

Testimony before the  
**House Committee on Education**

on  
**SB 492 – Teacher Licensure; Obscenity Defense**

by

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to offer comments today on **SB 492**, which has two parts.

Section 1 amends current law that requires either a permanent prohibition on obtaining a Kansas teacher's license or a five-year ban with the possibility of reinstatement for certain crimes.

Specifically, it would change current law to allow a person convicted of *misdemeanor* driving under the influence of alcohol or drugs to acquire a teaching license in Kansas. It would also make a conviction of (or a criminal diversion agreement for) the crime of endangering a child result in a five-year ban; and conviction of aggravated endangering a child or of sexual battery when the victim was under 18 or a student of the person committing the crime result in a lifetime ban from the teaching profession. KASB has no objection to those changes.

We are much more concerned about Section 2, which ostensibly merely prohibits teachers from using, reading, or displaying any obscene material without approval of the local school board; and prohibits principals from allowing individuals to use, read, or display such material. In fact, we believe this section is more likely to simply increase confusion and litigation over materials provided in schools.

After the House discussed **HB 2900** last session and referred that bill to this committee, KASB reviewed the issue of the "teacher defense" against obscenity prosecutions with our members. Over the course of the past year, not a single school board or board member has suggested that current law should be changed, or provided a single example of a teacher who has "used, read or displayed" obscene material, whether or not such material was approved by the local board.

Following consideration by the KASB Legislative Committee and presentations at 10 regional meetings across the state attended by hundreds of local board members, the KASB Delegate Assembly overwhelmingly adopted a statement opposing “efforts to directly or indirectly limit the board’s ability to determine curriculum, library or other instructional materials.” While section 2 of **SB 492** would seem to strengthen the board’s authority over curriculum, our analysis suggests that would not be the case, for these reasons:

First, remember the “teacher defense” provided in K.S.A. 21-4301 is not an absolute immunity from prosecution or conviction in an obscenity case. It is simply a defense that can be offered which a prosecutor and jury must consider. Likewise, removing this defense would not eliminate the ability of a teacher to raise an “educational purpose” in defending the use of materials.

Second, the bill states that a teacher shall not read, use or display in a school any material for which an affirmative defense to prosecution may be asserted unless such material has been approved by the board. But a teacher will not know what materials might require such a defense until they are charged. If it is the intent of the Legislature to require all material used by a teacher be approved by the local school board, it would be better to state that policy directly.

Third, although the bill seeks to prohibit teachers and principals from using such materials without board approval, it contains no enforcement unless the local prosecutor charges the teacher. The teacher would retain all current due process rights, and in fact, courts have upheld limits to the ability of school boards to censor materials simply because they are controversial.

As in all cases involving obscenity, there are examples almost everyone agrees are inappropriate; there are examples that reasonable people agree are not obscene, and a large grey area in between. This legislation is not going to change that fact. However, we suggest it may lead to efforts to resolve curriculum controversy through the courts. We think that would be a mistake.

We believe the best way to resolve this matter is through the local school district decision-making process. Most boards have a procedure for dealing with controversial materials. School boards are accountable to the voters through local elections every two years. Our members say that system is working well, and does not need to be changed.

Thank you for your consideration.