

For SAFETY Act, Industry Could be a Driver

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In the years after the devastating Sept. 11 terrorist attacks, the legacy of 9/11 still echoes in New York City's law firms and courts. The city has seen lawsuits from the families of victims, from first responders and from those whose property was damaged — so it's logical that businesses in the area are looking to take advantage of a federal liability-capping system for anti-terrorism services.

Although the evidence is anecdotal, officials from several homeland security business and advocacy groups say that New York-area businesses are increasingly looking for security contractors covered under the Support Anti-Terrorism by Fostering Effective Technologies Act.

“During my time at the department, we were hearing from owners and operators in New York who were saying they saw this as a way to vet technology and services — some even saw it as part of their business model,” said Akmal Ali, a principal at the lobbying firm Catalyst Partners and the former No. 2 in the Homeland Security Department's SAFETY Act office.

Congress passed the SAFETY Act less than a year after 9/11, as a way to make sure that the threat of liability didn't deter companies from producing anti-terrorism technology. The act has come to cover everything from blast shields, to explosive-sniffing dog services, to a process that makes ammonium nitrate fertilizer harder to turn into the type of bomb used in the Oklahoma City attack.

The coverage is product-specific. Products or services that reach the highest level of certification are shielded from liability, while those a step down get a liability cap. The benefits extend to those who buy products approved at either level — they cannot be sued for using them.

The law enjoys widespread, bipartisan support in Congress. In fact, when lawmakers have discussed it, they usually focus on the fact that only a comparatively small number of companies with eligible services seek coverage.

“I'm trying to find a way to get this to work, because everybody loves it,” California Republican Rep. Dan Lungren said in a hearing examining the act last year.

The SAFETY Act office gets about 200 applications per year. Paul Benda, director of the Homeland Security Advanced Research Projects Agency, said that's a number the department is constantly trying to increase.

“Expansion is one of our goals,” he said.

That's why some supporters see the idea of New York businesses looking for SAFETY Act approval from their contractors as a positive step. If more buyers want the coverage, more sellers would theoretically apply. It's a development the law's architects envisioned, said Raymond B. Biagini, a partner at the law firm McKenna, Long and Aldridge, who helped author some of the act's key provisions.

"We want to see customers realize that if they go out and buy SAFETY Act technology that they get derivative coverage," he said.

But Biagini and the law's other proponents say that one big contractor hasn't pushed for SAFETY Act approval as hard as it could: the federal government.

"We have not seen it as widespread as it could be in federal contracts," said Marc Pearl, president of the Homeland Security and Defense Business Council. Many agencies, including some in the Homeland Security Department, need to pay more attention to federal procurement regulations that say SAFETY Act approval can be a consideration for anti-terrorism contracts, he said.

Many of those in industry who like the SAFETY Act also want to see it incorporated into something like a Homeland Security "seal of approval" that could provide businesses and emergency response agencies with a list of reliable services.

"They are inundated by companies saying 'I have the best product,' and they're not always the best product," said Bradley C. Schreiber, vice president of Washington operations for the Applied Science Foundation for Homeland Security. "The SAFETY Act needs to be part of a broader product certification system within DHS so that federal, state and local first responders know what they're buying is a trusted product."

Although it recently introduced a set of SAFETY Act seals companies can use in their marketing materials, the department maintains the law is for liability, not for rating technologies. But Ali said it should reconsider that stance.

"If they're not doing it that way, they should, because that's how it's really worked," he said. "In my opinion, it's a clearinghouse for effective technology. Why reinvent the wheel?"

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