A.R.S. §§ 3-901 through 3-934

**Article 1. Administration**

**3-901. Definitions**

In this chapter, unless the context otherwise requires:

1. "Associate director" means the associate director of the division.

2. "Division" means the environmental services division of the Arizona department of agriculture.

3. "State agency" means any agency or political subdivision of the state.

4. "State land" includes land owned by this state or by a state agency.

**3-902. Administration and enforcement**

The director shall administer and oversee the enforcement of this chapter.

**3-903. Protected group of plants; botanical names govern; categories of protected plants; power to add or remove plants; annual hearing**

A. The protected group of native plants shall include, and protected native plants shall be, any plant or part of a plant, except, unless otherwise specifically included, its seeds or fruit, which is growing wild on state land or public land or on privately owned land without being propagated or cultivated by human beings and which is included by the director on any of the definitive lists of protected categories of protected native plants described in this section. The director by definitive lists may divide any protected category into subcategories which are to receive different treatment under the rules adopted under this article to conserve or protect such plants. In the preparation of each list of plants within a protected category or subcategory the director shall list by botanical names all of those protected plants which are to fall within the protection of that category or subcategory. The botanical names of the listed plants govern in all cases in the interpretation of this article and any rules adopted under this article.

B. The director shall establish by rule the lists of plants in the following categories of protected native plants:

1. Highly safeguarded native plants to be afforded the exclusive protections, including the use of scientific or threatened collection and salvage permits, provided this category in this chapter. This category includes those species of native plants and parts of plants, including the seeds and fruit, whose prospects for survival in this state are in jeopardy or which are in danger of extinction throughout all or a significant portion of their ranges, and those native plants which are likely within the foreseeable future to become jeopardized or in danger of extinction throughout all or a significant portion of their ranges. This category also includes those plants resident to this state and listed as endangered, threatened, or category 1 in the federal endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 et seq.), as amended, and any regulations adopted under that act.

2. Salvage restricted native plants to be afforded the exclusive protections involving the use of salvage permits, tags and seals provided in this chapter. This category includes those native plants which are not included in the highly safeguarded category but are nevertheless subject to a high potential for damage by theft or vandalism.

3. Salvage assessed native plants to be afforded the exclusive protections, involving the use of salvage tags and seals and annual salvage permits, provided in this chapter. This category includes those native plants which are not included in either the highly safeguarded or salvage restricted categories but nevertheless have a sufficient value if salvaged to support the cost of salvage tags and seals.

4. Harvest restricted native plants to be afforded the exclusive protections involving the use of harvest permits and wood receipts provided in this chapter. This category includes those native plants which are not included in the highly safeguarded category but are subject to excessive harvesting or overcutting because of the intrinsic value of their by-products, fiber or woody parts.

C. The director by rule may add or remove a native plant to or from the protected group or any of the categories of protected native plants.

D. The director shall hold a public hearing on native plants at least every twelve months after giving notice as required by section 3-912, subsection B.

**3-904. Destruction of protected plants by private landowners; notice; exception**

A. This chapter does not prevent the destruction of protected native plants or clearing of land or cleaning or removing protected native plants by the owner of the land or the owner's agent if:

1. The land is in private ownership.

2. The protected native plants are not transported from the land or offered for sale.

3. The owner or the owner's agent notifies the department pursuant to this section of the intended destruction at least:

(a) Twenty days before the plants are destroyed over an area of less than one acre.

(b) Thirty days before the plants are destroyed over an area of one acre or more but less than forty acres.

(c) Sixty days before the plants are destroyed over an area of forty acres or more.

4. The protected plants are destroyed within one year of the date of destruction disclosed in the notice given the department in paragraph 3 of this subsection.

B. The notice under subsection A, paragraph 3, subdivision (a) may be oral or written. The notice under subsection A, paragraph 3, subdivisions (b) and (c) must be in writing. The notice under subsection A, paragraph 3, whether written or oral, shall include:

1. The name and address of the owner of the land and, if the owner is not a resident of this state, the name and address of the owner's agent in this state to be contacted regarding the destruction or salvage of the native plants.

2. The earliest date that destruction of the protected native plants will begin.

3. A general description of the area in which the protected native plants will be destroyed.

4. Whether the owner intends to allow salvage of the plants to be destroyed.

C. The director by rule shall:

1. Prescribe the form and content of the notice that shall be adequate and comply with subsection B and shall provide landowners with copies of the notice on request.

2. Provide for an alternative procedure in cases in which the landowner is not required to notify the department in writing. The alternative procedure shall include:

(a) Oral notification by the landowners to the department.

(b) Preparation by the department of a written notice form. The department shall transmit a confirming copy to the landowner, and the owner may not begin destruction of protected native plants until the owner receives the written confirmation and the time prescribed under subsection A, paragraph 3 has elapsed.

D. The written notice form, whether completed by the landowner or the department, shall include the following notice in bold-faced type:

Notice: Consent of the landowner is required before entering any lands described in this notice.

E. Within five working days after receiving the notice required under this section the department shall post a copy of the notice in a conspicuous location in the public area of the division office that administers the department activities in the county where the land is located on which the native plants are to be destroyed. The division shall also mail a copy of the notice to any salvage operator or interested party that has requested notice of such activities occurring during the current calendar year. The director by rule may establish and the associate director shall collect a reasonable fee from those receiving copies of the notice to cover the cost of providing this notice.

F. If the department receives a notice of intended destruction under subsection A, paragraph 3 and subsequently receives a complete and correct application for a salvage permit executed by the owner of the land or the owner’s agent for any highly safeguarded or salvage restricted native plants intended to be destroyed under the notice, the department shall facilitate the prompt salvage of the plants by issuing a permit, and any associated tags and seals, within four working days.

G. The notice requirements of subsection A, paragraph 3 do not apply to the destruction of native plants that occurs in the normal course of mining, commercial farming and stock raising operations.

H. This section does not apply to the destruction of protected native plants on individually owned residential property of ten acres or less where initial construction has already occurred.

**3-905. Destruction of protected plants by state**

A. Except in an emergency, if a state agency proposes to remove or destroy protected native plants over an area of state land exceeding one-fourth acre, the agency shall notify the department in writing as provided in section 3-904 at least sixty days before the plants are destroyed, and any such destruction must occur within one year of the date of destruction disclosed in the notice. The department shall post and disseminate copies of the notice as provided in section 3-904, subsection E. This state and its agencies and political subdivisions are exempt from any fees established for salvaged plants.

B. If the director determines that the proposed action by the state agency may affect a highly safeguarded plant, he shall consult with the state agency and other appropriate parties and use the best scientific data available to issue a written finding as to whether the proposed action would appreciably reduce the likelihood of survival or recovery of the plant taxon in this state. If the determination is affirmative, the director shall also specify reasonable, prudent and distinct alternatives to the proposed project that can be implemented and are consistent with conserving the plant taxon.

C. The director shall adopt rules for the disposal and salvage of native plants subject to removal or destruction by a state agency either under permit to other government agencies or nonprofit organizations or sale to the general public or commercial dealers. The department may issue permits to donate, sell, salvage or harvest the plants after the it ascertains the validity of the request and determines the kinds and approximate number of the plants involved. The permit shall specify the number and species of protected native plants and the area from which they may be taken.

**3-906. Collection and salvage of protected plants; procedures, permits, tags and seals; duration; exception**

A. Except as provided in this chapter a person shall not take, transport or possess any protected native plant taken from the original growing site in this state without possessing a valid permit issued by the division.  The division shall issue permits in either a name or business name.  A permit to take, transport or possess native plants is nontransferable, except that a permittee, by subcontract or otherwise, may allow its agents to work under the permit if the permittee remains primarily responsible for the actions of persons acting under his expressed or implied authority.

B. In addition to the requirements prescribed by this section, a person who moves or salvages a saguaro cactus (cereus giganteus) that is more than four feet tall, from other than its original growing location, must purchase a permit, tag and seal from the department.  A person may move a saguaro cactus without obtaining a permit, tag and seal only if the person maintains documentation of a previous legal movement or if the department has record of a previous legal movement of the cactus by the person.  Saguaro cacti that are propagated by humans are exempt from the requirements of this subsection.

C. Permits applicable to highly safeguarded native plants may be issued only for collection for scientific purposes or for the noncommercial salvage of highly safeguarded native plants whose existence is threatened by intended destruction, or by their location or by a change in land usage, and if the permit may enhance the survival of the affected species.

D. Permits issued for the salvage of salvage assessed native plants shall be issued for a period of one calendar year without respect to the land from which the plants will later be taken.  The associated tags and seals shall be issued individually or in bulk on payment of any fees required under section 3-913, subsection A, without respect to the specific plants for which they will be used.  All such tags and seals remain valid for use in subsequent years as long as the permit is renewed.

E. The division shall provide tags and seals for each permit issued for taking, transporting or possessing highly safeguarded, salvage restricted or salvage assessed native plants.  The director by rule shall establish procedures and forms for permits, tags and seals to be issued for the collection and salvage of highly safeguarded native plants and the salvage of salvage restricted and salvage assessed native plants.  The director by rule may establish and modify the form and character of the tags and seals described in this section.  All such tags and seals shall be attached to the plants at the time of taking and before transporting.  It is unlawful to remove a tag or seal from a protected native plant that has been taken and tagged pursuant to this article before the plant has been transplanted at its designated site.  A tag or seal may be removed only by a designated agent of the division or by the owner of the plant.

F. This section does not apply to the transporting of protected native plants by a landowner or his agent from one of his properties to another if the plants are not offered for sale.

**3-907. Cutting or removal of harvest restricted plants for their by-products, fiber or wood; procedures; exceptions**

A. The division shall provide harvest or wood permits, and wood receipts with each wood permit, authorizing the taking, transporting or possessing of harvest restricted native plants cut or removed for manufacturing or processing purposes, for their by-products, fiber or wood. It is unlawful for a person to take, transport or possess such a plant for its by-products, fiber or wood if he is not in possession of a permit and any required receipt. A permit or receipt is not transferable by the permittee or his agent, nor may it be used by anyone other than the person to whom it was issued, except that the permittee shall transfer the receipt to the purchaser as proof of ownership of the wood covered by the receipt.

B. A person in possession of a valid permit for the removal of dead plants, wood, fiber or other by-products issued by the United States department of agriculture or the United States department of the interior from lands under the administration of the United States forest service or the United States bureau of land management is exempt from the permit required by subsection A.

C. This chapter shall not be construed to prohibit any person from cutting, removing, transporting or possessing any harvest restricted native plant or part for manufacturing or processing purposes in amounts of one hundred pounds or less, or any such plant or part as wood in amounts of two cords or less in quantity from land owned or leased by that person, other than state-owned land or other public land, or from land if the owner has given written consent to the person to cut, remove, transport or use the plant, or its fiber or wood.

D. This section does not apply to the use of dead wood for branding fires or at permissible camping or cooking sites for camping or cooking fires or cutting, removing, transporting or possessing dead harvest restricted plants or the dead parts from such plants from land owned or leased by that person.

**3-908. Prohibited acts; use of permits, tags, seals and receipts**

A. Except as provided in this chapter, it is unlawful for a person to destroy, dig up, mutilate, collect, cut, harvest or take any living highly safeguarded native plant or the living parts of any highly safeguarded native plant, including seeds or fruit, or any other living protected native plant or the living parts of any other protected plant, except seeds or fruit, from state land or public land without obtaining any required permit, tags, seals or receipts from the department, or from private land without obtaining written permission from the landowner, and any required permit, tags, seals or receipts from the department. It is unlawful for a person to falsify any paper or document issued to give permission for a person to take native plants of the protected group or to take more protected native plants than authorized by the permit or to take protected native plants from areas other than authorized by the permit.

B. Permits issued for the removal of protected native plants, or any parts of protected native plants, except permits issued for the salvage of salvage assessed native plants, shall be granted only on submission to the division of an application executed by both the landowner or his agent and the party who intends to be the permittee, after being completed by either or both, and are valid for a stated period of time to allow the permittee to remove the specific amount of plants, by-products, fiber or wood stated in the permit, or that period of time stated by the landowner as part of the landowner's permission, whichever is shorter. The permit expires on the termination date shown on the permit, when the tags and seals issued with the permit have been attached to the plants covered by the permit and the plants are no longer in the possession of the permittee or when the receipts have been transferred to the purchaser of the wood covered by the receipts.

C. A permit is valid for taking plants or parts of plants listed on the permit but not removed from the land described in the permit until the permit's expiration or for one year from the date of issuance, whichever occurs first, except that for any permit the tags and seals, or receipts, issued therewith but not yet used by the permittee become invalid if the land on which the plants are growing, and described in the permit, changes ownership, unless the new owner certifies in writing that the permittee may continue taking the plants or parts of plants as specified on the permit.

D. It is unlawful for a person or scientific or educational institution to misuse a permit in any manner. A permittee shall make permits, tags, seals and receipts available for inspection by the department or any peace officer as provided for in this chapter. A tag, seal or receipt is invalid unless it is issued with a valid permit. A permit is invalid unless it bears the required tag numbers or receipt numbers on its face. It is unlawful to alter or deface any permit, tag, seal or receipt.

E. The director may give written permission for a person or a scientific institution to take a definite number of specified plants in a protected group from areas specified by the department for scientific purposes. In addition the director may give written permission for a person to take specific plants or parts of plants not in the highly safeguarded category from areas specified by the department for salvage or for manufacturing or processing purposes or for the cutting or removal of wood and assess reasonable and proper fees for such taking of the plants or parts of the plants. The director may give written permission for a landowner to transfer specified plants in the protected group from land he owns to another property owned by him, and such permits shall be exempt from fees.

**3-909. Shipment of plants; exhibition of permit and certificate of inspection to carrier; sale of highly safeguarded plants**

A. No person or common carrier may transport a plant, or any part of a plant, belonging to the protected group, nor receive or possess a protected native plant for transportation within or without this state, except for manufactured wood articles, unless the person offering the plant for shipment exhibits to the person or common carrier a valid written permit for the transportation of the plant or part of a plant and has securely and properly attached a valid required native plant tag and seal to the plant. If for transport without the state, the plant shall also bear a certificate of inspection by the department.  All protected native plant species or varieties, not grown in Arizona and imported into this state, shall be transported directly to a department field office at which a movement permit and seals must be purchased before proceeding to the final destination.

B. Plants of the protected group that are shipped into this state shall be accompanied by all permits, tags and seals required by the exporting state or country.

C. It is unlawful for a person to commercially sell or offer for commercial sale in interstate commerce any highly safeguarded native plant or in the course of interstate commercial activity to deliver, receive, carry, transport or ship by any means any such plant in furtherance of a commercial sale or offer for commercial sale.

**3-910. Compiling information; reports; native plant surveys; investigations; technical advisory board**

A. At the request of any person, including a state or federal agency, and if the person provides the department with a suitable description of the land in question, the director may enter into agreements with any such person to conduct native plant surveys on the applicable private or state land. Unless the survey is limited to the simple determination of whether or not protected species exist on the land, the department may collect fees as reimbursement for the services which are reasonably based on the time factor, vegetation density and acreage.  Notwithstanding section 35-148, subsection A, the director shall deposit any monies received under this subsection in the fund established by section 3-913.

B. The director by rule may require written reports from persons engaged in salvaging or harvesting protected native plants as to the location and quantities of protected native plants and their parts which have been salvaged or harvested under this chapter.  The director by rule may make the filing of these reports a condition to the issuance or renewal of any permits, tags, seals or receipts provided for in this chapter.

C. The department may conduct investigations of the status of all species of native plants in order to develop information relative to population distribution, habitat needs, limiting factors and other biological data and to determine measures and requirements, including transplantation and propagation, necessary for their conservation or survival. If protected native plants or significant communities of such plants are vulnerable to depletion from their collection or harvest as a commercial resource, the department may collect statistical information and conduct investigations to determine what harvests are sustainable without depleting the plants or plant communities or destroying significant habitat provided by such plants or plant communities.

D. The director may appoint, utilize and contract with a technical advisory board, serving without compensation, to annually review the number of permits and tags issued in order to assess whether plant species, communities or populations are being depleted and recommend revisions to the protected plant categories.  The board shall consist of representatives of the scientific community, including the botanical and zoological fields, and representatives from the native plant industries, including salvage, revegetation, propagation, landscaping and harvesting concerns.

**3-911. Conservation and public education**

A. The department may conserve the highly safeguarded native plants including the use, and encouraging the use, of all methods and procedures that are necessary to bring the highly safeguarded native plants to the point where they are no longer in need of federal protection as endangered or threatened plants or state protection as highly safeguarded native plants.  These methods and procedures include all activities associated with scientific resource management such as research, census, law enforcement, habitat protection and maintenance, propagation and transplantation.

B. The department shall encourage commercial businesses engaged in land development or other activities conducted on private land to salvage protected native plants to the greatest extent feasible.

C. The department may produce, and collect reasonable fees for, seminars, courses, pamphlets and other educational programs and publications concerning the effect, intent and interpretation of this chapter, the identification, nature or condition of protected native plants and the feasibility and techniques for their conservation and salvage for presentation and dissemination to:

1. State agencies and political subdivisions, including state and local law enforcement agencies and counties or municipalities which have enacted or consider enacting ordinances preserving protected native plants.

2. Real estate and other commercial businesses engaged in land development and other activities conducted on private land.

3. Landowners and the public at large.

4. Persons or entities that are convicted of violating this chapter or rules and ordinances adopted pursuant to this chapter and that are ordered by the court to attend educational classes or programs as part of their sentences.

D. Notwithstanding section 35-148, subsection A, the director shall deposit any monies received under this section in the trust fund established by section 3-913.

**3-912. Rules; additional notice requirements**

A. The director shall adopt rules to enforce this chapter pursuant to title 41, chapter 6.

B. In addition to the notice requirements prescribed in title 41, chapter 6, at least thirty days before any hearing at which a new rule or a change in a rule will be considered the department shall send a copy of the notice by first class mail to persons or entities requesting notice pursuant to section 3-904, subsection E.

**3-913. Fiscal provisions; fees; Arizona protected native plant trust fund**

A. The department shall collect nonrefundable fees for issuing permits, tags, seals and receipts under this article, except for scientific purposes, from landowners moving protected plants from one of their properties to another, or from the independent owner of residential property of ten acres or less if no such plants are to be offered for sale.

B. The director shall establish the amount of the fee by rule to reasonably reflect the cost to the department for administering this chapter or to reflect the value of the service, permit, tag, seal or receipt, including at least the following amounts:

1. For cereus giganteus (saguaro), at least three dollars for each plant.

2. For native plants that the director determines to be useful for revegetation and that cannot be salvaged economically at a higher fee, at least twenty-five cents per plant.

3. For all other native plants, at least two dollars for each plant.

4. For all receipts for live harvest restricted native plants cut or removed for wood, at least one dollar per cord.

5. For a permit for the by-products or fiber of harvest restricted native plants, at least one dollar per ton.

C. The Arizona protected native plant trust fund is established for the exclusive purpose of implementing, continuing and supporting the program established by this chapter. All fees and other monies collected under this chapter except civil penalties assessed pursuant to section 3-933 or 3-934 shall be deposited in the trust fund.  The director shall administer the trust fund as trustee.  The state treasurer shall accept, separately account for and hold in trust any monies deposited in the state treasury, which are considered to be trust monies as defined in section 35-310 and which shall not be commingled with any other monies in the state treasury except for investment purposes. On notice from the director, the state treasurer shall invest and divest any trust fund monies deposited in the state treasury as provided by sections 35-313 and 35-314.03 and monies earned from investment shall be credited to the trust fund.  The beneficiary of the trust is the program established by this chapter. The trust fund shall be used exclusively for the purposes of this chapter on the order of the director. Surplus monies, including any unexpended and unencumbered balance at the end of the fiscal year, do not revert to the state general fund.

**3-914. Board of supervisors; power to preserve plants**

The board of supervisors of each county is authorized to adopt and enforce ordinances not in conflict with law for the preservation of protected groups of plants.

**3-915. Exemptions**

A. This chapter does not apply to existing canals, laterals, ditches, electrical transmission and distribution facilities, rights-of-way and other facilities, structures or equipment owned, operated, used or otherwise possessed by public service corporations and special districts established under title 48, chapter 11, 12, 17, 18, 19, 21 or 22.

B. This chapter does not apply to normal and routine maintenance of improvements which may cause the incidental or unavoidable destruction of native plants.

**3-916. Salvage of native plants by homeowners' association or other nonprofit organization; definition**

A. A homeowners’ association or any other community based nonprofit organization may collect and salvage native plants under this section without obtaining a permit, tag, seal or receipt or paying a fee otherwise required by this chapter.  Native plants may be obtained under this section only for noncommercial salvage and only if their existence is threatened by intended destruction, by their location or by a change in land use.

B. Before collecting any plant under this section, the homeowners' association or nonprofit organization shall submit to the department:

1. A letter of permission from the owner of the property on which the native plants are currently growing authorizing the homeowners' association or nonprofit organization to enter the property and remove the plants.

2. A copy of a resolution adopted by the governing body of the county, city or town authorizing the homeowners' association or nonprofit organization to collect and salvage native plants pursuant to this section in the unincorporated area of the county or in the city or town, as applicable.

3. A written statement from the homeowners' association or nonprofit organization including:

(a) The name of the association or organization.

(b) The name, address and telephone number of a contact person representing the association or organization.

(c) The name, address and telephone number of the owner of the property on which the native plants are currently growing.

(d) The physical location of the property on which the plants are growing.

(e) A signed statement that:

(i) The plants will be transplanted in a common area owned, managed or leased by the homeowners' association or on public property.

(ii) The plants will not be sold, exchanged or otherwise disposed of except as provided by this section.

C. A person who possesses a permit, tag or seal issued under this chapter for collection or salvage of native plants has priority over the homeowners' association or nonprofit organization in obtaining any native plant.

D. The department shall issue a notice to the homeowners' association or nonprofit organization of any violation of the terms and conditions prescribed by this section or of any statement submitted to the department under subsection B.  In the case of any subsequent violation, the department shall issue another notice prohibiting further collection or salvage of plants.  The department shall transmit a copy of each notice to the governing body of the county, city or town.

E. For purposes of this section "homeowners' association" means a nonprofit corporation or association that is organized in this state and that meets both of the following requirements:

1. It is established to own, lease or manage common, limited access lots, parcels, areas, grounds or streets of a real estate development in this state.

2. It has the power under its organizing documents to assess and compel association members to pay the expenses incurred in performing the association’s obligations.

**Article 2. Enforcement**

**3-931. Enforcement powers and procedures**

A. An employee, officer or agent of the department may enter in or on any premises or other place, train, vehicle or other means of transportation within or entering this state, if he has reason to believe there is present or on such premises or means of transportation a protected native plant taken, transported or possessed in violation of this chapter.

B. A power granted pursuant to this chapter to any person may be exercised by a deputy, inspector or agent of the authorized person. A person who is authorized to enforce this chapter, including an employee of a state, the United States or an Indian tribe with which cooperative agreements have been made by the director, has powers of a peace officer to enforce this chapter. It is unlawful to interfere with or hinder the actions of a peace officer or an officer or employee of the department in the enforcement of this chapter.

C. In the enforcement of this chapter, a peace officer or an officer or employee of the department may make arrests without warrant for a violation of this chapter which he may witness and may confiscate, or seize by the attachment of a "warning hold" notice, any protected native plant found without a valid and properly affixed tag and seal when required by this chapter, or any plant by-product, fiber or wood from protected native plants found in the possession of a person without a valid receipt if a receipt is required under this chapter. It is unlawful to move or otherwise handle or dispose of any protected plant or part of a plant held under a "warning hold" notice, except with the express written permission of the enforcing officer, and for the specified purpose. Plants, by-products, fiber or wood confiscated under this subsection, if not released to the person from whom they were seized before such time, shall be disposed of by the department or pursuant to court order at the conclusion of the proceedings.

D. Devices, equipment or vehicles used in the illegal taking, transportation, destruction or mutilation of protected native plants may be seized by a peace officer or officer of the department on a temporary basis, not to exceed one working day, to permit the protected native plants or parts of plants involved in the illegal act to be moved to a secure location.

E. An officer, employee or agent of the department who is duly authorized to enforce this chapter, in addition to peace officers, may enforce title 41, chapter 4.1, article 4 and sections 13-3702 and 13-3702.01. Such an officer, employee or agent may make an arrest without warrant for violations witnessed by the officer, employee or agent and may confiscate archaeological and other specimens or objects if unlawfully excavated or collected.

**3-932. Violation; classification; penalties**

A. A person commits theft of protected native plants if, without the express consent of the landowner, the person knowingly removes or destroys any protected native plants from private or state land. Theft of protected native plants with a value of:

1. One thousand five hundred dollars or more is a class 4 felony.

2. At least seven hundred fifty dollars but less than one thousand five hundred dollars is a class 5 felony.

3. At least five hundred dollars but less than seven hundred fifty dollars is a class 6 felony.

4. Less than five hundred dollars is a class 1 misdemeanor.

B. A knowing violation of this chapter involving either the misuse of permits, tags, seals, or receipts, or the collection, salvage, harvest, transportation or possession of protected plants without any required permits, tags, seals or receipts is a class 1 misdemeanor. A subsequent conviction for a violation of this subsection is a class 6 felony.

C. All other violations of this chapter are class 3 misdemeanors except that if a prior conviction is a class 3 misdemeanor, a subsequent conviction is a class 2 misdemeanor, and if a prior conviction is a class 2 misdemeanor, a subsequent conviction is a class 1 misdemeanor.

D. From and after June 30, 1990, on conviction of any violation of this chapter the director may request of the court that the convicted person, or a responsible person from a convicted entity, be ordered to attend educational classes or programs pursuant to section 3-911, subsection C.

E. On conviction of a violation of this chapter, the director may also request of the court as a provision of the sentence, the revocation of all permits issued to the person convicted and the permittee shall be required to surrender any unused tags or seals or receipts to the division, and the division shall not issue new or additional permits to the permittee for a period of one year from the date of conviction. The director may further request of the court that the sentence include a provision prohibiting a person convicted of a violation of this chapter from engaging in the salvage of protected native plants or acting as agent for any other permittee for a period of up to one year. In considering any such request to revoke or deny permits or prohibit work in salvage or with another permittee the court shall consider:

1. The nature of the offense.

2. The nature of any prior convictions.

3. The overall performance record by the convicted party in terms of its violations of this chapter compared to its efforts to salvage native plants as intended by this chapter.

**3-933. Violation; civil penalty**

A. The knowing violation of this chapter or a rule, order or ordinance issued or adopted under this chapter is punishable by a civil penalty in an amount of not more than five thousand dollars.

B. The director may bring an action in superior court in the county in which a violation of this chapter or any rule or order is alleged to have occurred. On the finding of a knowing violation by the defendant in any such action the court may impose the civil penalty provided by this section in an amount as it deems appropriate for each violation.

C. Each day of violation constitutes a separate offense.

D. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

**3-934. Injunction; violation; civil penalty**

A. The department's legal counsel, on request of a private party or the director, or the county attorney of the county in which a violation of this chapter or any rule or order issued or adopted under section 3-912 or 3-914 is alleged to have occurred may bring an action in the county requesting the court to enjoin or otherwise restrain the defendant from further violations of this chapter or the rule or order. If the alleged violation occurs through the actions of a state agency, the agency may be made a party defendant.

B. A person who violates an order or injunction issued by a court of competent jurisdiction pursuant to this section, in addition to any other penalty or remedy for contempt of court, shall forfeit and pay to this state a civil penalty of not more than ten thousand dollars for each violation as the court deems just and proper. For purposes of this section, the superior court in the county issuing any order or injunction retains jurisdiction. The attorney general or legal counsel for the department acting in the name of this state may petition for recovery of civil penalties pursuant to this section. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.