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## SAFETY Act

The Support Anti-terrorism by Fostering Effective Technologies Act, also known as the SAFETY Act, was passed by Congress in November 2002 as Subtitle G of Title VII of the Homeland Security Act, Public Law 107-296. The law provides product liability protections for sellers of certain anti-terrorism technologies. Specifically, the law creates certain liability limitations for “claims arising out of, relating to, or resulting from, an act of terrorism” where such technologies have been deployed. The purpose of the law is to ensure that the threat of liability does not deter potential manufacturers or sellers of anti-terrorism technologies from developing and commercializing the technology.

The protections of the SAFETY Act can be extended to any qualifying product, equipment, service, device, or technology that is designed, developed, modified, and procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause. The broad definition of technology encompasses tangible products, software, services, and various forms of intellectual property.

There are six basic protections offered to sellers. These are:

- Exclusive jurisdiction in federal court for suits against sellers of Qualified Anti-Terrorism Technology (QATT).
- A limitation on the liability of sellers to the amount of their insurance coverage.
- A prohibition on joint and several liability for non-economic damages.
- A complete bar on punitive damages and prejudgment interest.

- A reduction of plaintiffs’ recovery by amounts received from collateral sources.
- For certain products, a rebuttable presumption that the contractor is entitled to a “Government Contractor Defense” (GCD), as defined in the statute.

These protections apply to all sales, even sales between private parties—they are not limited to just sales to government agencies.

To qualify for these protections, the seller of the anti-terrorism technology must formally apply to the Department of Homeland Security (DHS). DHS will evaluate the application, and, if it approves of the technology, will designate the technology to be a QATT. Such products receive all the protections of the Act, except for entitlement to the GCD. To be entitled to the GCD, the seller must also apply to have the product certified as an Approved Product for Homeland Defense. This certification process requires additional review from DHS.

The GCD defined in the statute is different from the traditional government or military contractor defense established by common law. Under the SAFETY Act, once a product has been certified by the DHS, it is automatically entitled to the liability immunity provided by defense. A plaintiff may overcome the defense only by proving that the seller acted fraudulently or engaged in willful misconduct in submitting information in connection with the application. In general, the common law defense requires that the seller prove that government set the specifications for the product, that the product was built according to the specifications, and that the government was warned of any hazards associated with the product. See Product Safety Report PS-20-50, *Government Contractor Defense*, for more information on this defense.

DHS published interim procedures for product designation and certification in the *Federal Register* on October 16, 2003 (68 Fed. Reg. 59684). These procedures include the criteria that DHS will use for evaluating the technology. DHS has set up a Website, <https://www.safetyact.gov>, that provides detailed information about these procedures, along with application kits and informational materials.

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