§ 6825. Proof required in prosecution for certain violations. 1. In an action or proceeding, civil or criminal, against a person for violating such provisions of this article which relate to the possession of, compounding, retailing or dispensing of misbranded, substituted or imitated drugs, poisons or cosmetics, when it shall be necessary that an analysis be made for the purpose of establishing the quality of such drug, poison or cosmetic so as to determine the fact of misbranding, substituting or imitating, then it shall be required to prove at the trial or hearing of such action or proceeding, that the person, taking the same for analysis separated it into two representative parts, hermetically or otherwise effectively and completely sealed, delivered one such sealed part to the seller, manufacturer, wholesaler, pharmacist, or druggist from whose premises such sample was taken and delivered the other part so sealed to the chemist designated by the state board of pharmacy; and the facts herein required to be proven shall be alleged in the complaint or information by which such action or proceeding was begun. The rules of the board shall be proven prima facie by the certificate of the secretary.

2. Any person accused of violation of any of the provisions of this article relating to adulterating, misbranding, substitution or imitation shall not be prosecuted or convicted or suffer any of the penalties, fines or forfeitures for such violation, if he establishes upon the hearing or trial that the drug, device or cosmetic alleged to be adulterated, misbranded, substituted or imitated was purchased by him under a written guaranty of the manufacturer or seller to the effect that said drug, device or cosmetic was not adulterated or misbranded, within the meaning of this article and proves that he has not adulterated, misbranded, substituted or imitated the same, provided the seller has taken due precaution to maintain the standard set for the drug, device or cosmetic. A guaranty, in order to be a defense to a prosecution or to prevent conviction or to afford protection, must state that the drug, device or cosmetic to which it refers is not adulterated, misbranded, substituted or imitated within the meaning of the provisions of this article and must state also the full name and place of business of the manufacturer, wholesaler, jobber or other person from whom the drug, device or cosmetic was purchased, and the date of purchase. The

act, omission or failure of any officer, agent or other employee acting for or employed by any person within the scope of his authority or employment shall in every case be the act, omission or failure of such person as well as that of the officer, agent or other employee, and such person shall be equally liable for violations of this article by a partnership, association or corporation, and every member of the partnership or association and the directors and general officers of the corporation and the general manager of the partnership, association or corporation shall be individually liable and any action, prosecution or proceeding authorized by this article may be brought against any or all of such persons. When any prosecution under this article is made on the complaint of the board, any fines collected shall be paid into the state treasury as provided by this article.

3. No publisher, radio-broadcast licensee, advertising agency, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be subject to the penalties provided by this article by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the secretary, to furnish the secretary the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency, who caused him to disseminate such advertisement.