

# Is Your Company At Risk?

The SAFETY Act could protect companies that sell or use RFID anti-terror solutions from tort liability.

By Ray Biagini

July 16, 2007—In the aftermath of Sept. 11, 2001, federal, state and local governments, as well as private companies, invested billions of dollars to research, purchase and implement security technologies that might help prevent future attacks. They discovered that radio frequency identification could help improve public health and safety in a number of ways, including protecting pharmaceutical supply chains, providing access control at airports and nuclear power plants, targeting product recalls for contaminated food or faulty aircraft parts, and securing shipping containers.

But companies selling anti-terror technologies were concerned about tort liability. After the terrorist attacks, lawsuits were filed against the airports, port facilities, security companies, building owners and airlines for business interruption, economic loss and wrongful death. Why risk your entire company to sell a \$1,000 radiation detector? The federal government understood that it needed the private sector to invest in anti-terror solutions, but it also knew that the return on investment was limited by catastrophic litigation risk.

On Nov. 25, 2002, within the Homeland Security Act, Congress enacted the SAFETY (Support Anti-Terrorism by Fostering Effective Technology) Act, to eliminate or significantly limit tort liability for companies whose anti-terror products or services fail to prevent, interdict or mitigate a terrorist act.

Only those manufacturers and suppliers whose products are reviewed and approved by the Department of Homeland Security have SAFETY Act legal protections. If your RFID product is not SAFETY Act certified, you don't have this legal protection. If your company is using a non-Safety Act certified RFID solution, you don't have this legal protection, either.

If you're an RFID provider, you need to apply to the federal government for SAFETY Act protections now. DHS review and approval takes about 120 days and can be applied retroactively. SAFETY Act protection will not only reduce your own liability risk, it will also give you a market advantage by protecting your customers.

If you're considering RFID solutions for your facilities or supply chain, look for SAFETY Act certified products. You can incorporate the SAFETY Act into your IT procurement contracts.

**RELATED\_ARTICLES** The SAFETY Act would not apply in cases where an RFID solution failed to prevent or mitigate a death or injury caused by, say, counterfeiting, manufacturing defects or natural disasters. As RFID is considered for public health and safety applications, the SAFETY Act provides a precedent and legislative pathway to extend similar protections to non-terrorism scenarios.

For example, vaccine manufacturers in 2005 got protection against litigation if their products were used to protect the public from an outbreak of Avian flu or another public health epidemic. You have a fiduciary responsibility to your investors, shareholders and customers to understand how the SAFETY Act might apply

to you—and whether similar protections make sense in future legislation.

*Ray Biagini is a partner with the government contracts and litigation group of McKenna Long & Aldridge and a contributor to the firm's RFID Law Blog. He also was the author of key provisions of the SAFETY Act. Illustration by Gordon Studer.*

Copyright ©2005 RFID Journal, Inc. All Rights Reserved