

## HB 2645 -1, -2 STAFF MEASURE SUMMARY

### House Committee On Judiciary

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**Prepared By:** Gillian Fischer, LPRO Analyst

**Meeting Dates:** 1/31, 2/7

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#### **WHAT THE MEASURE DOES:**

Provides that “attempted transfer,” for purposes of Uniform Controlled Substances Act, includes possession of controlled substance with intent to transfer to another person. Establishes a Class A misdemeanor penalty for possession of certain amounts of Fentanyl. Adds user unit measurement of Fentanyl for purposes of calculating crime category level for certain offenses involving possession, delivery or manufacture of Fentanyl. Establishes minimum sentence if a person is convicted of unlawful manufacture or delivery for consideration of controlled substance that results in death of another person from use of controlled substance. Takes effect on 91st day following adjournment sine die.

#### **ISSUES DISCUSSED:**

##### **EFFECT OF AMENDMENT:**

-1 Replaces the measure. Establishes a Class A misdemeanor penalty for possession of certain amounts of Fentanyl. Adds user unit measurement of Fentanyl for purposes of calculating crime category level for certain offenses involving possession, delivery or manufacture of Fentanyl. Takes effect on 91st day following adjournment sine die.

-2 Replaces the measure. Establishes a Class A misdemeanor penalty for possession of certain amounts of Fentanyl. Adds user unit measurement of Fentanyl for purposes of calculating crime category level for certain offenses involving possession, delivery or manufacture of Fentanyl. Declares and emergency, effective on passage.

#### **BACKGROUND:**

In Oregon, a person commits the crime of delivery of a controlled substance if the person engages in the “actual, constructive, or attempted transfer” of that substance. A 1988 Oregon Court of Appeals case, *State v. Boyd*, established the rule that possession of drugs coupled with evidence of the intent to sell them, was sufficient to prove “attempted delivery” under ORS 475.005. The Oregon Court of Appeals recently overturned *State v. Boyd*, holding that evidence of possession with intent to sell, alone, was insufficient to establish the crime of delivery of a controlled substance.

A person illegally in possession of Fentanyl may be cited with a class E violation under ORS 475.752, unless they possess more than 50 grams, of Fentanyl, in which case they may be charged with a class C felony ORS 475.900. Oregon statute does not provide for a class A misdemeanor charge for possession of Fentanyl as it does for possession of similarly categorized controlled substances such as heroin, methamphetamine, and cocaine. Additionally, statutes criminalizing possession of Fentanyl require proof of specific quantities defined by weight and cannot be established by possession of “pills, tablets, capsules or user units” as allowed for in statutes relating to Oxycodone under ORS 475.834.

House Bill 2645 would amend the crime of delivery of a controlled substance to include possession with intent to deliver and would establish a mandatory minimum sentence for the conviction of manufacture or delivery of a controlled substance if the use of that controlled substance results in the death of another person. The measure would also establish a class A misdemeanor crime for possession of certain quantities of Fentanyl and provides a user unit measurement alternative for establishing quantities of Fentanyl under existing statutes.