

Legal Q&A

By **Christy Drake-Adams**, TML Assistant General Counsel

Q. What is a “transportation network company” or TNC?

A. Texas law defines a “transportation network company” to mean:

a corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a passenger to prearrange with a driver, exclusively through the entity’s digital network, a digitally prearranged ride. The term does not include an entity that provides:

- street-hail taxicab services;
- limousine or other car services arranged by a method other than through a digital network;
- shared expense carpool or vanpool arrangements; or
- a type of ride service for which:
 - the fee received by the driver does not exceed the driver’s costs of providing the ride; or
 - the driver receives a fee that exceeds the driver’s costs associated with providing the ride but makes not more than three round-trips per day between the driver’s or passenger’s place of employment and the driver’s or passenger’s home.

TEX. OCC. CODE § 2402.001; *see also id.* (defining the terms “digital network” and “digitally prearranged ride”).

TNCs are commonly referred to as ride-sharing or ride-hailing companies. Examples of transportation network companies include Uber and Lyft.

Q. Who regulates transportation network companies in Texas?

A. Historically, cities regulated TNCs. In 2015, some legislators proposed state laws to govern TNCs. A few would have expressly granted cities authority to regulate TNCs while others would have shifted this authority to the state. *See, e.g.*, Tex. H.B. 3358, 84th Leg., R.S. (2015), Tex. S.B. 1555, 84th Leg., R.S. (2015). None of the bills introduced in 2015 passed. The standoff ended in 2017 with the enactment of House Bill 100, effective May 29, 2017. Tex. H.B. 100, 85th Leg., R.S. (2017) (codified at Chapter 2402, Texas Occupations Code).

Under House Bill 100, the regulation of TNCs “is an exclusive power and function” of the State of Texas. TEX. OCC. CODE § 2402.003. Except for the regulations described in the next question, TNCs “may not be regulated by a municipality or other local entity.” *Id.*

The Texas Department of Licensing and Regulation (TDLR) is the state agency charged with implementing the state TNC regulations. *See, e.g., id.* § 2402.051 (providing that a TNC must get a permit from the TDLR in order to operate).

Q. Do cities have any authority to regulate transportation network companies?

A. Yes. A city that is also an airport owner or operator may impose regulations, including a reasonable fee, on a TNC that provides rides to or from the airport. *Id.* § 2402.003(b). And a city with jurisdiction over a cruise ship terminal may impose regulations, including a reasonable fee, on a TNC that provides rides to or from the terminal. *Id.* § 2402.003(c). City regulations over TNCs operating at an airport or ship terminal may not: (1) conflict with the requirements in Occupations Code Chapter 2402; or (2) impose requirements on drivers in addition to those in Section 2402.107, Occupations Code. *Id.* § 2402.003(d).

In addition to this regulatory authority, cities are expressly authorized to enter into two types of agreements with TNCs. First, a city may contract with a TNC for the coordination of large events occurring in the city’s jurisdiction. *Id.* § 2402.115. An agreement for a large event: (1) may not exclude a TNC holding a state permit from providing transportation services at the event; and (2) must have comparable terms for each TNC providing services at the event. *Id.* Second, a city and TNC may enter into a voluntary agreement under which the TNC shares the company’s data with the city. *Id.* § 2402.154.

Q. Could a transportation network company continue operating after May 29, 2017 (House Bill 100’s effective date)?

A. In order to facilitate the transition from local to state regulation, House Bill 100 provided that a TNC operating under a city ordinance immediately before May 29 could continue to operate at any location in this state without a permit until the later of:

- (1) the 30th day after the date rules adopted by the Texas Department of Licensing and Regulation become effective; or
- (2) the date the TNC’s application for a permit submitted to the TDLR before the date described in (1) is approved or denied. Tex. H.B. 100, 85th Leg., R.S. § 2 (2017).

The TDLR adopted final rules on October 20. *See* 42 Tex. Reg. 6559, 6615 (2017); *see also* 42 Tex. Reg. 4709, 4742 (2017) (proposing the rules); 42 Tex. Reg. 5185, 5270 (2017) (correcting the original publication of proposed rules). On December 1, 2017, the rules took effect and TDLR began accepting online applications for TNC permits. Transportation network companies that previously had a valid agreement with a city and continued operating were required to apply for a state permit with TDLR on or before December 31, 2017.

The state law, rules, and FAQs regarding transportation network companies are available on the TDLR website here: <https://www.license.state.tx.us/tnc/tnc.htm>.

Q. Are transportation network company drivers required to get a state permit?

A. No. While individual drivers do not need a separate permit from TDLR to act as a driver, they must be approved by a TNC to drive for the company.

Q. What was the status of a city’s transportation network company ordinance as of May 29, 2017?

A. House Bill 100 provides that on May 29, 2017, any city ordinance or policy related to TNCs or TNC drivers (excluding generally applicable traffic rules) is void. Tex. H.B. 100, 85th Leg., R.S. § 3 (2017); TEX. OCC. CODE § 2402.003(e).

Q. What if I have a complaint about a transportation network company?

A. Consumer complaints about a TNC operating in Texas can be sent to TDLR at <https://www.tdlr.texas.gov/Complaints> or communicated by phone at 1.800.803.9202.

Q. Is it legal to operate an automated vehicle in Texas?

A. Yes. Senate Bill 2205 enacted in 2017 expressly allows an automated motor vehicle to operate on Texas highways, with or without a human operator physically present, provided that the vehicle is:

- (1) capable of operating in compliance with traffic laws;
- (2) equipped with a record device that records velocity, location data, steering and brake performance, and transmit information about an accident to a central system;
- (3) compliant with federal law and federal motor vehicle safety standards;
- (4) registered and titled as required by state law; and
- (5) covered by liability insurance or otherwise self-insured as required by state law.

Tex. S.B. 2205, 85th Leg., R.S. (2017) (codified at Subchapter J, Chapter 545, Transportation Code).

Q. Who is considered the “operator” of an automated vehicle for purposes of assessing compliance with traffic laws?

A. The owner of the automated driving system is considered the operator for the purpose of assessing compliance with applicable traffic or motor vehicle laws, regardless of whether the owner is physically present in the vehicle. TEX. TRANSP. CODE § 545.453.

Q. Can cities regulate automated vehicles?

A. Both cities and state agencies are prohibited from imposing a franchise or other regulation related to the operation of an automated motor vehicle or driving system capable of operating without a human driver. *Id.* § 545.452. State law goes on to provide that automated motor vehicles and driving systems are governed exclusively by Subchapter J, Chapter 545, Transportation Code, aside from specific exceptions, such as insurance requirements. *Id.*