I. THE ADULT PROTECTIVE SERVICES ACT

A. Purpose and Intent:

An act to protect adults who cannot physically or mentally protect themselves and who are harmed or threatened with harm through action or inaction by themselves or by those responsible for their care. La. R.S. § 15:1501, et seq.

B. Definitions:

1. **Abuse**: the infliction of physical or mental injury, or actions which may reasonably be expected to inflict physical injury, on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value. La. R.S. § 15:1503(2).

2. **Neglect**: the failure, by a caregiver responsible for an adult’s care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be neglected or abused. La. R.S. § 15:1503(10).

3. **Elderly Abuse**: this term typically refers to –

   (a) The abuse of any person sixty years of age or older; and


C. Mandatory reporting:

1. Anyone, including but not limited to healthcare providers and social service practitioners, having cause to believe that an adult’s physical or mental health or welfare has been or may be affected by abuse, neglect or exploitation. La. R.S. § 15:1504(A).
2. **Exemption:** No cause of action shall exist against any person who in good faith makes a report and/or cooperates in the investigation or prosecution of those who violate this Act. *La. R.S. § 15:1504(B).*

3. **Limitation on exemption:** This exemption does not extend to
   
   (a) Any alleged principal, conspirator or accessory to an offense involving the abuse or neglect of the adult.
   
   (b) Any person who makes a report known to be false or with reckless disregard for the truth of the report.
   
   (c) Any person charged with direct or constructive contempt of court, any act of perjury, or any offense affecting judicial functions.

4. **Penalties:** Any person who knowingly or willfully violates these provisions shall be guilty of a misdemeanor and upon conviction shall be fined not more than $500 and/or imprisoned for not more than six months. *La. R.S. § 14:403.2(A), (B); La. R.S. § 14:93.3(C).*

II. **MISTREATMENT OF THE INFIRM**

A. **Definitions**

1. **Cruelty to the infirm:** the intentional or criminally negligent mistreatment or neglect by any person, including a caregiver, whereby unjustifiable pain, malnourishment, or suffering is caused to the infirmed, a disabled adult, or an aged person, including but not limited to a resident of a nursing home, mental retardation facility, mental health facility, hospital, or other residential facility. *La. R.S. § 14:93.3(A).*

2. **Exploitation of the infirm:** The intentional expenditure, diminution, or use by any person, including a caregiver, of the property or assets of the infirmed, a disabled adult, or an aged person, including but not limited to a resident of a nursing home, mental retardation facility, mental health facility, hospital, or other residential facility without the express voluntary consent of the resident or the consent of a legally authorized representative of an incompetent resident, or by means of fraudulent conduct, practices, or representations. *La. R.S. § 14:93.4.*

3. **Sexual battery of the infirm:**
   
   (a) Sexual battery of the infirm is the intentional engaging in any sexual act with another person who is not the spouse of the offender when:
   
   (i) The offender compels the victim, who is physically incapable of preventing the act because of advanced age or
physical infirmity, to submit by placing the victim in fear of receiving bodily harm.

(ii) The victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by an intoxicating, narcotic, or anesthetic agent administered by or with the privity of the offender.

(iii) The victim has such incapacity, by reason of a stupor or abnormal condition of mind from any cause, and the offender knew or should have known of the victim's incapacity.

(iv) The victim is incapable, through unsoundness of mind, whether temporary or permanent, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity. La. R.S. § 14.93.5(A).

(b) “Sexual acts” is defined as –

(i) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the offender’s body; or

(ii) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.

B. Penalties

1. Cruelty to the infirm; Exploitation of the infirm: any person found guilty of violating this provision shall be fined not more than $10,000.00 and/or imprisoned with or without hard labor for not more than ten years. La. R.S. § 14:93.3(E)(1); La. R.S. § 14.14:93.4(B).

2. Sexual battery of the infirm: any person found guilty of violating this provision shall be imprisoned with or without hard labor for not more than ten years. La. R.S. § 14:93.5(D).

III. NURSING HOME OVERSIGHT

A. Residents’ Bill of Rights

1. All nursing homes are required to adopt and publish the Residents’ Bill of Rights to the residents of each facility, and they shall treat such residents in accordance with the provisions of the statement. La. R.S. § 40:2010.8(A).

B. Civil enforcement: Residents shall have a private right of action to enforce the provisions set forth in this section, and the remedies for violations under this section are as follows:

1. Injunctive relief;
2. General and special damages; and

IV. RIGHTS AND REMEDIES

A. Private Right of Action

Louisiana does not permit a prevailing party to recover attorney’s fees unless specifically authorized by statute. With the exception of Nursing Home Oversight, neither the Adult Protective Services Act nor the criminal statutes addressing elder abuse address the civil remedies available for violations of these provisions. Although a claimant may assert a private right of action for violations of these provisions, the aggrieved party would not be able to recover attorney’s fees for any violation other than a Residents’ Bill of Rights violation by a nursing home.

B. Civil Remedies/Penalties

Louisiana also does not permit a prevailing party to recover exemplary damages unless specifically authorized by statute. Since the statutes governing the abuse or neglect of the elderly and infirm do not specifically authorize such damages (other than the award of attorney’s fees in the case of nursing home neglect), the claimant is limited to general and special damages that may be recovered in a civil tort action.

V. PREDATORY LENDING PRACTICES

A. Home Solicitation of Aged Persons

1. Definitions:

   (a) Aged Person is defined as any natural person who is 65 years of age or older. La. R.S. § 9:3541.21(1).

   (b) Disabled Person means a natural person who has a physical or mental impairment which substantially limits one or more major life activities. La. R.S. § 9:3541.21(3).
(c) **Home Solicitation Sale** is the consumer credit sales of goods and/or services where the seller engages in a personal solicitation of the sale at any place other than the seller’s business establishment which the consumer accepts. *La. R.S. § 9:3541.21(5).* Note that although the solicitation must take place outside the seller’s business establishment, no such requirement exists for the consumer’s acceptance.

2. **Prohibited Acts:**

   (a) Louisiana prohibits the solicitation of any consumer where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements if the transaction itself is part of a pattern or practice of mortgage abuses as defined at 15 U.S.C. 1639(h) or (i). *La. R.S. § 9:3541.21(A).*

   (b) A third party holder in due course of the loan is not in violation of this section unless it maintains an agency relationship with the solicitor or it has actual knowledge of or participated in the solicitation. *La. R.S. § 9:3541.22(B).*

**B. Remedies for intentional violations:**

1. If the court finds as a matter of law that the agreement or any clause of the agreement is unconscionable, it may –

   (a) refuse to enforce the agreement;

   (b) enforce the remainder of the agreement without the unconscionable clause; or

   (c) limit the application of any unconscionable clause as to avoid any unconscionable result. *La. R.S. § 9:3551.*

2. If the prohibited act was committed in bad faith, the consumer is entitled to a refund of all loan finance charges or credit service charges and has the right to recover three times the amount of such loan finance charge or credit service charge together with reasonable attorney’s fees. *La. R.S. § 9:3552(A)(1)(a).*

   (a) The right to recover the civil penalty only accrues when the following conditions are met:

      (i) written notice is given to the creditor by certified mail addressed to the creditor’s place of business where the consumer credit transaction arose;
(ii) a copy of the notice is mailed to the creditor’s agent for service of process; and

(iii) the violation is not corrected within thirty days of receiving such notice. La. R.S. § 9:3552(A)(1)(a)(i)-(iii).

(b) The following acts create a rebuttable presumption of bad faith by the creditor:

(i) Failure to return or give credit for an overcharge in the loan finance charge or credit service charge; or

(ii) failure to return a deficiency in the rebate when such overcharge or deficiency exceeds the greater of 10% of the loan finance charge, credit service charge or rebate, or $15. La. R.S. § 9:3552(A)(1)(b).

(c) The maximum penalty for violations of this section is $100. La. R.S. § 9:3552(A)(1)(c).

C. Remedies for unintentional violations

1. If a violation of this chapter is not intentional or is made in good faith on the part of the creditor the court may require the creditor to correct the violation.

2. The consumer is not entitled to the civil remedies granted by this section. La. R.S. § 9:3552(A)(2)(a).

3. If the complaining consumer serves the creditor with written notice of an alleged violation of this chapter, the creditor must respond to the complaint within thirty days of the receipt of written notice. Failure to provide such a response may result in a civil fine of not more than $100. La. R.S. § 9:3552(A)(2)(B).

4. Any civil action under this section must be brought within sixty days of final payment of the consumer credit contract, or in the case of a revolving loan or revolving charge account, within one year of the date of the violation. La. R.S. § 9:3552(A)(2)(E).

VI. LEGISLATION AFFECTING STATUTES

A. Pending: None

B. Anticipated: None