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FIRST REPRINT

A.B. 481

ASSEMBLY BILL NO. 481—COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 23, 2015

Referred to Committee on Ways and Means

SUMMARY—Provides additional authority for the enforcement of the laws prohibiting deceptive trade practices. (BDR 52-1168)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to deceptive trade practices; requiring the Commissioner of Consumer Affairs or the Director of the Department of Business and Industry to provide investigative assistance to the Attorney General with cases involving deceptive trade practices; revising the provisions governing the revolving account for the Consumer Affairs Division of the Department of Business and Industry; revising provisions governing the service of subpoenas issued by the Division; expanding injunctive relief available against a person engaging in a deceptive trade practice; authorizing the Director to assess administrative fines; revising provisions relating to assurances of discontinuance; revising provisions relating to nondisclosure; creating the Consumer Affairs Unit within the Department of Business and Industry; continuing the transfer of certain powers and duties of the Consumer Affairs Division and the Commissioner of Consumer Affairs to the Office of the Attorney General; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires that the Commissioner of Consumer Affairs or the
- 2 Director of the Department of Business and Industry provide investigative
- 3 assistance to the Attorney General with cases involving a deceptive trade practice,



subject to limitations of legislative appropriation or availability of personnel. (NRS 598.0965) **Section 3** of this bill removes the aforementioned limitations.

Existing law creates a revolving account for the Consumer Affairs Division of the Department. (NRS 598.0966) **Section 4** of this bill requires the Director or his or her designee to administer the account and to deposit grants of money received by the Division into the account. **Section 4** also requires the money in the account to be used to defray the costs of the Division. Existing law authorizes the Commissioner or the Director to issue subpoenas and prescribes the method of service. (NRS 598.0967) **Section 5** of this bill revises the requirements for service of these subpoenas. Existing law authorizes a court to provide injunctive relief to prevent deceptive trade practices by a person who is not cooperating with an investigation. (NRS 598.097) **Section 6** of this bill authorizes a court to order a person who is not cooperating with an investigation to cease doing business in this State. Existing law authorizes certain sanctions against a person found to be engaging in a deceptive trade practice, including an order to cease and desist, payment of investigation and hearing costs and payment of restitution. (NRS 598.0971) **Section 7** of this bill authorizes the Director to assess an administrative fine as well. **Section 9** of this bill revises the provisions authorizing the Commissioner or Director to accept an assurance of discontinuance. Existing law allows the Commissioner or Director to make certain disclosures regarding deceptive trade practices. (NRS 598.098) **Section 10** of this bill makes the Commissioner and Director subject to the same nondisclosure law as the Attorney General in these cases.

Section 14 of this bill creates, from July 1, 2015, through June 30, 2017, the Consumer Affairs Unit within the Department to perform certain duties previously assigned to the Consumer Affairs Division. **Section 15** of this bill provides that certain provisions which were temporarily repealed by the 75th Session of the Nevada Legislature are no longer repealed. **Section 16** of this bill continues the temporary repeal of certain other provisions repealed by the 75th Session.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 598.0965 is hereby amended to read as follows:

598.0965 1. ~~{Within the limits of legislative appropriation and the availability of personnel, the}~~ **The** Commissioner or Director shall provide investigative assistance, including the identification and use of relevant evidence in his or her possession, necessary for litigation referred to the Attorney General pursuant to NRS 598.0963 or 598.0979. The Attorney General shall provide legal advice and guidance to the Commissioner or Director in carrying out his or her powers and duties pursuant to NRS 598.0903 to 598.0999, inclusive, including the investigation of any alleged violation of those sections and the preparation for litigation.

2. Upon written request by the Attorney General, the Commissioner or Director may provide any investigative assistance, including evidence and information in his or her possession, for use



1 in any action brought by the Attorney General pursuant to
2 subsection 3 of NRS 598.0963. No request for assistance may be
3 unreasonably denied.

4 **Sec. 4.** NRS 598.0966 is hereby amended to read as follows:

5 598.0966 1. There is hereby created a revolving account for
6 the Consumer Affairs Division of the Department of Business and
7 Industry . ~~In the sum of \$7,500, which must be used for the~~
8 ~~payment of expenses related to conducting an undercover~~
9 ~~investigation of a person who is allegedly engaging in a deceptive~~
10 ~~trade practice.]~~ *The account must be administered by the Director*
11 *or his or her designee.*

12 2. The ~~[Commissioner]~~ *Director or his or her designee* shall
13 deposit ~~the money in the revolving account in a bank or credit~~
14 ~~union qualified to receive deposits of public money as provided by~~
15 ~~law, and the deposit must be secured by a depository bond~~
16 ~~satisfactory to the State Board of Examiners.~~

17 ~~3. The Commissioner or the designee of the Commissioner~~
18 ~~may:~~

19 ~~—(a) Sign all checks drawn upon the revolving account; and~~

20 ~~—(b) Make withdrawals of cash from the revolving account.~~

21 ~~4. Payments made from the revolving account must be~~
22 ~~promptly reimbursed from the legislative appropriation, if any, to~~
23 ~~the Consumer Affairs Division for the expenses related to~~
24 ~~conducting an undercover investigation of a person who is allegedly~~
25 ~~engaging in a deceptive trade practice. The claim for reimbursement~~
26 ~~must be processed and paid as other claims against the State are~~
27 ~~paid.~~

28 ~~5. The Commissioner shall:~~

29 ~~—(a) Approve any disbursement from the revolving account; and~~

30 ~~—(b) Maintain records of any such disbursement.]~~ *any grant of*
31 *money received by the Division into the account, and any money*
32 *in the account must be used solely to defray the costs and expenses*
33 *of the Division.*

34 3. *The Director or his or her designee shall deposit any*
35 *administrative fines received by the Division into the State General*
36 *Fund.*

37 **Sec. 5.** NRS 598.0967 is hereby amended to read as follows:

38 598.0967 1. The Commissioner and the Director, in addition
39 to other powers conferred upon them by NRS 598.0903 to
40 598.0999, inclusive, may issue subpoenas to require the attendance
41 of witnesses or the production of documents, conduct hearings in aid
42 of any investigation or inquiry and prescribe such forms and adopt
43 such regulations as may be necessary to administer the provisions of
44 NRS 598.0903 to 598.0999, inclusive. Such regulations may
45 include, without limitation, provisions concerning the applicability



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1 of the provisions of NRS 598.0903 to 598.0999, inclusive, to
2 particular persons or circumstances.

3 2. ~~{Service}~~ *Except as otherwise provided in this subsection,*
4 *service* of any notice or subpoena must be made *by certified mail*
5 *with return receipt or* as ~~{provided in N.R.C.P. 45(e).}~~ *otherwise*
6 *allowed by law. An employee of the Consumer Affairs Division of*
7 *the Department of Business and Industry may personally serve a*
8 *subpoena issued pursuant to this section.*

9 **Sec. 6.** NRS 598.097 is hereby amended to read as follows:

10 598.097 If any person fails to cooperate with any investigation,
11 as provided in NRS 598.096, or if any person fails to obey a
12 subpoena issued by the Commissioner, Director or Attorney General
13 pursuant to NRS 598.0963 or 598.0967, the Commissioner, Director
14 or Attorney General may apply to any district court for equitable
15 relief. The application must state reasonable grounds showing that
16 the relief is necessary to terminate or prevent a deceptive trade
17 practice. If the court is satisfied of the reasonable grounds, the court
18 may:

19 1. Grant injunctive relief restraining the sale or advertisement
20 of any property by the person.

21 2. Require the attendance of or the production of documents by
22 the person, or both.

23 3. *Order the person to cease doing business within this State.*

24 4. Grant other relief necessary to compel compliance by the
25 person.

26 **Sec. 7.** NRS 598.0971 is hereby amended to read as follows:

27 598.0971 1. If, after an investigation, the Commissioner has
28 reasonable cause to believe that any person has been engaged or is
29 engaging in any deceptive trade practice in violation of NRS
30 598.0903 to 598.0999, inclusive, the Commissioner may issue an
31 order directed to the person to show cause why the ~~{Commissioner}~~
32 *Director* should not order the person to cease and desist from
33 engaging in the practice ~~{and to pay an administrative fine.}~~ The
34 order must contain a statement of the charges and a notice of a
35 hearing to be held thereon. The order must be served upon the
36 person directly or by certified or registered mail, return receipt
37 requested.

38 2. *An administrative hearing on any action brought by the*
39 *Commissioner must be conducted before the Director or his or her*
40 *designee.*

41 3. If, after conducting a hearing pursuant to the provisions of
42 subsection ~~{1,}~~ 2, the ~~{Commissioner}~~ *Director or his or her*
43 *designee* determines that the person has violated any of the
44 provisions of NRS 598.0903 to 598.0999, inclusive, or if the person
45 fails to appear for the hearing after being properly served with the



statement of charges and notice of hearing, the ~~Commissioner may make a written report of~~ *Director or his or her designee shall issue an order setting forth* his or her findings of fact concerning the violation and cause to be served a copy thereof upon the person and any intervenor at the hearing. If the ~~Commissioner~~ *Director or his or her designee* determines in the report that such a violation has occurred, he or she may order the violator to:

(a) Cease and desist from engaging in the practice or other activity constituting the violation;

(b) Pay the costs of conducting the investigation, costs of conducting the hearing, costs of reporting services, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the ~~Commissioner~~ *Director or his or her designee* free of charge, charges for providing an independent hearing officer, if any, and charges incurred for any service of process, if the violator is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive; ~~and~~

(c) Provide restitution for any money or property improperly received or obtained as a result of the violation ~~;~~ *and*

(d) Impose an administrative fine of \$1,000 or treble the amount of restitution ordered, whichever is greater.

➤ The order must be served upon the person directly or by certified or registered mail, return receipt requested. The order becomes effective upon service in the manner provided in this subsection.

~~3-1~~ *4.* Any person whose pecuniary interests are directly and immediately affected by an order issued pursuant to subsection ~~2-1~~ *3* or who is aggrieved by the order may petition for judicial review in the manner provided in chapter 233B of NRS. Such a petition must be filed within 30 days after the service of the order. The order becomes final upon the filing of the petition.

~~14-1~~ *5.* If a person fails to comply with any provision of an order issued pursuant to subsection ~~2-1~~ *3*, the Commissioner *or the Director* may, through the Attorney General, at any time after 30 days after the service of the order, cause an action to be instituted in the district court of the county wherein the person resides or has his or her principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.

~~15-1~~ *6.* If the court finds that:

(a) The violation complained of is a deceptive trade practice;

(b) The proceedings by the ~~Commissioner~~ *Director or his or her designee* concerning the written report and any order issued pursuant to subsection ~~2-1~~ *3* are in the interest of the public; and

(c) The findings of the ~~Commissioner~~ *Director or his or her designee* are supported by the weight of the evidence,



1 ➡ the court shall issue an order enforcing the provisions of the order
2 of the ~~{Commissioner}~~.

3 ~~— 6. Except as otherwise provided in NRS 598.0974, an~~
4 ~~Director or his or her designee.~~

5 7. An order issued pursuant to subsection ~~{5}~~ 6 may include:

6 (a) A provision requiring the payment to the ~~{Commissioner}~~
7 *Consumer Affairs Division of the Department of Business and*
8 *Industry* of a penalty of not more than \$5,000 for each act
9 amounting to a failure to comply with the ~~{Commissioner's}~~
10 *Director's or designee's* order; ~~{or}~~

11 (b) *An order that the person cease doing business within this*
12 *State; and*

13 (c) Such injunctive or other equitable or extraordinary relief as
14 is determined appropriate by the court.

15 ~~{7}~~ 8. Any aggrieved party may appeal from the final
16 judgment, order or decree of the court in a like manner as provided
17 for appeals in civil cases.

18 ~~{8}~~ 9. Upon the violation of any judgment, order or decree
19 issued pursuant to subsection ~~{5}~~ 6 or ~~{6}~~ 7, the Commissioner, after
20 a hearing thereon, may proceed in accordance with the provisions of
21 NRS 598.0999.

22 **Sec. 8.** NRS 598.0975 is hereby amended to read as follows:

23 598.0975 1. Except as otherwise provided in subsection 3
24 and in subsection 1 of NRS 598.0999, all fees, civil penalties and
25 any other money collected pursuant to the provisions of NRS
26 598.0903 to 598.0999, inclusive:

27 (a) In an action brought by the Attorney General,
28 ~~{Commissioner or Director}~~ must be deposited in the State General
29 Fund and may only be used to offset the costs of administering and
30 enforcing the provisions of NRS 598.0903 to 598.0999, inclusive ~~{}~~
31 *, by the Attorney General.*

32 (b) In an action brought by the district attorney of a county,
33 must be deposited with the county treasurer of that county and
34 accounted for separately in the county general fund.

35 2. Money in the account created pursuant to paragraph (b) of
36 subsection 1 must be used by the district attorney of the county for:

37 (a) The investigation and prosecution of deceptive trade
38 practices against elderly persons or persons with disabilities; and

39 (b) Programs for the education of consumers which are directed
40 toward elderly persons or persons with disabilities, law enforcement
41 officers, members of the judicial system, persons who provide social
42 services and the general public.

43 3. The provisions of this section do not apply to:

44 (a) Criminal fines imposed pursuant to NRS 598.0903 to
45 598.0999, inclusive; or



(b) Restitution ordered pursuant to NRS 598.0903 to 598.0999, inclusive, in an action brought by the Attorney General. Money collected for restitution ordered in such an action must be deposited by the Attorney General and credited to the appropriate account of the Consumer Affairs Division of the Department of Business and Industry or the Attorney General for distribution to the person for whom the restitution was ordered.

Sec. 9. NRS 598.0979 is hereby amended to read as follows:

598.0979 1. Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, when the Commissioner or Director has cause to believe that a person has engaged or is engaging in any deceptive trade practice, knowingly or otherwise, he or she may request in writing that the Attorney General represent him or her in instituting an appropriate legal proceeding, including, without limitation, an application for an injunction or temporary restraining order prohibiting the person from continuing the practices. The court may make orders or judgments necessary to prevent the use by the person of any such deceptive trade practice or to restore to any other person any money or property which may have been acquired by the deceptive trade practice.

2. Where the Commissioner or Director has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he or she may accept an assurance of discontinuance of any deceptive trade practice. This assurance may include a stipulation for the payment by the alleged violator of:

(a) The costs of investigation and the costs of instituting the action or proceeding ~~H~~, *including attorney's fees for the services of the Attorney General;*

(b) Any amount of money which he or she may be required to pay pursuant to the provisions of NRS 598.0971 in lieu of any administrative fine; and

(c) The restitution of any money or property acquired by any deceptive trade practice.

~~↳ Except as otherwise provided in this subsection and NRS 239.0115, any assurance of discontinuance accepted by the Commissioner or Director and any stipulation filed with the court is confidential to the parties to the action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice as had previously been enjoined, the assurance of discontinuance or stipulation becomes a public record. Proof by a preponderance of the evidence of a violation of an assurance constitutes prima facie evidence of a deceptive trade practice for the~~



~~purpose of any civil action or proceeding brought thereafter by the Commissioner or Director, whether a new action or a subsequent motion or petition in any pending action or proceeding.]~~

3. Any assurance of discontinuance accepted by the Commissioner or Director pursuant to subsection 2 must be filed with the court in the same manner as required by the Attorney General pursuant to NRS 598.0995 and, upon acceptance by the court, becomes an order of the court. An assurance of discontinuance made pursuant to subsection 2 is not an admission of guilt or liability for any purpose, except that any failure to comply with the provisions of the assurance is enforceable in the same manner as provided in subsection 7 of NRS 598.0971.

Sec. 10. NRS 598.098 is hereby amended to read as follows:

598.098 1. ~~[NRS 598.0903 to 598.0999, inclusive, do not prohibit the]~~ The Commissioner or Director ~~[from disclosing to the Attorney General, any district attorney or any law enforcement officer the fact that a crime has been committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive.]~~ may, during the course of the investigation of any alleged violation of this chapter, obtain and use any intelligence, investigative information or other information obtained by or made available to the Commissioner or Director. Except as otherwise provided in subsections 2 and 3, any such intelligence or information received must remain confidential under the laws of this State until the Commissioner or Director obtains a final administrative order pursuant to NRS 598.0971 and is exempt from the provisions of NRS 239.010.

2. ~~[Subject to the provisions of subsection 2 of NRS 598.0979 and except]~~ Except as otherwise provided in ~~[this section,]~~ subsection 4, the Commissioner or Director may ~~[not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not:~~

—(a) Prevent the Commissioner or Director from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice;

—(b) Apply to a person who is subject to an order issued pursuant to subsection 5 of NRS 598.0971.] cooperate with and coordinate the enforcement of the provisions of this chapter with the Attorney General, any state or local governmental agencies, officer of the Federal Government and the several states, including, without limitation, the sharing of information and evidence obtained in accordance with NRS 598.0967.

3. ~~[Upon request,]~~ The provisions of subsections 1 and 2 do not prohibit the Commissioner ~~[may:~~



1 ~~—(a) Disclose the number of written complaints received by the~~
2 ~~Commissioner during the current and immediately preceding 3~~
3 ~~fiscal years. A disclosure made pursuant to this paragraph must~~
4 ~~include the disposition of the complaint disclosed.~~

5 ~~—(b) Make public any order to cease and desist issued pursuant to~~
6 ~~subsection 5 of NRS 598.0971.~~

7 ~~↪ This subsection does not authorize the Commissioner to disclose~~
8 ~~or make public the contents of any complaint described in paragraph~~
9 ~~(a) or the record of or any other information concerning a hearing~~
10 ~~conducted in relation to the issuance of an order to cease and desist~~
11 ~~described in paragraph (b).] or Director from disclosing any~~
12 ~~intelligence or information received pursuant to subsection 1,~~
13 ~~including, without limitation, the address or telephone number of~~
14 ~~a business or organization.~~

15 4. ~~[The Commissioner may adopt regulations authorizing the~~
16 ~~disclosure of] If any~~ information ~~[concerning any complaint or~~
17 ~~number of complaints received by] sought pursuant to an~~
18 ~~investigation of an alleged violation of this chapter includes a~~
19 ~~trade secret, the Commissioner or Director [relating to a person who~~
20 ~~has been convicted of violating a provision of NRS 598.0903 to~~
21 ~~598.0999, inclusive.] shall enter into, and be bound by, an~~
22 ~~agreement regarding limitations on the disclosure of the~~
23 ~~information to protect the trade secret. Notwithstanding the~~
24 ~~provisions of this section, the Commissioner or Director shall not~~
25 ~~disclose that information in violation of the terms of the~~
26 ~~agreement. As used in this subsection, “trade secret” has the~~
27 ~~meaning ascribed to it in NRS 600A.030.~~

28 **Sec. 11.** (Deleted by amendment.)

29 **Sec. 12.** NRS 598.0995 is hereby amended to read as follows:

30 598.0995 1. In proceeding pursuant to subsection 3 of NRS
31 598.0963 or NRS 598.0987 to 598.0995, inclusive, the district
32 attorney or Attorney General may accept an assurance of
33 discontinuance with respect to any method, act or practice deemed
34 to be a deceptive trade practice from any person who is engaged or
35 is about to engage in the method, act or practice by following the
36 procedures set forth in ~~[subsection 2 of]~~ NRS 598.0979.

37 2. Any assurance made pursuant to subsection 1 must be in
38 writing and must be filed with and subject to the approval of the
39 district court in the county in which the alleged violator resides or
40 has his or her principal place of business, or the district court in any
41 county where any deceptive trade practice has occurred or is about
42 to occur or the district court agreed to by the parties.

43 3. An assurance of discontinuance made pursuant to
44 subsections 1 and 2 is not an admission of violation for any



purpose, but is subject to the terms, limitations and conditions of NRS 598.0979.

Sec. 13. (Deleted by amendment.)

Sec. 14. Chapter 232 of NRS is hereby amended by adding thereto a new section to read as follows:

1. From July 1, 2015, through June 30, 2017, for the purposes of the provisions of NRS 598.0903 to 598.0999, inclusive, any duty or authority conferred upon or any reference to the Consumer Affairs Division of the Department of Business and Industry shall be deemed to be the duty or authority of, or a reference to, the Consumer Affairs Unit which is hereby created in the Department of Business and Industry.

2. The Director of the Department of Business and Industry shall designate a Deputy Director of the Department of Business and Industry to serve as the Commissioner of Consumer Affairs and Chief of the Consumer Affairs Unit.

Sec. 15. Section 77 of chapter 475, Statutes of Nevada 2009, at page 2732, is hereby amended to read as follows:

Sec. 77. 1. NRS 487.535, 487.568, 487.570, 487.602, 597.480, 597.490, 597.500, 597.510, 597.520, 597.530, 597.535, 597.540, 597.550, 597.560, 597.570, 597.5701, 597.5702, 597.5703, 597.5704, 597.5705, 597.5706, 597.580, 597.590, 598.971, 598.975, 598.981, 598.985 and 598.990 are hereby repealed.

2. NRS ~~598.0913, 598.0927, 598.0957, 598.0959, 598.0965, 598.0966, 598.0967, 598.0971, 598.0979, 598.098, 598.305, 598.307, 598.315, 598.317, 598.325, 598.335, 598.345, 598.356, 598.361, 598.365, 598.366, 598.367, 598.371, 598.372, 598.373, 598.374, 598.375, 598.385, 598.395, 598.405, 598.416, 598.425, 598.435, 598.445, 598.455, 598.465, 598.471, 598.485, 598.495, 598.506, 598.515, 598.525, 598.845, 598.851, 598.855, 598.860, 598.865, 598.915, 598.9407, 598.9413, 598.944, 598.946, 598C.030, 598C.180, 599B.015, 599B.080, 599B.090, 599B.100, 599B.105, 599B.110, 599B.115, 599B.120, 599B.125, 599B.130, 599B.140, 599B.143, 599B.145 and 599B.195~~ are hereby repealed.

Sec. 16. Section 80 of chapter 475, Statutes of Nevada 2009, as last amended by chapter 250, Statutes of Nevada 2013, at page 1054, is hereby amended to read as follows:

Sec. 80. 1. This section and sections 1 to 35, inclusive, 36 to 57, inclusive, and 58 to 79, inclusive, of this act become effective on July 1, 2009.

2. The amendatory provisions of sections 3, 4, ~~36 to 50~~, 51, ~~inclusive~~, 57, 58 to 75, inclusive, and subsection 2



of section 77 of this act expire by limitation on June 30, ~~2015.~~ 2017.

3. Sections 35.1 to 35.95, inclusive, and 57.5 of this act become effective on July 1, 2015.

4. The amendatory provisions of sections 36 to 49, inclusive, of this act expire by limitation on June 30, 2015.

Sec. 17. 1. This section and sections 14, 15 and 16 of this act become effective upon passage and approval.

2. Sections 1 to 13, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

(b) On July 1, 2015, for all other purposes.

3. Section 14 of this act expires by limitation on June 30, 2017.

