

Driving Exam Language Offerings



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Introduction

South Dakota is one of a handful of states that offer non-commercial driver license written examinations in English language only. This memorandum will provide an overview of the background and laws in South Dakota and an overview of exam language offerings in other states.

Background

Following a nationwide legislative trend for an English-only movement, the Legislature passed SB 110 in 1995 designating English as the common language of the state and requiring the use of English for public records and meetings.¹ Certain executive branch agencies in the state have relied on an interpretation of these statutes at times as the reason for not offering government documents in languages other than English.² SDCL 1-27-22 provides for exceptions to the common language requirement for foreign language courses; limited English proficiency (LEP) instruction; international tourism, commerce, and sporting events; requirements for public health, safety, and emergencies; the needs of the criminal justice system; and when the need arises in the case of expert testimony, witnesses, or speakers. There is no such exception explicitly listed in statute for driver licensing, but there is neither an explicit bar nor a requirement in state statute from offering documents in additional languages. In contrast, the South Dakota Cosmetology Commission offers its written exams, based upon the national NIC examination, in both English and Vietnamese.³

Language Offerings

Six states offer non-commercial driver license written exams in English only.⁴ The next most common language offered after English is Spanish. Many states offer the exam in three or more languages. Some states have an additional road signs test offered in English only. Most states allow the use of interpreters for the written portion of the test, but states vary as to whether interpretation services are provided by the state, volunteers, or are the responsibility of the examinee. Individuals are allowed to use an interpreter provided through their own arrangements and expense for the written portion of the non-commercial driver license exam.

Driving skills tests are conducted in English to ensure potential drivers understand basic commands, are able to have the minimum conversational skills, and read road signs as may be necessary for safe driving. States are split as to whether interpreters are allowed for the behind the wheel skills portion of the test, in part due to safety concerns arising from utilizing an interpreter while the examinee is driving. In addition to the written exam, some

¹ See 1995 S.D. SESS. LAWS, CH. 9.

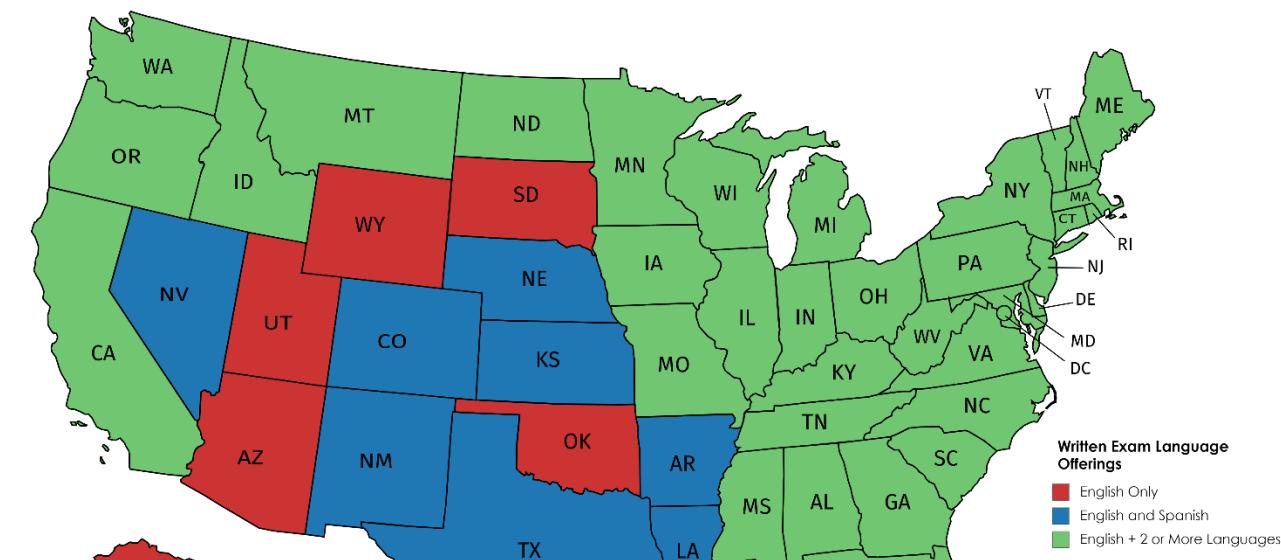
² Anderson, Patrick "English only? S.D. license law a hurdle for Sioux Falls construction industry." *Argus Leader* [Sioux Falls] August 29, 2017: <https://www.argusleader.com/story/news/business-journal/2017/08/29/time-driving-tests-spanish-construction-industry-reps-say/607741001/>.

³ South Dakota Department of Labor website accessed at https://dlr.sd.gov/cosmetology/licensing_reciprocity_licensed_of_state.aspx.

⁴ See Figure 1.

states offer multiple language versions of their driver manual. Under the Americans with Disabilities Act, states are required to offer effective communication services for deaf and hard of hearing individuals, and these individuals may obtain both non-commercial and commercial driver licenses. In South Dakota, an individual requesting this type of service must contact the Division of Driver Licensing to arrange for services, which will be provided by the state. Federal regulations require that the Commercial Driver License (CDL) exams are offered in English only, but states may choose to offer their CDL manual or preparation materials in additional languages.⁵

Figure 1 – Written Driver License Exam Language Offerings



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Data obtained from publicly available sources on driver license written exams.

Right to Bilingual Services

Courts have not supported a blanket constitutional right to bilingual services. In *Alexander v. Sandoval*, a class action suit sought to enjoin the Alabama Department of Public Safety from administering driver license examinations in English only. The Court found that Title VI of the Civil Rights Act of 1964 does not provide a cause of action to enforce the Department of Justice's regulation forbidding recipients of financial assistance from the

⁵ 49 C.F.R. § 391.11(b)(2).



federal government to utilize criteria or administrative methods that have the effect of subjecting individuals to discrimination based on race, color, or national origin.⁶

Issues and Concerns

In addition to its interpretation of the requirements for English as the common language in SDCL chapter 1-27, the Department of Public Safety cited the cost of translating the exam and the continuing updates to be prohibitive and estimated the cost to translate to an additional language at around \$62,000, according to testimony by the department in the hearing for 2018 SB 136.⁷ Rather than using a third-party vendor, as in most states, in South Dakota the Department of Public Safety uses the Bureau of Information and Telecommunications (BIT) to maintain the test and the instructional manual. The State would need to use state employee hours to translate the written examination and manual. Some argue that the lack of proficiency is a safety issue, but it has not been demonstrated that a level of English language proficiency beyond basic communication skills and the ability to read and interpret road signs is required to be a safe driver.

Why would a state undertake the cost of offering driver licensing materials and examinations in additional languages? The rationale is that the ability to safely and legally drive helps integrate individuals into the community and helps to provide a pathway for economic self-sufficiency through increased employment opportunities and less need to rely on the state for transportation and financial support. With unemployment rates reaching record lows, the pressure on industry to search for qualified workers has dramatically increased. In particular, the construction industry in South Dakota is seeking to hire more qualified workers and a significant number of these individuals are Spanish speakers.⁸

Requiring written examinations in English only may present a potential safety issue. Individuals may currently be driving unlicensed and uninsured on the state's roadways without proper instruction or a license from the state indicating that the individual is qualified to drive.

Limited English Proficiency (LEP)

The Office of General Counsel for the U.S. Department of Housing and Urban Development described limited English proficiency in 2016 guidance as, "a person's limited ability to read, write, speak, or understand English."⁹ This guidance cited census data estimating that over twenty-five million individuals in the United States are LEP, and Spanish speakers comprising sixty-five percent of this figure. As applied to the driver licensing process, being able to read and comprehend English to take a written multiple choice exam or read an instruction manual requires a significantly higher degree of language proficiency than reading road signs or using basic conversational skills.

The Multi-Cultural Center of Sioux Falls offers a driver's education program approximately every two months for LEP individuals. Payment for the course includes the use of an interpreter for the written exam up to two times. Alternately, individuals may arrange for a single session with an interpreter for sixty dollars for the exam without taking the course. This is just one option for an issue that is occurring throughout the state. An individual would

⁶ 532 US 275 (2001).

⁷ See bill testimony recording located at https://sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=136&Session=2018.

⁸ See Argus Leader article.

⁹ <https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>.



still need the resources to be able to pay for the services, have transportation to attend, and have an open schedule at the right time for the course. Individuals may already have sufficient driving skills but lack language skills, and the driving education course may make the process to obtain a license significantly longer in some cases.

It should be noted that making examinations, manuals, or preparation materials available in other languages is an issue related to language proficiency and separate from providing licenses to individuals with lawful or unlawful citizenship or residency status.

Conclusion

The Department of Public Safety has interpreted South Dakota's laws designating English as the common language in the state to preclude offering written non-commercial driving exam tests in additional languages. An individual may use a translator for the written exam, but the responsibility to find, hire, and pay the translator falls upon the individual in need of interpretation services. South Dakota, along with its neighbor Wyoming, remains part of the small contingent of states that continue to offer the test in English only.

This issue memorandum was written by Emily Kerr, Legislative Attorney, on November 9, 2018, for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.

