

Insurance Times: Anti-terror tech firms seek products liability protection

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WASHINGTON, D.C. — The companies making new homeland security devices, such as bomb detectors and biological weapon alarms, want the government to pick up the tab if their products fail and they are sued.

And in the midst of an aggressive lobbying blitz, they have found a key ally in Congress.

Rep. Tom Davis, the Republican head of a key House subcommittee on technology and federal contracting, plans to have the provision attached to the Homeland Security authorization bill making its way through Congress.

His amendment would indemnify defense and technology contractors who make the devices so that the government would pick up the tab for any liability judgments that exceed the contractor's insurance coverage.

The industry helped draft a version of the plan, and has sent executives to Capitol Hill to make its case. The technology industry also has been generous to Davis — with more than \$120,000 in donations going to him since January of last year. Davis represents a district in northern Virginia, a region that boasts numerous defense and technology companies.

The pitch from the contractors is straightforward — companies that develop new antiterrorism technologies with life-and-death consequences could be driven out of business if they are sued due to a product failure.

"There needs to be a backup mechanism from the government otherwise the company is betting the company every time it bids on one of these contracts," said Harris Miller, president of the Information Technology Association of America. The trade group represents many of the government's largest contractors, including EDS Corp. and IBM.

Defense contractor Northrop Grumman, another backer of the legislation, said that it may not be able to bid on a Postal Service contract for a biohazard detection device unless the company is indemnified.

"The unintended consequence of even a single failure in a well-intended system or device we might provide could result in significant legal exposure that could financially ruin a company," Northrop Grumman president Ronald D. Sugar said in congressional testimony delivered last month.

Davis' office said his amendment is needed to ensure companies are willing to take the risk in developing and deploying new technologies critical to Americans' safety.

"Davis's legislation will be based on the premise that Congress should ensure the availability of technologies that could make people and facilities across the nation less vulnerable to terrorist threats," spokesman David Marin said.

There is no limit on what the government may have to pay out, but there would be no federal payment if there was "willful misconduct" by the contractor.

Consumer groups are wary about the message the plan could send to corporate America.

"I assume Americans want the very best out there," said Bob Hunter, an insurance expert at the Consumer Federation of America. "One of the ways we get the very best is that people are liable if they don't produce the best. To have the taxpayer on the hook instead of the company will lead to less quality."

Still, there is some precedent for the Davis legislation. The government can already indemnify contractors against claims when it buys technology for its own use, such as in national defense. But there is no such

protection if the products are sold to commercial purchasers — like an airport or office building — or to state and local governments.

Miller, of the technology trade association, said the legislation is no different than the payments made to the families of those killed in last year's terrorist attacks.

"The people would demand that the government pay for it anyhow," Miller said. "We might as well formalize the process up front."