence of drying or a mushy condition. Evidence of damage shall be determined by as many cuts of each individual grapefruit as are necessary.

(4) Injury due to any cause is serious if the skin (rind) is broken and the injury is not healed.

(5) Scars, including those caused by insects, are serious if they are dark, or rough, or deep and if they aggregate 25 percent or more of the fruit surface.

(6) Scale is serious if 50 percent or more of the fruit surface shows scale infestation in excess of 50 scales per square inch.

(7) Dirt, smudge stain, sooty mold, rot residues, or other foreign material are serious if an aggregate area of 25 percent or more of the fruit surface is affected.

(8) Staining of the skin (rind) is serious if 50 percent or more of the fruit surface is affected with a pronounced discoloration.

(9) Greenish or brownish rind oil spots are serious if they cover an aggregate area of 25 percent or more of the fruit surface.

(10) Spotting or pitting is serious if the spots or pits are sunken and cover an aggregate area of 10 percent or more of the fruit surface.

(11) Roughness is serious if 90 percent or more of the fruit surfact is rough and coarse, or lumpy.

(12) Aging is serious if one-third or more of the surface of the grapefruit is dried and hard.

(13) Softness is serious if the grapefruit is flabby.

(14) Sunburn is serious if it causes decided flattening of the fruit and drying and discoloration of the skin (rind) affecting more than one-third of the fruit surface.

(15) Sheepnose is serious if the stem end of the grapefruit protrudes decidedly.

The compliance or noncompliance with the standards for grapefruit prescribed in this chapter, except as to maturity, may be determined from a representative sample taken as follows:

(a) When in containers the sample shall consist of not less than 10 percent, by count, of the grapefruit in each of the containers selected as the sample.

(b) When in bulk the sample shall consist of not less than 100 grapefruit, except that where the total number of grapefruit in the bulk lot is less than 1,000 grapefruit a representative sample shall consist of 10 percent of the grapefruit.

Each individual grapefruit may be examined for one or all of the defects, except as to maturity, but only one defect shall be counted or scored against any individual grapefruit.

The official sample for testing for maturity of grapefruit shall consist of not less than 30 grapefruit.

Any such sample so taken ~~shall constitute~~ is prima facie evidence of the character of the entire lot from which such sample was taken, ~~as provided in Section 782 of this code~~. The presumption established by this paragraph is a presumption affecting the burden of proof.

Tolerances to be applied to certain of the foregoing standards are hereby established. The grapefruit in any one container or bulk lot shall be deemed as a whole to meet the requirements of Standards Numbers 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this section so long as not over 10 percent, by count, of the individual grapefruit in such container or bulk lot are below said standards, and so long as not over 5 percent, by count, thereof are below any one of said standards. The grapefruit in any one container or bulk lot shall be deemed, as a whole, to meet the requirements of Standard Number 3

of this section so long as not more than 15 percent, by count, of the individual grapefruit in such container or bulk lot are seriously damaged by freezing or drying due to any cause, but not to exceed one-third of this tolerance shall be allowed for very serious damage by freezing or drying due to any cause.

Comment. The next to last paragraph of Section 796 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is *prima facie* evidence of another fact establishes a rebuttable presumption."). The hearsay exception exists and the presumption arises when it is established that the sample was taken according to the method prescribed in the section. Since the presumption is one that affects the burden of proof, it places on the person claiming that the sample is not representative of the entire lot the burden of proving that to be a fact. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."). Concerning the effect of the presumption in a criminal action, see Evidence Code Section 607 and the Comment thereto.

The phrase "as provided in Section 782 of this code" has been deleted as unnecessary:

SEC. 18. Section 841 of the Agricultural Code is amended to read:

841. The director and the commissioners of each county of the State, their deputies and inspectors, under the supervision and control of the director shall enforce this chapter. The refusal of any officer authorized under this chapter to carry out the orders and directions of the director in the enforcement of this chapter is neglect of duty.

The director by regulation may prescribe methods of selecting samples of lots or containers of honey, which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled; establish and issue official color charts depicting the color standards and requirements established in this chapter; and make other rules and regulations as are reasonably necessary to secure uniformity in the enforcement of this chapter.

Any sample taken under the provisions of this chapter ~~shall be~~ is prima facie evidence, in any court in this State, of the true condition of the entire lot in the examination of which said sample was taken. The presumption established by this paragraph is a presumption affecting the burden of proof.

Comment. The last paragraph of Section 841 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). The hearsay exception exists and the presumption arises when it is established that the sample was taken in accordance with the regulations. Since the presumption is one that affects the burden of proof, it places on the

person claiming that the sample is not representative of the entire lot the burden of proving that to be a fact. EVIDENCE CODE §606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."). Concerning the effect of the presumption in a criminal action, see Evidence Code Section 607 and the Comment thereto.

The phrase "in any court in this State" has been deleted as unnecessary.

§ 892.5

SEC. 19. Section 892.5 of the Agricultural Code is amended to read:

892.5. The director may investigate and certify to shippers or other financially interested parties the grade, quality and condition of barley. Said certificates shall be based upon the United States standards for barley and ~~shall-be~~ are prima facie evidence of the truth of the statements contained therein. The presumption established by this section is a presumption affecting the burden of proof, but it does not apply in a criminal action.

Comment. Section 892.5 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

§ 893

SEC. 20. Section 893 of the Agricultural Code is amended to read:

893. The director shall inspect and grade upon request and certify to any interested party the quality and condition of any field crop or other agricultural product under such rules and regulations as he may prescribe. Certificates issued by authorized agents of the director ~~shall be received in the courts in the State~~ as are prima facie evidence of the truth of the statements therein contained. The presumption established by this section is a presumption affecting the burden of proof, but it does not apply to a criminal action. Such inspection shall not be made or such certificates issued by any person not specifically authorized by the director in reference to any field crop product for which State standards have been established. Any person so authorized shall comply with the rules and regulations issued by the director relative to the certification of field crop products.

Comment. Section 893 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CCDE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

The phrase "shall be received in the courts in the State" has been deleted as unnecessary.

§ 920

SEC. 21. Section 920 of the Agricultural Code is amended to read:

920. (a) Any sample taken by an enforcement officer in accordance with rules and regulations promulgated under the provisions of this article for the taking of official samples ~~shall be~~ is prima facie evidence, in any court in this State, of the true condition of the entire lot from which the sample was taken. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) A written report issued by the State Seed Laboratory showing the analysis of any such sample ~~shall be~~ is prima facie evidence in any court in this state, of the true analysis of the entire lot from which the sample was taken. The presumption established by this subdivision is a presumption affecting the burden of proof, but it does not apply in a criminal action.

Comment. Subdivision (a) of Section 920 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). The hearsay exception exists and the presumption arises when it is established that the sample was taken in accordance with the method prescribed by the rules and regulations. Since the presumption is one that affects the burden of proof, it places on the person claiming that the sample is not representative of the entire lot the burden of proving that to be a fact. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the non-existence of the presumed fact."). Concerning the effect of the presumption

in a criminal action, see Evidence Code Section 607 and the Comment thereto.

Subdivision (b) not only creates an exception to the hearsay rule but also a presumption. The presumption is a presumption affecting the burden of proof.

The phrase "in any court in this State" has been deleted as unnecessary.

§ 1040

SEC. 22. Section 1040 of the Agricultural Code is amended to read:

1040. ~~In any action, civil or criminal, in any court in this State,~~ A certificate of the director stating the results of any analysis, purported to have been made under the provisions of this act, ~~shall be~~ is prima facie evidence of the fact that the sample or samples mentioned in said analysis or certificate were properly analyzed; that such samples were taken as herein provided; that the substance analyzed contained the component parts stated in such certificate and analysis; and that the samples were taken from the lots, parcels or packages mentioned in said certificate. The presumption established by this section is a presumption affecting the burden of proof, but it does not apply in a criminal action.

Comment. Section 1040 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the non-existence of the presumed fact."

Although the certificate is admissible in a criminal action, no presumptive effect is given to it in a criminal action. This construction seems to be a reasonable construction of the clause "in any action, civil or criminal, in any court in this State" which formerly appeared in the section.

§ 1105

SEC. 23. Section 1105 of the Agricultural Code is repealed.

~~1105.--It shall be presumed from the fact of possession by any person, firm or corporation engaged in the sale of eggs that such eggs are for sale.~~

Comment. Section 1105 is unnecessary in light of Agricultural Code Section 18. See Section 18 and the Comment thereto. Compare 21 OPS. CAL. ATTY. GEN. 171 (1953)(concerning Section 1105) with 17 OPS. CAL. ATTY. GEN. 154 (1951)(concerning Section 18).

SEC. 24. Section 1106.1 of the Agricultural Code is amended to read:

1106.1. The director, by regulation, shall prescribe methods of selecting samples of lots or containers of eggs which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled. Any sample taken hereunder ~~shall be~~ is prima facie evidence ~~in any court in this State~~ of the true condition of the entire lot in the examination of which said sample was taken. The presumption established by this section is a presumption affecting the burden of proof.

Comment. Section 1106.1 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). The hearsay exception exists and the presumption arises when it is established that the sample was taken in accordance with the methods prescribed by regulation. Since the presumption is one that affects the burden of proof, it places on the person claiming that the sample is not representative of the entire lot the burden of proving that to be a fact. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."). Concerning the effect of the presumption in a criminal action, see Evidence Code Section 607 and the Comment thereto.

The phrase "in any court in this State" has been deleted as unnecessary.

SEC. 25. Section 1267 of the Agricultural Code is amended to read:

1267. For the purpose of enforcing the provisions of this chapter the director is authorized to receive verified complaints from producers against any commission merchant, dealer, broker, cash buyer, or agent or any person, assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to the said complaint. The director or his authorized agents are empowered to administer oaths of verification on said complaints. He shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in which any farm products are kept, stored, handled or transported. He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers and other documents, articles or instruments to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said director shall be guilty of contempt and shall be certified to the superior court of the State for punishment of such contempt. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director shall be prima facie evidence of the matters therein contained, and may be admitted into evidence in any hearing provided in this chapter.

Comment. The last sentence of Section 1267 has been deleted. This sentence is inconsistent with subdivision (c) of Section 1268.2.

SEC. 26. Section 1268.2 of the Agricultural Code is amended to read:

1268.2. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may otherwise required by statute to be recognized in civil actions at the hearing , and irrelevant and unduly repetitious evidence shall be excluded.

Comment. The revision of the last sentence of Section 1268.2 is necessary because, under Division 8 (commencing with Section 900) of the Evidence Code, the privileges applicable in some administrative proceedings are at times different from those applicable in civil actions. As revised, the last sentence of Section 1268.2 conforms to the last sentence of Government Code Section 11513 (State Administrative Procedure Act) as amended in the act that enacted the Evidence Code.

SEC. 27. Section 1272 of the Agricultural Code is amended to read:

1272. (a) When requested by his consignor, a commission merchant shall before the close of the next business day following the sale of any farm products consigned to him transmit or deliver to the owner or consignor of the farm products a true written report of such sale, showing the amount sold, and the selling price. Remittance in full of the amount realized from such sales, including all collections, overcharges and damages, less the agreed commission and other charges, together with a complete account of sales, shall be made to the consignor within ten days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing. In the account the names and addresses of purchasers need not be given, except as required in Section 1271. Provided, however, where a commission merchant has entered into a written contract with two or more owners or consignors which contract provides that the returns for farm products sold for the account of such owners or consignors shall be pooled on a definite basis as to size and/or grade, during a certain period of time then a commission merchant shall be required to render an account of sales, showing the net average pool return on each size and/or grade from sales made and shall keep a correct record of such sales, showing in detail all information as required in Section 1271 of the Agricultural Code.

(b) Every commission merchant shall retain a copy of all records covering each transaction, for a period of one year from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor,

or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity or weight of any lot, shipment or consignment of farm products, the department shall furnish upon the payment of a reasonable fee therefor by the requesting party a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate shall ~~be~~ is prima facie evidence ~~in all courts of this State as to the recitals thereof~~ of the truth of the statements contained therein . The presumption established by this subdivision is a presumption affecting the burden of proof, but it does not apply in a criminal action. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned.

(c) Every dealer must pay for farm products delivered to him or it at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such farm products.

(d) No claim may be made as against the seller of farm products by a dealer or cash buyer under this chapter, and no credit may be allowed to such dealer or cash buyer as against a producer of farm products by reason of damage to or loss, dumping, or disposal of farm products sold to said dealer or cash buyer, in any payment, accounting or settlement made by said dealer or cash buyer to said producer, unless said dealer or cash buyer has secured and is in

possession of a certificate, issued by an agricultural commissioner, county health officer, director, a duly authorized officer of the State Board of Health, or by some other official now or hereafter authorized by law, to the effect that the farm products involved have been damaged, dumped, destroyed or otherwise disposed of as unfit for human consumption or as in violation of the fruit and vegetable standards of the Agricultural Code as contained in Division 5, Chapter 2 thereof. Such certificate will not be valid as proof of proper claim, credit or offset unless issued within twenty-four hours of the receipt by the dealer or cash buyer of the farm products involved.

Comment. Subdivision (b) of Section 1272 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

The phrase "in all courts of this State" has been deleted as unnecessary.

SEC. 28. Section 1272.5 of the Agricultural Code is amended to read:

1272.5. Proof of any sale of farm products made by a commission merchant for less than the current market price to any person with whom he has any financial connection, directly or indirectly as owner of its corporate stock, as copartner, or otherwise, or any sale out of which said commission merchant receives, directly or indirectly, any portion of the purchase price, other than the commission named in licensee's application or in a specific contract with the consignor, shall-be-prima-facie-evidenece establishes a rebuttable presumption of fraud within the meaning of this chapter. This presumption is a presumption affecting the burden of proof.

No commission merchant, dealer, or broker who finances, lends money, or otherwise makes advances of money or credits to another commission merchant, dealer, or broker may deduct from the proceeds of farm products marketed, sold, or otherwise handled by him on behalf of or for the account of the commission merchant, dealer, or broker to whom such money, loans, advances or credits are made, an amount exceeding a reasonable commission or brokerage together with the usual and customary selling charges and/or costs of marketing, and may not otherwise divert to his own use or account or in liquidation of such loans, advances or credits the moneys, returns, or proceeds accruing from the sale, handling or marketing of farm products handled by him on behalf of or for the account of the commission merchant, dealer, or broker to whom or for whom such loans, advances, or credits are made.

Comment. When the facts that give rise to the presumption under Section 1272.5 have been established, the commission merchant has the burden of proof to show the absence of fraud. EVIDENCE CODE § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."). Concerning the effect of this presumption in a criminal action, see Evidence Code Section 607.

This presumption has been classified as a presumption affecting the burden of proof in recognition of the fact that a commission merchant serves in a fiduciary capacity. See Raymond v. Independent Growers, Inc., 133 Cal. App.2d 154, 284 P.2d 57 (1955). See also Section 1272 which provides that the commission merchant has the burden of proving the correctness of his accounting as to any transaction which may be questioned.

SEC. 29. Section 1300.3-2 of the Agricultural Code is amended to read:

1300.3-2. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are ~~now or hereafter may~~ otherwise required by statute to be recognized in civil actions at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

Comment. The revision of the last sentence of Section 1300.3-2 is necessary because, under Division 8 (commencing with Section 900) of the Evidence Code, the privileges applicable in some administrative proceedings are at times different from those applicable in civil actions. As revised, the last sentence of Section 1300.3-2 conforms to the last sentence of Government Code Section 11513 (State Administrative Procedure Act) as revised in the act that enacted the Evidence Code.

SEC. 30 . Section 1300.5 of the Agricultural Code is amended to read:

1300.5. (a) Every processor other than a licensed winegrower who purchases farm products from the producer thereof on a packout basis shall promptly upon completion of said processing inform the producer of the results obtained, and in so doing shall account fully and completely for the entire weight of the farm product so received from the producer.

Where a specific grade or quality is a condition of a packout basis contract between producer and the processor, such grade or quality shall be determined at the completion of said processing by a state or federal agency duly authorized to determine said grade or quality, and the certificate issued in connection with said inspection ~~shall be~~ is prima facie evidence of the grade or condition or both of the finished product. The presumption established by this paragraph is a presumption affecting the burden of proof, but it does not apply in a criminal action.

Every contract between a processor and a producer covering the purchase of farm products on a packout basis shall, in addition to designating the price to be paid for the specific grade, designate the price to be paid for any other grade into which the farm product is processed as determined by inspection of the finished product by a duly authorized state or federal agency.

(b) Every processor other than a licensed winegrower who receives farm products from the producer thereof for processing on a consigned basis shall promptly make and keep a correct record showing in detail the following with reference to the processing, handling, storage, and sale of said farm products:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The quantity received.
- (4) The size or sizes of the containers into which the finished product is packed.
- (5) The grade or grades and quality of the finished product.
- (6) The price or prices obtained from the sale of the finished product.
- (7) An itemized statement of costs and charges paid in connection with the processing, handling, storage, and sale of the farm product.

(c) Where the processor has entered into a written contract with two or more owners or consignors, which contract provides that the returns for the farm products handled and sold for the account of such owners or consignors shall be pooled on a definite basis as to grade or quality, or both, during a specific period of time, then the processor shall render an account of sale showing the net average pool return on each grade and quality from sales made, showing in detail all charges in connection with the handling, processing and selling of such farm products, and the processor shall keep a correct record of such sales and charges.

(d) Every processor shall keep accurate books and records showing the names and addresses of all producers selling and making delivery of farm products to him, including the dates of deliveries, the quantities thereof, and the agreed price to be paid therefor, and if no agreed price has been arrived at, or a method for determining the same agreed upon, then such agreed price shall be considered the value of such products as of date of delivery. For the purpose of ascertaining such

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value and in addition to other evidence, reference may be had to price quotations from the federal-state market news service. Accurate grading and weight receipts bearing the date thereof shall be given by all processors to each producer, or his agent, upon each and every delivery, such receipt to bear the name and address of the producer and the name of the processor. Not later than five days after demand the processor shall give to every such producer so requesting a full and complete statement of such producer's account, showing the entire quantities of products delivered by him, the grades thereof, and the amount owing for every lot and for the whole thereof.

Comment. The second paragraph of subdivision (a) of Section 1300.5 not only creates an exception to the hearsay rule but also a presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

SEC. 31. Section 4135 of the Agricultural Code is amended to read:

4135. The sale by any retail store, or manufacturer or distributor, including any producer-distributor or nonprofit cooperative association acting as a distributor, of milk, cream, or dairy products at less than cost is an unfair practice. Cost as applied to manufacturers and distributors, as used herein, shall mean the cost of raw product, plus all costs of manufacturing, processing, handling, sale and delivery, including overhead costs; and cost as applied to retail stores, as used herein, shall mean invoice or replacement cost, whichever is lower, plus the cost of doing business of such retail store. "Cost of raw product," in the case of market milk and market cream, whether or not such market milk or market cream is used in the processing or manufacture of dairy products, shall be the applicable minimum price therefore, if any, payable by distributors to producers pursuant to stabilization or marketing plans in effect under the provisions of Chapter 17 (commencing with Section 4200) of Division 6; provided, however, that the foregoing definition of "cost of raw product," as applied to sales on a bid basis to public agencies or institutions, shall be applicable only to market milk or market cream utilized for Class 1 purposes, as such purposes are defined in Chapter 17, Division 6 of this code. Evidence Proof of cost, based on audits or surveys, made in accordance with generally accepted cost accounting procedures, ~~shall-constitute-prima-facie-evidence~~ establishes a rebuttable presumption of such cost at the time of the commission of such violation.

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This presumption is a presumption affecting the burden of proof, but it does not apply in a criminal action. The director shall establish by rule and regulations pursuant to Section 4143 the procedures which shall be considered as "generally accepted cost accounting procedures." Such procedures are those found by the director to accurately determine actual costs.

Comment. Under Evidence Code Section 606, the effect of a presumption affecting the burden of proof "is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

SEC. 32. Section 4148 of the Agricultural Code is amended to read:

4148. Prices filed pursuant to Section 4147 shall be made in such office of the director as he shall designate. Such prices shall not become effective until the seventh day after filing. Evidenee Proof of any sale of, or offer or agreement to sell such market milk, market cream or dairy products by a distributor at less than the prices theretofore filed with the director by such distributor pursuant to the provisions of this article ~~shall-consti- tute-prima-facie-proof~~ establishes a rebuttable presumption of a violation of this article. This presumption is a presumption affecting the burden of producing evidence. Offers and agreements to sell, as used herein, shall include offers and agreements which are conditional, or which shall become effective, upon the filing thereafter of amended prices by the distributor making such offer. Upon receipt of such filings or amendments, the director shall forthwith date, file and index the same in such manner that the information therein contained shall at all times be kept current and be readily available to any interested person desiring to inspect the same. Any other distributor in the marketing area may meet any such prices so filed; provided, that such distributor shall file with the director a schedule of prices not exceeding the prices so met by him within 24 hours after meeting the same.

Comment. The effect of a presumption affecting the burden of producing evidence is stated in Evidence Code Section 604: "The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its non-existence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate."