STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

January 13, 2026

Opinion No. 26-01

Scope of Proposed Legislation to Limit Civil Liability for Pesticide Manufacturers and Sellers

Question 1

Is the presence, absence, or content of pesticide labeling in accordance with Tenn. Code Ann. § 43-8-104 and/or the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") an essential element of a claim against a manufacturer or seller of a pesticide that is based on one or more of the following theories of liability: negligence; strict liability; breach of warranty; design defect; inadequate testing; inherently unsafe for the intended use; deviation from intended design during production; and assurances of product quality or safety?

Opinion 1

It depends on the specific allegations asserted against the manufacturer or seller.

Question 2

Would passage of Senate Bill 527/House Bill 809 allow manufacturers to use labeling of a pesticide in accordance with Tenn. Code Ann. § 43-8-104 and/or FIFRA as a defense against theories listed in Question 1?

Opinion 2

It depends on the specific allegations asserted against the manufacturer.

Question 3

If Senate Bill 527/House Bill 809 becomes law, will a person who is injured by a pesticide that is labeled in accordance with Tenn. Code Ann. § 43-8-104 and/or FIFRA be able to maintain a claim against the pesticide manufacturer? If yes, under which cause(s) of action and what elements would the injured person have to prove to establish a claim under such cause of action compared to the elements the injured person would have to prove to establish a claim based on negligence for failure to warn?

Opinion 3

See response to Question 2. The viability of a given cause of action would depend on what is alleged.

Question 4

Does Senate Bill 527/House Bill 809 bar civil actions for damages caused by a pesticide that are discovered before a pesticide's label was approved or updated in accordance with Tenn. Code Ann. § 43-8-104 and/or FIFRA? After a pesticide's label was approved or updated in accordance with Tenn. Code Ann. § 43-8-104 and/or FIFRA?

Opinion 4

As specifically phrased, we do not think that either of the respective queries posed through the above question admit definitive answers.

Question 5

Does Senate Bill 527/House Bill 809 violate 7 U.S.C. § 136a(f)(2)?

Opinion 5

No. The proposed legislation would not "violate" the referenced federal provision.

ANALYSIS

Like other measures recently enacted or considered in other States,[1] the legislative proposal at the center of the request seeks to provide civil liability protection related to pesticides. *See generally* S.B. 527/H.B. 809, 114th Gen. Assem. (2025). The proposed legislation specifically addresses "[t]he manufacturer or seller of a pesticide registered with the commissioner [of agriculture] in accordance with § 43-8-104 and with the federal environmental protection agency (EPA) under the federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136 et seq.)." *Id.* And it substantively provides that such a manufacturer or seller "is not liable in a civil action related to the labeling of the pesticide, including a products liability action alleging a failure to warn under title 29, chapter 28, if the pesticide bore a label approved by the EPA under FIFRA at the time of sale." *Id.* Through a separate subsection, however, the proposed legislation states that it "does not apply if a pesticide is manufactured or sold in violation of [Tennessee Code Annotated, Title 43, Chapter 8] or FIFRA." *Id.*[2]

[1] *See, e.g.*, Ga. Code Ann. § 2-7-171 (generally addressing, "beginning on January 1, 2026," what shall be deemed "a sufficient warning label for the purposes of an action commenced under any provision of state law concerning the duty to warn or label, or any other common law duty to warn"); N.D. Cent. Code § 28-01.3-11 (likewise addressing the sufficiency of labels for registered pesticides in relation to "the duty to warn or label" under state law "or any other common law duty to warn").

[2] Our references herein relate to the substantive provisions of the proposal as originally introduced in the General Assembly, which are the same provisions the request relays in connection with its questions. For the sake of completeness, though, we note that this separate subsection referenced—subsection (b) of the proposal—appears differently pursuant to the terms of an amendment introduced in the Senate Judiciary Committee.

This proposed law reflects a broader tension between holding a company accountable through agency rules established before the company acts or through tort liability applied retrospectively. In heavily-regulated industries in the United States, manufacturers often find themselves in perilous waters between the Scylla of regulation and the Charybdis of litigation. *Cf., e.g.*, *Wyeth v. Levine*, 555 U.S. 555, 581 (2009) (permitting tort claims against drug manufacturer based on failure to warn even though the drug's labeling had been deemed sufficient by the federal Food and Drug Administration). Regulators mandate in advance what companies should do, often in great detail with respect to labeling, and trial lawyers spring into action on the back end to tell the companies that what they did was not good enough to satisfy state law requirements. How this tension plays out in practice depends heavily on the specific laws at issue and the specific facts in a given case.

Questions of federal preemption are frequently at the center of this tension. Notably, the United States Solicitor General was recently invited to offer his views on FIFRA preemption in a failure to warn case and argued that the federal statute preempts a state law claim based on alleged mislabeling. *See* Brief for the United States as Amicus Curiae at 1, 10, *Monsanto Co. v. Durnell*, No. 24-1068 (U.S. Dec. 1, 2025). As he specifically explained, "FIFRA 'pre-empts any statutory or common-law rule that would impose a labeling requirement that diverges from those set out in FIFRA and its implementing regulations.'" *Id.* at 11 (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 452 (2005)). This line of analysis affords a powerful defense to manufacturers who comply with their federal regulatory burden.

Here, the instant request poses several questions for our consideration against the backdrop of the pending legislative proposal and FIFRA, but it does so—necessarily—in the absence of specific allegations detailed in a civil complaint or a robust factual record. While we have carefully considered the questions and attempted to answer them to the extent possible, the granular analysis ultimately necessary to resolve the questions posed makes it regrettably difficult to provide useful answers under these circumstances. We address the questions in turn below.

1. As phrased, the first question inquires into a hypothetical claim against a manufacturer or seller of a pesticide that might be based on one or more of several listed legal theories. It specifically asks whether the presence, absence, or content of pesticide labeling in accordance with Tenn. Code Ann. § 43-8-104 and/or FIFRA would be an essential element of the asserted claim. Although some of the listed legal theories might be predicated on the presence, absence, or content of pesticide labeling when invoked in a lawsuit against a manufacturer or seller of a pesticide, whether a given legal action would be somehow tethered to pesticide labeling would inevitably depend on the specific allegations against the defendant.[3] Evaluating whether a given state law

[3] It can of course be expected that some of the claims specifically listed in the request, such as a true "design defect" claim, would exist independent of questions pertaining to a pesticide's labeling. *See Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 444 (2005) (noting that "[r]ules that require manufacturers to design reasonably safe products, to use due care in conducting appropriate testing of their products, to market products free of manufacturing defects, and to honor their express warranties or other contractual commitments plainly do not qualify as requirements for 'labeling or packaging'"). But for some of the listed claims—such as the request's reference to a generic "negligence" claim—the applicability of the proposed legislation would turn on the theory of liability. After all, a "negligence" claim might be predicated on a pesticide's labeling. But it might not be. Again, whether a given legal action would be tethered to pesticide labeling would inevitably depend on the specific allegations asserted against the defendant.

cause of action would be preempted by federal law may also depend heavily on the specific allegations raised in a given case.

2-3. Through its next two questions, the request seeks general guidance concerning the proposed legislation's impact on state causes of action and whether the legislation would afford pesticide manufacturers with a defense to liability. In short, although the proposed legislation provides that manufacturers of registered pesticides are not liable in certain civil actions, it only does so in relation to civil actions that are "related to the labeling" of a pesticide. *Id.* Therefore, if an action against a manufacturer of a registered pesticide were not related to the labeling of the pesticide, the proposed legislation would not work to prevent liability. But if an action were related to the labeling of the pesticide, the proposed legislation might well prevent liability. Of course, a civil action's relation to pesticide labeling would ultimately depend on the specifics of what a given plaintiff might allege.

4. The fourth question poses two queries concerning whether the proposed legislation would bar "civil actions" for damages "caused by a pesticide." The first query asks whether the proposed legislation would bar actions when damages "are discovered before a pesticide's label was approved or updated" in accordance with Tenn. Code Ann. § 43-8-104 and/or FIFRA. The second query then asks whether the proposal would bar actions when damages are discovered "[a]fter a pesticide's label was approved or updated."

We do not think that either query yields an absolute answer. Each would depend on the facts of a given case. As stated in the proposed legislation, a manufacturer or seller of a registered pesticide will not be liable in a civil action related to the labeling of the pesticide if the pesticide bore an EPA-approved label under FIFRA "at the time of sale." *Id.* But such liability protection wouldn't apply "if a pesticide is manufactured or sold in violation of [Tennessee Code Annotated, Title 43, Chapter 8] or FIFRA." *Id.*[4]

[4] Again, as referenced earlier, the specific terms of this carveout are different pursuant to the language of an amendment introduced in the Senate Judiciary Committee.

5. The final question in the request asks whether the proposed legislation violates 7 U.S.C. § 136a(f)(2), a statute which provides that "[i]n no event shall registration of an article be construed as a defense for the commission of any offense under this subchapter." 7 U.S.C. § 136a(f)(2). It doesn't. Setting aside the question's premise that a state statute can "violate" a federal one,[5] § 136a(f)(2) simply speaks to whether something can be considered a defense "under" the federal statutory scheme. *Id.* That § 136a(f)(2) forecloses a registration-based defense under the federal scheme says nothing of state law actions and defenses. Moreover, the version of the proposed legislation referenced within the request specifically states that its liability protection "does not apply if a pesticide is manufactured or sold in violation of . . . FIFRA." S.B. 527/H.B. 809, 114th Gen. Assem. (2025).

JONATHAN SKRMETTI
Attorney General and Reporter

J. MATTHEW RICE
Solicitor General

MATTHEW KERNODLE
Assistant Attorney General

Requested by:

The Honorable Mark A. Pody
State Senator
425 Rep. John Lewis Way North
Nashville, Tennessee 37243

[5] Without question, state laws can conflict with federal laws. But as a general matter, we do not believe that a state statute "violates" a federal one. The federal government operates in one sphere; a state government sovereignly operates in its own. When there is a conflict between the statutes enacted by the respective sovereigns, the Supremacy Clause provides the rule of decision: courts "must not give effect to state laws that conflict with federal laws." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015).