

**SB**

**37**

# Alaska State Legislature




**Senator Kim Elton**  
**Minority Whip**

**Senator Fred Dyson**  
**Chair, Health Education &**  
**Social Services**

## MEMORANDUM

February 3, 2005

To: Senator Fred Dyson, Chair  
Senate Health Education & Social Services Committee

From: Kim Elton 

Re: SB 37

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I respectfully request a hearing on Senate Bill 37, requiring the department of Health & Social Services to rewrite its regulations on the transportation of dead bodies.

I have attached our sponsor statement, a copy of the regulation, and a recent news article that ran in both the Anchorage and Juneau papers.

I appreciate your joint sponsorship of this bill, and look forward to presenting it before the committee as soon as is convenient.

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## **SB 37** **Transportation of Dead Bodies**

### **Sponsor Statement**

Alaska law currently requires any dead body transported in or out of the state to first be embalmed. This requirement, found in public health regulations, was in effect prior to statehood. Back when few communities had daily jet service, dry ice was not widely available, and plastics technology not as advanced as it is today, this was necessary to protect the public health.

Members of certain religious groups, however, do not embalm their dead. When these Alaskans wish to be buried next to a loved one out of state or in the Holy Land, or when they wish to bury a loved one in Alaska who passed away Outside, their religious practices and state law come into conflict. This requirement can also impact tourists visiting our state.

Government should only infringe religious liberty when necessary to serve a compelling state interest, like protection of the public health. SB 37 requires the Department of Health & Social Services to rewrite its regulations regarding the transportation of dead bodies. It gives the department the flexibility it needs to require embalming where necessary to protect the public health, but not as a general matter of course.

We would appreciate your support.

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Anchorage Daily News

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**Alaska embalming law wars with religions****TRANSPORT: Jewish woman tries to strike down state rule that impedes exercise of faith.**By MATT VOLZ  
The Associated Press*(Published: February 2, 2005)*

JUNEAU -- Sending Grace Weinberg to her final resting place nearly came down to a choice between breaking the laws of the state or those of her religion.

Weinberg was 84 years old when she moved in with her daughter, Sheryl, in Juneau in 1995. Grace was an active member of the town's small Jewish community and even led an aerobics class three days a week.

But by spring 2003, the 92-year-old's health had diminished, and she and her daughter began to plan her funeral.

Grace's final resting place was to be beside her late husband in Arizona. But when Sheryl met with a Juneau funeral director about transporting her mother to Phoenix, she hit an obstacle: Bodies cannot cross Alaska state lines unless they have been embalmed.

"We're Jewish," Weinberg said. "When I told him she couldn't be embalmed, he told me that was impossible."

Jewish tradition prohibits the dead from being embalmed, according to several rabbis and religious scholars, because all the organs and fluids are sacred and must be buried with the body, and the embalming process removes them and replaces them with chemicals to slow decomposition.

"The reason it's not permitted is because we use the notion from dust to dust," said Rabbi Edythe Menscher of the Union for Reform Judaism based in New York. "As you are created, so you return."

Some other faiths, such as Islam, also prohibit embalming the dead.

In the Weinbergs' case, it became a matter of working around the law of the state to comply with the law of their faith.

Sheryl Weinberg spent six weeks talking to state officials and medical examiners, trying to get a waiver to transport her mother's remains. It was important that the paperwork be in place because once Grace died, Jewish law required she be buried as quickly as possible.

The waiver came through just weeks before Grace died in August 2003. Her body was sent quickly to Phoenix, unembalmed.

"Had we not had the waiver, it would have been impossible to have honored her wish," her daughter said.



In order to carry out her mother's wish to be buried in Phoenix, Sheryl Weinberg had to fight an Alaska law that prohibits transport of unembalmed bodies across state borders. *(The Associated Press)*

[Click on photo to enlarge](#)

Sheryl Weinberg has taken her fight to Alaska's Capitol, where she hopes to see the law struck down. She said she does not want other families to go through what she did as she prepared for her mother's death.

"The fact that I had a roadblock almost first thing and had to secure this waiver, it was not something I relished, but I had to pursue it to the end," she said.

The law that requires bodies be embalmed has been part of state public health regulations since Alaska was a territory.

"This could be an artifact from the time when the technology provided that dry ice would be packed on the body and (it) be shipped on a freighter," said Sen. Kim Elton, a Democrat from Juneau and a sponsor of a bill to change the law.

Elton and the other sponsors say technological advances and daily jet service have reduced the health concerns the law was meant to address.

Allowing the law to stand now infringes on religious liberty, they say.

Deb Erickson, deputy director of the state Department of Health, said the issue rarely comes up in Alaska, where the Lubavitch Jewish Center estimates about 5,000 of the state's population of nearly 650,000 are Jewish.

Erickson said she can remember two cases in the past two years when embalming waivers were requested.

"We haven't hesitated to grant a waiver in the past when it's due to religious services," she said.

At least one funeral director doesn't think changing the law is a good idea. Bill Wilkerson, general manager of Alaskan Memorial Park and Mortuary in Juneau, said he believes transporting unembalmed bodies could pose a health risk or cause discomfort to others, such as passengers aboard a plane that carries an unembalmed body not properly sealed in a container.

Changing the law also could cut into the bottom line of funeral parlors, which charge for embalming.

"It's not a big issue but it could become a big issue if it came to somebody who didn't want to pay for embalming," Wilkerson said.

There is no public health threat in transporting an unembalmed body on a common carrier such as an airplane as long as the body is in a sealed container, Erickson said. The proposed law change would still require embalming for bodies carrying communicable diseases, she added.

An Alaska Airlines spokeswoman said the airline's policies follow state law. If the law in Alaska changes, the airline would adjust its policies, she said.

Rabbi Yosef Greenberg of the Lubavitch Jewish Center in Anchorage said the issue does not come up frequently now, but Alaska's population and tourism industry are growing. Last year, he said, he helped secure a waiver to return to Israel the bodies of two Israeli tourists who died in a car crash.

Greenberg said he fully supports changing the law.

"I think it's a very crucial resolution," Greenberg said.

### Against state lines

**THE LAW:** Public health laws require bodies be embalmed before they are transported across Alaska state lines.

**THE CONFLICT:** Judaism, Islam and some other religions prohibit their dead from being embalmed.

**THE PROPOSED CHANGE:** Bills filed in the Alaska House and Senate would change the law to allow unembalmed bodies to cross state lines so that religious traditions aren't compromised because of state law. The exception would be in the case of communicable diseases.

-- The Associated Press

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**7 AAC 35.100. Transportation of the dead**

(a) The transportation of human remains dead of any diseases mentioned in 7 AAC 35.090 shall be permitted only under the following conditions:

- (1) the body shall be thoroughly embalmed with disinfectant solution; and
- (2) all orifices shall be closed with absorbent cotton; and
- (3) the body shall be washed with the solution and placed immediately in an hermetically sealed casket; and
- (4) the casket encased in a suitable shipping container acceptable to the Commissioner of Health and Social Services.

(b) The transportation of human remains dead of any cause other than those diseases mentioned in 7 AAC 35.090 is permitted only under the following conditions:

- (1) when the destination can be reached within the state within 24 hours after death, an unembalmed body shall be thoroughly washed, all orifices shall be closed with absorbent cotton, and the body dressed in a clean sheet and placed in an hermetically sealed metal shipping container;
- (2) human remains shipped into or out of Alaska must first be embalmed;
- (3) when the body cannot reach its destination within 24 hours after the death, the body shall be thoroughly embalmed, and placed in a casket; the casket encased in a suitable shipping container acceptable to the Commissioner of Health and Social Services;
- (4) exceptions to (b) of this section may be approved only by the Commissioner of Health and Social Services where circumstances render the provisions of (b) of this section impossible to carry out.

(c) An outside shipping container is required in all instances except when the casket is transported in a hearse. The outside container shall be of wood, canvas, reinforced nylon, composition board, or other suitable material.

**History:** In effect before 7/28/59; am 2/21/71, Register 37

**Authority:** AS 18.05.040