

# Pesticides, Failure to Warn Lawsuits, and State Legislation

## Key Takeaways:

- In recent years there have been lawsuits against pesticide manufacturers which claimed the company failed to warn about the risks of using the product.
- Manufacturers are required by federal law to use the label provided by the EPA.
- State and federal legislation has been filed to provide clarity to whether pesticide manufacturers are liable for claims on failure to warn which follow the federal label requirements.
- Federal Circuit Courts of Appeal have split decisions about whether the federal law preempts failure to warn claims on pesticides following federal label requirements, and the U.S. Supreme Court is in the process of determining whether the court will hear the issue.
- There is concern that if this type of litigation continues to be successful, manufacturers will stop producing these products which are vital to farmers. Bayer has publicly stated that without resolution to this issue, the company will be compelled to remove glyphosate from the market.

## Questions:

1. Should companies be held liable for failure to warn claims even though federal law prohibits making changes to the federally approved label?
2. Tennessee Farm Bureau policy supports state legislation to address these types of lawsuits, do your farmers in your community support this position?
3. Would losing access to pesticide products impede profitability for farmers?

## Background

Tennessee Farm Bureau Federation would like to thank the National Agricultural Law Center for the information in this article.

Over the past several years there has been an increase in lawsuits filed claiming that exposure to a pesticide product caused the development of illness or injury. The highest profile pesticide injury cases have involved plaintiffs who claim that exposure to glyphosate, the active ingredient in the pesticide Roundup, has caused non-Hodgkin's lymphoma. There have also been cases alleging injury as the result of exposure to paraquat, chlorpyrifos, and other commonly used pesticide products. Typically, the lawsuits claim pesticide manufacturers failed to warn consumers

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about health risks allegedly associated with exposure to certain pesticide products and have become central to pesticide injury litigation.

“Failure to warn” is a type of civil tort frequently raised in products liability cases. Unlike negligence and design defect, which are other legal claims, failure to warn does not argue a product has physical faults. Instead, a plaintiff typically raises failure to warn claims to allege a product manufacturer failed to provide adequate warnings or instructions about the safe use of a product. The high-profile pesticide cases hinge on the failure to warn concept. To succeed on a failure to warn claim, a plaintiff must prove two things. First, the plaintiff must show the manufacturer did not adequately warn consumers about a particular risk. Second, the plaintiff must show the risk was either known or knowable considering the generally recognized and prevailing best scientific and medical knowledge available at the time the product was manufactured and distributed. Essentially, the manufacturer must have either known or been able to easily discover the risk, failed to warn consumers, and such failure caused the plaintiff to become injured.

Pesticide manufacturers argued failure to warn claims by stating that pesticides are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), a federal law which requires all pesticides to bear a federally approved label to be sold legally in the United States. Part of registering a pesticide product label requires the Environmental Protection Agency (EPA) to conduct a human health risk assessment and make a carcinogenicity classification. Additionally, FIFRA prohibits states from adding language to a federally registered pesticide label which is “in addition to or different from” federal requirements. Pesticide manufacturers argue failure to warn claims in pesticide injury lawsuits should be dismissed because the only way to avoid the claims would be for the manufacturer to affix cancer warning statements to the packaging in addition to the federal label. Manufacturers have argued this would violate FIFRA by introducing label language different from the federally approved label. Specifically, EPA has never concluded that glyphosate is carcinogenic in humans, which is what most of the lawsuits claim.

Lawsuits filed by plaintiffs have been on the rise for years claiming they were injured after being exposed to glyphosate and Bayer (formerly Monsanto) failed to warn them of risks, with the question of whether FIFRA preempts the tort claims raised by plaintiffs having come before three Circuit Courts of Appeal. Currently, there is a split amongst the circuits, with the Ninth and Eleventh Circuits finding these claims are not preempted by federal law and the Third Circuit holding that FIFRA does preempt the claims. The Supreme Court has been asked to consider whether the FIFRA preempts state tort law and claims pesticide manufacturers have “failed to warn” consumers about alleged health risks associated with using their products. In June 2025, the Supreme Court asked the Office of the Solicitor General to give input on whether the Court should hear the case on the scope of federal pesticide law. The Supreme Court will decide by the end of the year if it will take up the case.

While courts continue to consider whether failure to warn claims should be permitted in pesticide injury lawsuits, some states are looking to pass legislation limiting the liability of pesticide manufacturers facing failure to warn lawsuits over pesticide products bearing federally approved labels consistent with the most recent human health risk evaluations and carcinogenicity classifications from EPA. North Dakota and Georgia have passed this type of legislation. In 2025, Tennessee Farm Bureau supported similar legislation which passed the Senate but was delayed in the House Judiciary Committee until 2026. As amended, the legislation created a defense in Tennessee law for failure to warn claims for following the federal label.

Congressional legislation has also been filed. The Agricultural Labeling Uniformity Act seeks to provide clarity and consistency in state and federal roles in pesticide labeling. It reinforces the EPA's role as the national authority on pesticide labeling and packaging requirements.

A significant concern of many in the agricultural industry is if there is not a resolution to this type of litigation there will be loss of important products used by farmers. Bayer has publicly stated that without resolution to this issue, the company will be compelled to remove glyphosate from the market. Bayer is the only domestic producer of glyphosate.

## **Policy**

### *Tennessee Farm Bureau Crop Protection (Partial)*

We urge Congress to provide greater oversight of EPA's review of crop protection products. EPA must be held accountable to make timely, science-based decisions and not bow under pressure from activist groups. We oppose any legal action based on excessively broad interpretations of environmental laws which restrict or limit the safe and proper use of agricultural crop protection products. Products which have undergone proper approval processes under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) should be protected from frivolous lawsuits making unsubstantiated health or safety claims.

### *Economic Policy (Partial)*

The U.S. cannot afford to allow our regulatory, litigation, labor, and other input costs to rise to the point our nation becomes vulnerable to economic blackmail. Our rural communities are suffering from the loss of jobs. We urge Congress to study ways to lower our production costs and remain competitive worldwide.

Read more about Bayer's potential decision to remove glyphosate from the shelves:



*American Farm Bureau*

*336 / Agricultural Chemicals (Partial)*

1. Agricultural chemicals are important in continuing to supply consumers with an abundant, safe, nutritious, high quality and reasonably priced food supply. We are committed to continuing the use of agricultural chemicals in a safe and judicious manner so as to protect the health and safety of producers, our employees, our families, our communities and the environment.

8. Regulation

8.1. We believe implementation and defense of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) should be based on credible scientific information in order to benefit farmers, the environment and the public and should be the sole federal regulatory authority over pesticides.

8.3. We recommend that state and local law not be able to prevent the use of pesticide and herbicide products that have EPA approval. 8.3.1. We should continue to work with EPA on the use of pesticides in counties where endangered species are located to ensure we are not adding an undue burden on farmers.

8.3.2. Products that have undergone proper approval processes under FIFRA should be protected from frivolous lawsuits making unsubstantiated health and safety claims.

8.17. All approved agricultural chemicals, such as atrazine, acetachlor, glyphosate, diuron and simazine, are safe when used according to label and effective, economical crop protection chemicals that must continue to be available to farmers.