

Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

#### **§ 428. Identification of new entrants into the Federal marketplace**

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

(Pub. L. 107–296, title VIII, § 858, Nov. 25, 2002, 116 Stat. 2238.)

#### **PART G—SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES**

#### **§ 441. Administration**

##### **(a) In general**

The Secretary shall be responsible for the administration of this part.

##### **(b) Designation of qualified anti-terrorism technologies**

The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this part in accordance with criteria that shall include, but not be limited to, the following:

- (1) Prior United States Government use or demonstrated substantial utility and effectiveness.
- (2) Availability of the technology for immediate deployment in public and private settings.
- (3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.
- (4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this part are extended.
- (5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.
- (6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.
- (7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

##### **(c) Regulations**

The Secretary may issue such regulations, after notice and comment in accordance with

section 553 of title 5, as may be necessary to carry out this part.

(Pub. L. 107–296, title VIII, § 862, Nov. 25, 2002, 116 Stat. 2238.)

#### **Statutory Notes and Related Subsidiaries**

##### **SHORT TITLE**

For short title of this part as the “Support Anti-terrorism by Fostering Effective Technologies Act of 2002” or the “SAFETY Act”, see section 861 of Pub. L. 107–296, set out as a Short Title note under section 101 of this title.

#### **§ 442. Litigation management**

##### **(a) Federal cause of action**

###### **(1) In general**

There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers<sup>1</sup> that provide qualified anti-terrorism technology to Federal and non-Federal government<sup>2</sup> customers.

###### **(2) Jurisdiction**

Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

##### **(b) Special rules**

In an action brought under this section for damages the following provisions apply:

###### **(1) Punitive damages**

No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

###### **(2) Noneconomic damages**

###### **(A) In general**

Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

<sup>1</sup> So in original. Probably should be “Sellers”.

<sup>2</sup> So in original. Probably should be “Government”.

**(B) Definition**

For purposes of subparagraph (A), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

**(c) Collateral sources**

Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

**(d) Government contractor defense****(1) In general**

Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary’s consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

**(2) Exclusive responsibility**

The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller’s submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller’s specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

**(3) Certificate**

For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller

and place the anti-terrorism technology on an Approved Product List for Homeland Security.

**(e) Exclusion**

Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

(Pub. L. 107-296, title VIII, §863, Nov. 25, 2002, 116 Stat. 2239.)

**§ 443. Risk management****(a) In general****(1) Liability insurance required**

Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal Government customers (“Seller”) shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

**(2) Maximum amount**

For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.

**(3) Scope of coverage**

Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) Contractors, subcontractors, suppliers, and vendors of the customer.

**(4) Third party claims**

Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

**(b) Reciprocal waiver of claims**

The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, in-

volved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

**(c) Extent of liability**

Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

(Pub. L. 107-296, title VIII, § 864, Nov. 25, 2002, 116 Stat. 2240.)

**§ 444. Definitions**

For purposes of this part, the following definitions apply:

**(1) Qualified anti-terrorism technology**

For purposes of this part, the term “qualified anti-terrorism technology” means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

**(2) Act of terrorism**

(A) The term “act of terrorism” means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

- (i) is unlawful;
- (ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and
- (iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

**(3) Insurance carrier**

The term “insurance carrier” means any corporation, association, society, order, firm, company, mutual,<sup>1</sup> partnership, individual ag-

gregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

**(4) Liability insurance**

**(A)<sup>2</sup> In general**

The term “liability insurance” means insurance for legal liabilities incurred by the insured resulting from—

- (i) loss of or damage to property of others;
- (ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;
- (iii) bodily injury (including) to persons other than the insured or its employees; or
- (iv) loss resulting from debt or default of another.

**(5) Loss**

The term “loss” means death, bodily injury, or loss of or damage to property, including business interruption loss.

**(6) Non-Federal Government customers**

The term “non-Federal Government customers” means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 [50 U.S.C. 1431 et seq.] to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

(Pub. L. 107-296, title VIII, § 865, Nov. 25, 2002, 116 Stat. 2241.)

**Editorial Notes**

REFERENCES IN TEXT

Public Law 85-804, referred to in par. (6), is Pub. L. 85-804, Aug. 28, 1958, 72 Stat. 972, which is classified generally to chapter 29 (§ 1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

PART H—MISCELLANEOUS PROVISIONS

**§ 451. Advisory committees**

**(a) In general**

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from chapter 10 of title 5, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18 for official actions taken as a member of such advisory committee.

<sup>1</sup> So in original.

<sup>2</sup> So in original. No subpar. (B) has been enacted.