

What Is The SAFETY Act?

The SAFETY Act was enacted by Congress as a part of the Homeland Security Act of 2002. Its purpose is to incentivize the use or sale of security products, procedures and technologies that can help protect people, property or financial assets against terrorism or e-terrorism. This Federal law grants unprecedented liability immunities, court award caps and limitations, affirmative defenses and other significant benefits.



Why Apply for SAFETY Act Protection?

SAVE THE ORGANIZATION – Your insurance and assets alone cannot assure financial survival after the emotionally charged litigation that will certainly follow a terrorist attack. Allegations of lapses in your security, procedures, training or technology are very difficult to defend. From the jury's perspective, "Something had to be inadequate or fail in order for this tragic event to occur." In addition to the huge financial liabilities faced, negative publicity and the resulting damage to the organization's reputation will take an additional toll.

SAVE MONEY – There is an opportunity to lower your insurance program costs and/or the total cost of risk.

FIDUCIARY RESPONSIBILITY – An important function of management is minimizing the organization's liability exposures. Understanding how the SAFETY Act can protect against a financial disaster is critical. Not taking advantage of the Act's protection, if available to you, can create future liability challenges in addition to the direct terrorism exposures. These can include Director & Officer suits and potential Sarbox violations.

INCREASE REVENUES – If you provide or sell security or event-response related products, technologies or services to others, SAFETY Act Designation gives your organization a significant competitive edge. In addition, many public and private procurements are now requiring SAFETY Act approval as a part of the bid process. (See the Marketing section that follows)

SAFETY Act's Liability Protections

- **Sets a maximum dollar cap on your liability**
- **Exclusive jurisdiction in Federal Court**
- **Punitive damage claims are barred**
- **Non-compensatory and non-economic damages are barred** – *If a plaintiff was not physically injured, mental anguish, loss of consortium and similar claims are all barred.*
- **Pre-judgment interest is barred** – *This is the interest penalty imposed by the court from the date of the event until the date the award is actually paid. This amount can be substantial.*
- **Prohibition on joint and several liabilities for non-economic damages** - *Only that percentage of the claim directly attributed to your negligence can be recovered.*
- **Credit for plaintiff's other recoveries** – *Your liability will be reduced for compensation available to the claimant from other sources such as insurance or other defendants.*

This law can also grant full immunity for security procedures you use or provide!



What Can be Protected?

The SAFETY Act's scope is very broad. It can protect what you use or do at your own facilities, as well as products and services you may provide to others. These things do not have to be new, high tech, cutting-edge or exclusively dedicated to anti-terrorism to qualify for protection. Eligible items can include any product, technology, software, procedure or service that can help identify, deter, prevent, mitigate, respond to or help recover from a terrorist event. Access control, cameras, alarms, sensors, fire suppression systems, training, evacuation procedures, IT network protections all qualify.

Immunity for Approved Product Use

Your organization does not have to be the SAFETY Act approved entity to benefit from this law's sweeping liability protection. Just by using or providing products, technologies, advice or services already SAFETY Act Designated, you are automatically immune from liability stemming from related terrorism suits filed against you.

Who Can Be Protected?

A SAFETY Act applicant can be an individual or a corporation. It can be public, private, or a combination of the two such as a port authority. A municipality, city, county or state agency is eligible. The SAFETY Act can protect the owners or operators of facilities, plants, buildings, hotels, casinos, sports or entertainment venues as well as distributors, manufacturers or technology and service providers. Facilities, buildings, schools, etc. can be protected for safety and security related exposures on site. This includes procedures, technologies, systems, training, and warnings for lockdowns, evacuations or other event responses. The Act can protect entities involved in R & D, consultation or instruction in safety, anti-terrorism or security. Many non-US based entities have been awarded SAFETY Act approval. This unique legislation can protect virtually any entity regardless of type, domicile, location, exposure, government or industry sector.



Significant Marketing Advantages for Approved Products or Services

If you are a provider, SAFETY Act Designation gives your products, facilities, technologies, advice or services a significant competitive edge and marketing advantage over those competitors not Designated.

- Designation clearly demonstrates that your products and/or services have successfully passed the very stringent DHS scrutiny and technical review process.
- More importantly, customers get automatic immunity from related terrorism suits by selecting Designated products or services. Absent SAFETY Act, this immunity cannot be obtained anywhere else.

Many procurements, both public and private, require SAFETY Act Designation or demonstrated eligibility. This trend is expected to increase. A recent change to the Federal Acquisition Regulations requires SAFETY Act consideration as part of the procurement process.

SAFETY ACT CONSULTANTS

Core Services

- Provide expert consultation and advice
- Free initial consultation(s) including an evaluation of SAFETY Act's applicability to your specific exposures and needs, basic application and strategy overviews, time, workload and cost estimates
- Access to our expert business partners
- Provide key management with information, reports and consultation as requested
- Provide full DHS application process strategy, stewardship, support and expert consultation
- Advise and negotiate with the DHS, lawyers, brokers, agents and insurers as needed
- Keep C-Suite, legal and risk management staff informed as needed or requested
- Provide feedback on DHS' comments, concerns, requirements and updates
- Expert insurance consultation to risk management, legal or insurance brokers
- Review insurance program, contracts and leases for potential SAFETY Act conflicts, compliance, adequacy and cost savings
- Assist upgrading, modifying or updating any existing Certifications or Designations
- Work with procuring agencies or entities on any SAFETY Act requirements or eligibility issues contained within the bid specs
- Help draft press releases, marketing and related articles on your SAFETY Act approval as appropriate and/or as requested
- Help create an overall SAFETY Act strategy plan for you, your facilities, divisions, units, vendors, customers and/or subcontractors
- If applicable, help you use SAFETY Act to better market your products or services

Despite the many benefits of the SAFETY Act, it still remains one of the most underreported and underutilized success stories for the DHS and our nation at large.



- The Homeland Security & Defense Business Council

Post 9/11, virtually all organizations are involved, or should be involved, in some form of security and threat detection. As a direct result, huge liability exposures are created. A terrorist act, that a jury perceives as successful because of an inadequacy, breach or lapse in security, procedures or response, will very quickly create one of the toughest liability, defense, public relations and financial challenges your management and organization may ever have to face.

The most powerful solution to date is the SAFETY Act. This 2002 Federal law can grant unprecedented immunities, caps on your liability, defenses and other benefits.

GET INTO THE ACT™

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THE SAFETY ACT

Support Anti-terrorism by Fostering Effective Technologies Act of 2002

We help organizations understand and protect themselves from one of the few financial exposures that can threaten their entire enterprise

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