

# Pillsbury, the SAFETY Act and You

Technology has changed the business world. It has enhanced productivity, expanded capabilities, and connected companies at a global level. But security remains a fundamental challenge for corporations, and the increasing pace of terrorist attacks makes a solution ever more difficult to obtain.

Among many strategies to manage security threats and risk, Pillsbury's signature Global Security team brings significant experience with one particularly effective tool to limit liability in the event of a terrorist attack: the SAFETY Act.

## Pillsbury Representative SAFETY Act Experience

Pillsbury has handled more than 150 successful SAFETY Act applications for clients, including advanced detection systems, professional sports security programs, and smart building systems.

- Major League Baseball
- Brookfield Office Partners
- Honeywell International
- MSA Security
- L-3 Communications

## What Is the SAFETY Act?

Created to “facilitate and promote the development and deployment” of products, services, and policies that will save lives and protect property, the Supporting Anti-Terrorism by Fostering Effective Technologies Act (SAFETY Act) provides companies with a unique way to limit or even eliminate liability in the event of an “act of terrorism” (physical or cyber). An owner or seller of security products, services or policies, along with companies that deploy their own security programs,

may apply for significant liability protections from the Department of Homeland Security (DHS). If a product or service receives SAFETY Act “Certification,” then it is presumptively entitled to immunity from tort claims arising from a cyberattack. Under a SAFETY Act “Designation,” the tort liability is limited to the amount of insurance required to be maintained (as determined by the DHS), and under both types of SAFETY Act awards, cases may only be litigated in federal court.

## Why Should I Worry about Liability from Terrorist Attacks?

Since 2001, a number of courts have held that terrorist attacks are “reasonably foreseeable” events meaning that companies must take reasonable measures to mitigate or avoid them. Such rulings have translated into millions of dollars in damages.

Unfortunately, the recent spate of terrorist attacks around the globe has reminded companies of their need to invest heavily in security technologies. The challenge for business leaders is not whether terrorist attacks are “reasonably foreseeable,” but what constitutes “reasonable” cybersecurity measures. Just as challenging is the fact that companies have to find a way to justify their investment in security technologies and services as they buy them, lest they face lengthy and expensive litigation over claims of “negligent contracting.”

## What is Eligible for SAFETY Act Protections?

A wide variety of products, services, policies, and programs are eligible for protections under the SAFETY Act. Given the prevalent need for security tools to protect persons, property, and economic interests from terrorists and criminals, nearly all security products and services are eligible for SAFETY Act protections.

Examples of products, services, policies, and tools that have received SAFETY Act protections include:

- Intrusion detection systems;
- Access control systems;
- Advanced surveillance and alarm systems;
- Intelligent patrol systems; and
- Physical security planning and implementation services.

Remember that products, services, or policies need only have *some application* to terroristic or criminal cyber threats in order to be eligible for SAFETY Act protections. Even if a product, service, or policy was designed and used mainly to protect against “routine” security threats such as theft or unauthorized facility access, it is still eligible for protections as long as it can also be used to stop or mitigation intentional acts designed to cause harm.

## How Can the SAFETY Act Protect Me or My Company?

The SAFETY Act is a particularly efficient means of minimizing or eliminating a company’s liability exposure before a terrorist attack or other threat even occurs. Any company that creates, sells, or otherwise deploys products, services or policies that can be used to combat security threats can and should seek SAFETY Act protections. This includes companies that design and deploy policies, programs or products for internal use only.

Buyers of security tools and services can also benefit. Under the SAFETY Act, companies face limited or no liability for claims arising out of or related to the use of the SAFETY Act-approved products, services, or policies. That means that by going through the SAFETY Act process, the company will see its exposure to terrorism or other security-related litigation minimized (by limiting liability to the amount of insurance they carry as well as barring punitive damages and interest) or eliminated.

## SAFETY Act Benefits

A company may use the SAFETY Act to manage its security related liability as follows. First, a company directly benefits by putting its security products or services through the SAFETY Act application process. Upon receipt of a SAFETY Act award, the company can rest assured that claims related to negligent design, testing, operation, maintenance, and training will be minimized or even eliminated thanks to the SAFETY Act. A SAFETY Act award also serves to minimize or eliminate claims based on whether the company’s security product or policies and procedures were reasonably designed and manufactured.

A company can also explore SAFETY Act protections for its internal security program. Any security policy or procedure used or developed by a company to protect its own facilities and operations is eligible for SAFETY Act protections.

Finally, a company can take advantage of liability protections by integrating the SAFETY Act into its own security procurement policies. By simply purchasing SAFETY Act-approved products and services, a company can limit its security-related exposure.

Considering that companies that purchase SAFETY Act-approved products or services face no liability for the decision to purchase such items, it is obvious how beneficial the SAFETY Act can be.

## The Pillsbury Path to Obtaining SAFETY Act Protections

Members of the Global Security team are extremely well-versed in the SAFETY Act, having prepared well over 150 applications for a wide variety of services and products. Firm attorneys regularly speak and write on the SAFETY Act, and they have even testified before the House Committee on Homeland Security and SAFETY Act implementation.

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