SUMMARY—Revises provisions relating to trade practices. (BDR 52-548)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: May have Fiscal Impact.

Effect on the State Highway Fund: No.

AN ACT relating to trade practices; imposing certain requirements and restrictions on the use of artificial intelligence companions; prohibiting the use of protected class data by a grocery establishment for certain purposes; prohibiting the use of surge pricing and surveillance pricing by a grocery establishment to establish or modify the price of goods; making it a deceptive trade practice to violate those requirements, restrictions and prohibitions; revising the list of activities that constitute an unlawful contract, combination or conspiracy in restraint of trade; revising the maximum amount of a civil penalty for which a person who violates the provisions of existing law governing unfair trade practices is liable; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law defines activities that constitute deceptive trade practices and provides for the imposition of civil and criminal penalties against persons who engage in deceptive trade practices. (Chapter 598 of NRS) Existing law also defines "artificial intelligence system" to mean any

machine-based system that, for any explicit or implicit object, infers from the inputs the system receives how to generate outputs, including, without limitation, content, decisions, predictions or recommendations, that can influence physical or virtual environments. (NRS 629.610)

**Sections 14-16** of this bill establish certain requirements and restrictions concerning artificial intelligence companions. **Section 3** of this bill defines the term "artificial intelligence companion" to mean, in general, an artificial intelligence system that is designed to simulate a sustained human or human-like relationship with a user, including, without limitation, a relationship involving intimate, romantic or platonic communications or companionship.

**Section 14** prohibits the operator of an artificial intelligence companion from making an artificial intelligence companion available for use in this State unless the operator complies with **sections 2-17** of this bill.

**Section 15** requires an operator of an artificial intelligence companion to implement and maintain certain protocols that: (1) detect and address self-harm and suicidal ideation by a user of the artificial intelligence companion; (2) upon detection of an expression of suicidal ideation or self-harm by a user, provide the user with a notification that refers the user to a crisis service provider; and (3) prevent the artificial intelligence companion from generating content that encourages self-harm or provides instructions for methods of self-harm. **Section 15** further requires an operator of an artificial intelligence companion to publicly post certain notices relating to the required protocols on the Internet website of the operator. **Section 15** also requires an operator of an artificial intelligence companion to provide, at certain times, the user with a clear

and conspicuous notification that the user is communicating with an automated system and not with a human.

**Section 16** requires an operator of an artificial intelligence companion that is directed to children or an operator that knows or reasonably should know that a user is a child to implement measures to prevent an artificial intelligence companion from generating outputs that: (1) contain an endorsement or promotion of certain activities; (2) encourage the user to maintain secrecy about an interaction with the artificial intelligence companion, self-isolate or refrain from seeking help from a health professional or appropriate adult; or (3) describe, depict or facilitate certain sexually explicit conduct or content. **Section 16** also limits the collection and use of personal information of a user of an artificial intelligence companion who is a child by the operator of the artificial intelligence companion. **Section 16** further establishes certain requirements for determining whether an operator knew or reasonably should have known that a user was a child.

**Section 17** makes a violation of **sections 2-17** a deceptive trade practice. **Sections 3-13** define words and terms for the purposes of **sections 2-17**.

**Sections 30 and 31** of this bill prohibit the use of certain practices to determine the price of goods offered for sale by a grocery establishment to a consumer in this State. **Section 25** of this bill defines the term "grocery establishment" to mean a store principally devoted to the sale of food for human consumption off the premises, regardless of whether the store sells other products secondarily, and in which the area open to the public is over 10,000 square feet.

**Section 30** prohibits the use of protected class data in marketing, selling, offering to sell or the establishment or modification of the price of goods sold at a grocery establishment if: (1) the use

of such data effectively withholds from or denies any consumer or group of consumers the same benefits or availability of a good offered to others; or (2) results in the person selling or offering to sell a good to a consumer or group of consumers for a price that is less than the price offered to another consumer or group of consumers. **Section 30** defines "protected class data" to mean, in general, data concerning a consumer or group of consumers that identifies a characteristic that is protected from discrimination under any federal or state law.

**Section 31** prohibits, with certain exceptions, the use of surge pricing or surveillance pricing to determine the price of certain goods sold at a grocery establishment. **Section 28** of this bill defines the term "surge pricing" to mean, in general, the establishment or modification of the price of a good that is based on real-time demand for the good, demand for the good that is predicted by an algorithm, behaviors of consumers or a determination by an algorithm of the willingness of consumers to pay a certain price for the good. **Section 29** of this bill defines the term "surveillance pricing" to mean, in general, the establishment or modification of the price of a good for a particular consumer or a particular group of consumers that is based on personally identifiable information or inferred data.

The Nevada Unfair Trade Practice Act sets forth various activities that constitute an unlawful contract, combination or conspiracy in restraint of trade and requires the Attorney General to investigate and take certain actions against persons who engage in such activities, which may include, without limitation, criminal prosecution and the imposition of civil penalties. (Chapter 598A of NRS) **Section 33** of this bill specifies that an agreement by two or more grocery establishments to use the same or a commonly owned algorithm to conduct surveillance pricing

constitutes an unlawful contract, combination or conspiracy in restraint of trade. **Section 34** of this bill revises the maximum amount of the civil penalty for which a person who violates the Act is liable from a certain percentage of the gross income of the person to $50,000 for each violation.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as section 2 to 32, inclusive, of this act.

**Sec. 2.** ***As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this act have the meanings ascribed to them in those sections.***

**Sec. 3.** ***1. "Artificial intelligence companion" means an artificial intelligence system, including, without limitation, an emotional recognition algorithm, that is designed to simulate a sustained human or human-like relationship with a user, including, without limitation, a relationship involving intimate, romantic or platonic communications or companionship, by:***

***(a) Retaining information from previous interactions and sessions with the user and the preferences of the user to personalize the outputs generated and facilitate ongoing engagement with the artificial intelligence system;***

***(b) Asking unprompted or unsolicited questions relating to the emotions of the user that go beyond a direct response to a prompt by the user; and***

***(c) Sustaining an ongoing dialogue concerning matters that are personal to the user.***

***2. The term does not include an artificial intelligence system that is:***

***(a) Primarily designed and marketed for commercial use by a business entity for the purpose of customer service, business operations, productivity and analysis related to source information, internal research or technical assistance;***

***(b) A feature of a video game, film, television program, other audiovisual work, theme park or live entertainment at a particular location which is limited to generating output related to the video game, film, television program, other audiovisual work, theme park or live entertainment, as applicable, and is unable to generate outputs on unrelated topics;***

***(c) Incorporated into a stand-alone electronic device that functions as a speaker and voice command interface and which:***

***(1) Acts as a virtual assistant;***

***(2) Is activated by the voice of the person using the device; and***

***(3) Does not sustain an ongoing dialogue with the person using the device through multiple interactions or generate outputs that are likely to elicit emotional responses from the person;***

***(d) An educational tool used in a school or other instructional setting that is designed solely to support specific learning objectives that are aligned with a curriculum and which does not provide for companionship through open-ended conversations; or***

*(e) Used solely for the operation or navigation of a motor vehicle and is unable to sustain a dialogue on topics that are unrelated to those functions.*

**Sec. 4.** *"Artificial intelligence system" has the meaning ascribed to it in NRS 629.610.*

**Sec. 5.** *"Child" means a natural person who is less than 18 years of age.*

**Sec. 6.** *"Emotional recognition algorithm" means an artificial intelligence system that detects and reacts to the emotions of a particular user using collected data, which may include, without limitation, data in the form of text, voice, audio or video.*

**Sec. 7.** *"Interaction" means the use by a user of voice, physical or visual gesture, text or touch contact as an input prompt to cause an artificial intelligence companion to react, respond or learn from that prompt.*

**Sec. 8.** *"Operator" means any person who makes an artificial intelligence companion available for users in this State. The term does not include an application store, operating system or search engine that only provides access to an artificial intelligence companion operated by another person.*

**Sec. 9.** *"Personal information" has the meaning ascribed to it in NRS 603A.040.*

**Sec. 10.** *"Self-harm" means a person harming himself or herself with or without the intent to cause death.*

**Sec. 11.** *"Session" means a period in which a user is continuously engaging in an uninterrupted series of interactions with an artificial intelligence companion.*

**Sec. 12.** *"Suicidal ideation" means a feeling, thought or consideration with the preoccupation of the idea of death or suicide.*

**Sec. 13.** *"User" means any natural person who interacts with an artificial intelligence companion in this State for personal use and who is not an operator or an agent or affiliate of an operator.*

**Sec. 14.** *An operator shall not make an artificial intelligence companion available for use in this State unless the operator complies with the requirements of sections 2 to 17, inclusive, of this act.*

**Sec. 15.** *1. An operator shall implement and maintain protocols to detect and address expressions of self-harm and suicidal ideation by a user of the artificial intelligence companion of the operator. Such protocols must include, without limitation:*

*(a) The implementation of reasonable methods for detecting expressions of suicidal ideation and self-harm by a user;*

*(b) Upon detection of an expression of suicidal ideation or self-harm by a user, the provision to the user of a notification that refers the user to a crisis service provider, which may include, without limitation, a referral to dial the digits 9-8-8 to access the hotline described in NRS 433.704 for persons who are considering suicide or otherwise in a behavioral health crisis, or any successor number for a hotline established pursuant to the National Suicide Prevention Lifeline program, or other appropriate crisis services; and*

*(c) The implementation of reasonable measures to prevent the artificial intelligence companion from generating content that encourages self-harm or instructs a user on methods to commit self-harm.*

*2. An operator shall post on the Internet website of the operator a notice concerning the protocols required by subsection 1. The notice:*

*(a) Must provide a general description of the protocols with sufficient detail for a user to know of the existence of the protocols;*

*(b) Must not provide any details that would allow a user to circumvent the protocols; and*

*(c) Must include, without limitation, the number of users in the immediately preceding calendar year that were provided a notification described in paragraph (b) of subsection 1.*

*3. An operator shall provide a user with a clear and conspicuous notification that the user is communicating with an automated system and not with a human. The notification may be given orally or in writing and must be given:*

*(a) In the language with which the user is communicating with the artificial intelligence companion; and*

*(b) At the following times:*

*(1) At the beginning of a session;*

*(2) Upon resumption of a session that was paused or interrupted for more than 15 minutes; and*

*(3) At least every 2 hours during a session.*

**Sec. 16.** *1. If an artificial intelligence companion of an operator is directed to children or if an operator knows or reasonably should know that a user is a child, the operator shall implement reasonable measures to prevent the artificial intelligence companion from generating outputs that:*

***(a) Contain an endorsement or promotion of or facilitate suicide, self-harm, substantial physical harm to others, disordered eating, mental health disorders, substance use disorders or unlawful use of drugs or alcohol;***

***(b) Encourage the user to maintain secrecy about an interaction with the artificial intelligence companion, to self-isolate or to refrain from seeking help from a health professional or an appropriate adult;***

***(c) Facilitate sexually explicit conduct;***

***(d) Describe or depict computer-generated child sexual abuse material, as defined in NRS 200.700; or***

***(e) Describe or depict sexually explicit conduct, including, without limitation, a child engaging in, or simulating or assisting others to engage in or simulate, sexual conduct.***

***2. For any user an operator knows or reasonably should know is a child, the operator:***

***(a) Shall collect only the minimum amount of personal information from the child that is necessary to provide the services of the artificial intelligence companion;***

***(b) Shall retain personal information collected from a child confidentially, securely and only for as long as is reasonably necessary to fulfill the specific purpose for which the information was collected; and***

***(c) Shall not distribute any personal information collected from a child to any third party, other than to the extent that the operator engages a third party to verify the age of the user.***

***3. An operator or a third party engaged by an operator to verify the age of a user shall not use any personal information collected for verification of the age of a user for any purpose other***

*than to determine the age of the user, to prevent fraud related to the use of the artificial intelligence companion or any other operator services or to support the safety of the user.*

*4. A determination of whether an operator knew or reasonably should have known that a user was a child for purposes of this section must be based on information and inferences relating to the age of the user known to the operator from any source, including, without limitation, the age provided by the user in connection with the initial use of the artificial intelligence companion, any self-identified age in any interaction or communication with the operator or any age the operator attributes or associates with the user for any purpose, including, without limitation, marketing, advertising or product development. The fact that a user who was a child self-identified to the operator as not being a child is, in and of itself, insufficient to establish that the operator did not know and reasonably should not have known that the user was a child.*

**Sec. 17.** *A violation of the provisions of sections 2 to 17, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to NRS 598.0999, inclusive.*

**Sec. 18.** *As used in sections 18 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 19 to 29, inclusive, have the meanings ascribed to them in those sections.*

**Sec. 19.** *"Algorithm" means an artificial intelligence system, facial recognition software and any other computational process that uses a set of rules to define a sequence of operation.*

**Sec. 20.** *"Artificial intelligence system" has the meaning ascribed to it in NRS 629.610.*

**Sec. 21.** *"Behavior" means any observable, measurable or inferred action, habit, preference, interest or vulnerability of a consumer, including, without limitation, any political, personal or professional affiliation, Internet browsing history, Internet Protocol address used, location frequented, purchase history, financial circumstances and inference associated with a group, band, class or tier of consumers to which the consumer belongs.*

**Sec. 22.** *"Consumer" means a natural person who is a resident of this State.*

**Sec. 23.** *"Food" has the meaning ascribed to it in NRS 580.040.*

**Sec. 24.** *"Good" means a retail product for sale in a grocery establishment.*

**Sec. 25.** *"Grocery establishment" means a store principally devoted to the sale of food for human consumption off the premises, regardless of whether the store sells other products secondarily, and in which the area open to the public is over 10,000 square feet.*

**Sec. 26.** *"Inferred data" means data concerning a consumer that is based on an inference, assumption, prediction or classification derived, in whole or in part, from personally identifiable information, including, without limitation, personally identifiable information concerning a device identified as belonging to the consumer, the Internet activity of the consumer, the participation of the consumer in any loyalty program and other behaviors of the consumer. The term includes, without limitation, data based on an inference, assumption, prediction or classification concerning:*

*1. The income, education level and household composition of a consumer;*

*2. The characteristics of a consumer, including, without limitation, any characteristic that is protected from discrimination under any federal or state law;*

*3. The likelihood of a consumer to purchase a certain good or engage in other behaviors; and*

*4. The preferences, psychological trends, predispositions, attitudes, intelligence, abilities and aptitudes of a consumer.*

**Sec. 27.** *"Personally identifiable information" means information that identifies, relates to, describes, is reasonably capable of being associated with or could reasonably be linked, directly or indirectly, to a particular consumer or household. The term includes:*

*1. The information specified in paragraphs (a) to (e), inclusive, of NRS 603A.040, regardless of whether the information is encrypted;*

*2. Biometric data, as defined in NRS 603A.415;*

*3. Location information derived from an electronic device of a consumer; and*

*4. Any other information that reasonably identifies, relates to, describes, is reasonably capable of being associated with or could reasonably be linked, directly or indirectly, to a particular consumer or household, including, without limitation, the signature of the consumer, the telephone number of the consumer, the passport number of the consumer and information concerning the education, employment or commercial transactions of the consumer.*

**Sec. 28.** *"Surge pricing" means the establishment or modification of the price of a good that, rather than being based on the actual costs of a person to provide the good, is based on real-time demand for the good, demand for the good that is predicted by an algorithm, behaviors of consumers or a determination by an algorithm of the willingness of consumers to pay a certain price for the good.*

**Sec. 29.** *"Surveillance pricing" means the establishment or modification of the price of a good for a particular consumer or a particular group of consumers that, rather than being based on the actual costs of a person to provide the good, is based on personally identifiable information or inferred data. The term does not include the establishment or modification of a price for a good that applies uniformly to all consumers.*

**Sec. 30.** *1. A grocery establishment shall not use protected class data in the marketing, selling, offering to sell or establishment or modification of the price for any good if the use of the protected class data, in whole or in part:*

*(a) Has the effect of withholding from or denying to any consumer or group of consumers the same benefits or availability of a good offered to others; or*

*(b) Results in the person selling or offering to sell the good to a consumer or group of consumers for a price that is less than the price offered to another consumer or group of consumers.*

*2. As used in this section, "protected class data" means data concerning a consumer or a group of consumers that directly or by implication identifies a characteristic that is protected from discrimination under any federal or state law, including, without limitation, race, religious creed, color, age, sex, disability, sexual orientation, gender identity or expression, national origin, ancestry or familial status.*

**Sec. 31.** *1. A grocery establishment shall clearly post the price of all goods sold to consumers at the grocery establishment.*

*2. Except as otherwise provided in this section, a grocery establishment shall not use:*

***(a) Surge pricing to establish or modify the price of a good sold by the grocery establishment, regardless of the duration in which any price established by surge pricing remains in effect, including, without limitation, for a duration of minutes, hours or days or for a duration based on a number of separate transactions.***

***(b) Surveillance pricing to establish or modify the price of a good sold by the grocery establishment for a particular consumer or particular group of consumers.***

***3. A grocery establishment may reduce the price of a good sold by the grocery establishment in a manner that would otherwise be prohibited by this section so long as the reduction:***

***(a) Is uniformly offered to all consumers or made available to all consumers who meet eligibility criteria disclosed by the grocery establishment; and***

***(b) Does not violate section 30 of this act.***

***4. The provisions of this section do not prohibit a grocery establishment from establishing a loyalty, membership or reward program so long as any personally identifiable information collected by the grocery establishment for the purpose of administering the program is not used for surge pricing or surveillance pricing in violation of subsection 2 or used in a manner that violates section 30 of this act.***

**Sec. 32.** ***A violation of the provisions of sections 18 to 32, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to NRS 598.0999, inclusive.***

**Sec. 33.** NRS 598A.060 is hereby amended to read as follows:

598A.060 1. Every activity enumerated in this subsection constitutes a contract, combination or conspiracy in restraint of trade, and it is unlawful to conduct any part of any such activity in this State:

(a) Price fixing, which consists of raising, depressing, fixing, pegging or stabilizing the price of any commodity or service, and which includes, but is not limited to:

(1) Agreements among competitors to depress prices at which they will buy essential raw material for the end product.

(2) Agreements to establish prices for commodities or services ~~[.]~~ ***, including, without limitation, an agreement between two or more grocery establishments to use the same or a commonly owned algorithm to conduct surveillance pricing.***

(3) Agreements to establish uniform discounts, or to eliminate discounts.

(4) Agreements between manufacturers to price a premium commodity a specified amount above inferior commodities.

(5) Agreements not to sell below cost.

(6) Agreements to establish uniform trade-in allowances.

(7) Establishment of uniform cost surveys.

(8) Establishment of minimum markup percentages.

(9) Establishment of single or multiple basing point systems for determining the delivered price of commodities.

(10) Agreements not to advertise prices.

(11) Agreements among competitors to fix uniform list prices as a place to start bargaining.

(12) Bid rigging, including the misuse of bid depositories, foreclosures of competitive activity for a period of time, rotation of jobs among competitors, submission of identical bids, and submission of complementary bids not intended to secure acceptance by the customer.

(13) Agreements to discontinue a product, or agreements with anyone engaged in the manufacture of competitive lines to limit size, styles or quantities of items comprising the lines.

(14) Agreements to restrict volume of production.

(b) Division of markets, consisting of agreements between competitors to divide territories and to refrain from soliciting or selling in certain areas.

(c) Allocation of customers, consisting of agreements not to sell to specified customers of a competitor.

(d) Tying arrangements, consisting of contracts in which the seller or lessor conditions the sale or lease of commodities or services on the purchase or leasing of another commodity or service.

(e) Monopolization of trade or commerce in this State, including, without limitation, attempting to monopolize or otherwise combining or conspiring to monopolize trade or commerce in this State.

(f) Except as otherwise provided in subsection 2, consolidation, conversion, merger, acquisition of shares of stock or other equity interest, directly or indirectly, of another person engaged in commerce in this State or the acquisition of any assets of another person engaged in commerce in this State that may:

(1) Result in the monopolization of trade or commerce in this State or would further any attempt to monopolize trade or commerce in this State; or

(2) Substantially lessen competition or be in restraint of trade.

2. The provisions of paragraph (f) of subsection 1 do not:

(a) Apply to a person who, solely for an investment purpose, purchases stock or other equity interest or assets of another person if the purchaser does not use his or her acquisition to bring about or attempt to bring about the substantial lessening of competition in this State.

(b) Prevent a person who is engaged in commerce in this State from forming a subsidiary corporation or other business organization and owning and holding all or part of the stock or equity interest of that corporation or organization.

***3. As used in this section:***

***(a) "Algorithm" has the meaning ascribed to it in section 19 of this act.***

***(b) "Grocery establishment" has the meaning ascribed to it in section 25 of this act.***

***(c) "Surveillance pricing" has the meaning ascribed to it in section 29 of this act.***

**Sec. 34.** NRS 598A.170 is hereby amended to read as follows:

598A.170 Persons who engage in activities prohibited by this chapter are civilly liable, at the suit of the Attorney General, in an amount not to exceed ~~[5 percent of the gross income realized by the sale of commodities or services sold by such persons in this state in each year in which the prohibited activities occurred.]~~ ***$50,000 for each violation.***