

SUBJECT: Offense of use of electronic communication as organized criminal activity

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, J. González, Hunter, Moody, Murr, Pacheco

0 nays

2 absent — Zedler, P. King

WITNESSES: For — Shane Walker, Greater Austin Merchants Cooperative Association; Jeff Headley, Houston Police Department; Christopher Gatewood, Smith County Criminal District Attorney's Office; Paul Hardin, Texas Food & Fuel Association; (*Registered, but did not testify*: Rita Ostrander, Combined Law Enforcement Associations of Texas; Frederick Frazier, Dallas Police Association, State FOP legislative chairman; Richard Jankovsky, Department of Public Safety Officers Association; David Sinclair, Game Warden Peace Officers Association; Ray Hunt, Houston Police Officers Union; Stephen Scurlock, Independent Bankers Association of Texas; Jimmy Rodriguez, San Antonio Police Officers Association; Noel Johnson, TMPA)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Penal Code sec. 71.02 makes engaging in organized criminal activity a crime. The offense consists of committing, or conspiring to commit, one or more of certain crimes or types of crimes listed in the statute with the intent to establish, maintain, or participate in a combination of three or more persons or in the profits of such a combination or as a member of a criminal street gang. The list of offenses that can be considered engaging in criminal activity has 18 categories, some with numerous individual offenses. Offenses are generally punished one category higher than the crimes themselves.

Sec. 16.02 makes it a crime to unlawfully intercept, use, or disclose wire, oral, or electronic communications. Offenses are generally second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000).

DIGEST:

HB 869 would add the offense of unlawfully intercepting, using, or disclosing wire, oral, or electronic communications to the list of crimes that can constitute the offense of engaging in organized criminal activity.

The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 869 would give law enforcement officers another tool to combat credit card skimming. Skimmers are illegal devices attached to gas pumps, ATMs, or other terminals to steal credit card information. Often, thieves using skimmers work in groups to defraud numerous individuals per skimmer with a large impact on industries.

It often is unwieldy to prosecute these crimes using current laws that make it a crime to unlawfully intercept or use electronic communications or to commit theft by electronic device. In these situations, multiple victims of a skimmer must be called by the prosecution during the trial, which often is difficult. Penalties available under current law also do not reflect the seriousness of the consequences of large-scale skimming.

HB 869 would place unlawfully intercepting, using, or disclosing wire, oral, or electronic communications with similar crimes, including fraud, that can constitute organized criminal activity. This would help deter skimming, allow easier prosecutions for offenses, and impose appropriately higher penalties when skimming is carried out by an organized group. Prosecutors would retain discretion to handle cases of skimming under the offense itself or under the organized criminal activity statute.

The increased penalty allowed under HB 869 would apply only when the requirements for organized criminal activity were met so individuals

committing offenses alone would not fall under the bill, nor would innocent individuals who were not part of a group committing the crime. The long list of affirmative defenses to prosecution for unlawful interception of communications would continue to apply, helping to ensure that only those situations involving crimes could be prosecuted as organized criminal activity.

**OPPONENTS
SAY:**

The Legislature should be cautious about any potential unintended consequences of adding to the organized criminal activity statute and having innocent individuals who happen to be associated with an offender end up being considered part of a criminal gang.