

What Is The SAFETY Act?

The SAFETY Act was enacted by Congress as part of the Homeland Security Act of 2002. This is the same legislation that created the Department of Homeland Security or "DHS" and the Transportation Security Administration or "TSA". The Act provides unprecedented immunity, liability protections, liability caps, affirmative defenses and other incentives for entities involved in protecting against terrorism threats including cyber risks. SAFETY Act is an acronym for the "Support Anti-terrorism by Fostering Effective Technologies Act".



Why Apply For Protection?

SAVE YOUR ORGANIZATION – You **cannot** buy enough insurance and likely do not have the assets to survive the emotionally charged litigation that will certainly follow a serious terrorism event which somehow involves your facilities, security, products, technology or services.

FIDUCIARY RESPONSIBILITY – If your organization buys, uses, or provides anti-terrorism related products, and/or services, whether for itself or for others, your management has a fiduciary responsibility to the owners, investors, shareholders and customers to understand if and how the SAFETY Act can help protect you against catastrophic financial disaster. Applying requires some effort however, not applying, if SAFETY Act was otherwise available to you, could create much more severe liability challenges in the future including potential Sarbox violations and stockholder suits in addition to the existing terrorism exposures you already face.

SAVE MONEY – There is a big opportunity to save on new and existing insurance programs, your ongoing cost of risk as well as the SAFETY Act application process.

INCREASE YOUR REVENUES – SAFETY Act provides qualified products and services with significant marketing advantages. (See "Marketing Advantages" section that follows)

Minimum SAFETY Act Benefits

- **A limitation or "cap" on your liability** *equal to the amount of terrorism liability insurance the DHS requires you to carry for the approved product, facility, technology or service*
- **Exclusive jurisdiction in Federal court**
- **Punitive damage claims are barred**
- **Non-compensatory damages are barred**
- **Non-economic damages are barred** *unless the plaintiff was physically harmed. Non-economic damages include pain and suffering, mental anguish, loss of consortium etc.*
- **Pre-judgment interest is barred** - *Pre-judgment interest is interest imposed by the court from the date of the event until the date the ultimate award is determined*
- **A prohibition on joint and several liabilities** *for non-economic damages - Only that percentage of the total claim amount attributed to the defendant's [your] negligence can be recovered*
- **Credit for Other Plaintiff Recoveries** – *Your liability will be reduced for compensation available to the claimant from other sources such as insurance or other defendants*



Significant Marketing Advantages

Although not the intended purpose of the legislation, SAFETY Act approval gives your products, facilities, technologies and/or services a significant marketing edge over those that are not qualified.

- The detailed DHS review process tells others that your products, facilities and/or services have successfully passed stringent DHS scrutiny and the review process
- Your customers will benefit from significant liability protection by selecting your products or services over those that do not afford them SAFETY Act protection

Today, more and more procurements, both private and governmental, have required SAFETY Act Designation or eligibility. This trend is expected to increase. A recent change to the Federal Acquisition Regulations or "FAR" ensures that SAFETY Act considerations are an integral part of each agency's acquisition planning procedures.

Who & What Can Be Protected

SAFETY Act is very broad in scope as to what terrorism related identification, prevention, response, mitigation or recovery can be protected. It can include anything that is designed, developed, modified or procured for preventing, detecting, identifying, or deterring acts of terrorism as well as responding to or limiting the harm such acts might otherwise cause. It does not have to be new or used just for anti-terrorism. The integration of multiple products and services can also be protected.

SAFETY Act protection can apply to things you provide to others as well as things you buy, use or do at your own facilities to protect people and property. These can include a vast range of one or more things such as:

- Products and technologies
- Services, training and/or advice
- Software, network or cyber protection
- Other forms of intellectual property



The SAFETY Act applicant can be an individual or an entity such as a corporation. It can be a public, quasi-public or private concern or a combination such as an airport or port authority. A municipality, county or state agency is just as eligible as is a large corporation. There are no limitations as to who can apply.

SAFETY Act can protect schools for their security, warning and evacuation procedures on campus or to research, development or instruction in anti-terrorism.

Using Approved Products & Services

Under the DHS' interpretation, the use of SAFETY Act approved products, facilities or services automatically confers certain liability protection to the user. This is in addition to the very broad protections granted to the qualified SAFETY Act Designee. Again, you do not have to be SAFETY Act approved to obtain some protection. Just by buying, using or selling approved products or services, you will get some liability benefit.