

SAFETY ACT CONSULTANTS

A HAVeESP, Inc. Company™

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THE SAFETY ACT

THE SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002

WHAT EXACTLY IS THE SAFETY ACT?

The SAFETY ACT is a little known and often misunderstood section of the Homeland Security Act enacted in 2002 in the wake of the 9/11 attacks. SAFETY ACT is an acronym for the section of the Homeland Security Act titled "Support Anti-terrorism by Fostering Effective Technologies Act." This unique Federal law creates a system of risk and litigation mitigation tools including **dollar caps on liability** and potentially **immunity** for using or providing SAFETY ACT approved products, technologies and/or services. This law was enacted to ensure that the threat of liability suits resulting from an act of terrorism does not deter the development, use or provision of technologies or services that could help save lives and protect property.

SAFETY ACT PROTECTIONS

The SAFETY ACT provides **unprecedented liability protections** for products, technologies or services that have received DHS SAFETY Act approval (over 1500 as of 2020). The most significant benefit is either total liability immunity or a dollar cap on liability so that claims cannot exceed the amount of terrorism liability insurance carried. In addition, the Act also includes a range of additional benefits. These include **exclusive jurisdiction in federal court** for any and all related claims for the event; **a bar** on punitive damages and prejudgment interest; limitations on non-economic damages (i.e. pain and suffering, loss of consortium, etc.); the defendant's liability is proportional to their actual responsibility for the event (joint and several liability is barred). Again, all claims are still limited to the dollar cap.

WHO CAN BE PROTECTED UNDER SAFETY ACT?

YOUR ORGANIZATION & SAFETY ACT - Any person, entity or organization that uses, buys, deploys, sells, installs, manufactures, is otherwise involved in any type of security or event response, whether for yourself or for others, does so at an **extraordinary liability risk**. Because of this catastrophic exposure, owners and management have a fiduciary responsibility to explore the unprecedented and broad immunities, liability caps, defenses and protections that could potentially be afforded under the SAFETY Act. It is critical to know if and how your organization can benefit from this unique Federal law. In addition to potentially immense financial impact of corporate liability and reputational risk, severe personal liability can result from ignoring, or failing to understand and utilize the SAFETY ACT.

WHAT CAN BE PROTECTED UNDER SAFETY ACT?

The SAFETY ACT is **extremely broad in scope** as to what products, technologies or services can be protected under the law. It can include **any product or service** that is deployed, designed, developed, manufactured, distributed, sold, modified or otherwise used to help in any way **to prevent, deter, detect, respond to, mitigate or recover from an act of terrorism**. These can include technologies, products or services, buildings, factories and other facilities, infrastructure, sports & entertainment venues, transportation hubs, vaccines, detection equipment, advice, procedures, protocols, processes, software, network and/or cyber protection and other forms of intellectual property.

A SAFETY ACT eligible product or service does not have to be new, "high-tech," nor be exclusively dedicated to terrorism. It can have multiple functions as long as it has an anti-terrorism component or



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element. (i.e. access control, fire & alarm systems, evacuation procedures, mass notification systems, network protection, communication, cameras, video, construction technique or materials can all qualify)

WHO CAN APPLY FOR SAFETY ACT PROTECTION?

You do **not have to be** a provider or sell to the government to apply for and benefit from this unique law. **Any** person or organization can apply to the DHS for SAFETY ACT protections including domestic or foreign entities, whether governmental, public or private including partnerships, corporations, non-profits, cities, agencies, etc. This law can cover facilities, manufacturers, developers, designers, distributors, and installers of security and anti-terrorism goods and services. Again, items **do not** have to be exclusively dedicated to terrorism as long as there is an anti-terrorism component involved. Obviously, since this is a US law, its protections would only apply to suits filed within the United States or its territories. In addition to the traditional security industry, SAFETY ACT can also cover buildings and other facilities, construction & techniques, training, guards, access control, K-9s, transportation, marine, aviation, infrastructure, sports and entertainment venues, event staffing, schools and campuses, architecture, design, advice & consultation, software, cyber and network protection and other intellectual property.

AUTOMATIC LIABILITY PROTECTION FOR SAFETY ACT PRODUCTS

Just by using or providing another party's approved products, technologies, facilities, or services, this law **automatically grants the user or provider liability immunity** from acts of terrorism. This immunity applies to a claim or lawsuit arising from an alleged failure or omission in a SAFETY ACT product, facility, technology or service. ***You do not need to apply for this protection. It is automatic.***

A UNIQUE, DISRUPTIVE & COMPELLING MARKETING ADVANTAGE

UNPRECEDENTED AND AUTOMATIC LIABILITY PROTECTION - If you sell or otherwise provide SAFETY ACT approved products, facilities, technologies or services, the SAFETY ACT automatically affords you unprecedented liability protection. In addition, your customers, users, tenants, suppliers, distributors and/or subcontractors are **automatically protected and immune** from lawsuits stemming from an act of terrorism where a SAFETY ACT approved product and/or service was in use and alleged to have failed in preventing or mitigating the act. Without their own SAFETY ACT approval, even with very high levels of insurance, **your competitors cannot possibly provide** this type or level of liability protection for their customers for any competing products or services. This automatic immunity for a product or service is unique, compelling and is highly desirable to potential customers or users.

-- IMPORTANT NOTES --

The information contained in this document is NOT legal advice and cannot be relied on as such. It is a summary based on our understanding of the SAFETY ACT, the ACT's Final Rule / Regulation, DHS seminars, discussions & meetings, our clients' prior applications and approvals, security related products and services, contractual issues, the insurance marketplace and various terrorism and non-terrorism insurance products and coverages.

SAFETY ACT awards can help protect corporate Directors' and Officers' personal assets from suits alleging a breach in fiduciary responsibility in not effectively managing or mitigating physical security and terrorism liability exposures. This personal liability exposure can also apply to certain managers, board members or public officials' liability. In addition, potential Sarbanes Oxley compliance and related reporting issues might also apply.



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