

(I) neither the exclusion provided by this clause nor any other provision of this chapter may be construed as a finding that silicone gel (or any other form of silicone) may or may not cause harm; and

(II) the existence of the exclusion under this clause may not—

(aa) be disclosed to a jury in any civil action or other proceeding; and

(bb) except as necessary to establish the applicability of this chapter, otherwise be presented in any civil action or other proceeding.

### (3) Component part

#### (A) In general

The term “component part” means a manufactured piece of an implant.

#### (B) Certain components

Such term includes a manufactured piece of an implant that—

(i) has significant non-implant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

### (4) Harm

#### (A) In general

The term “harm” means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

#### (B) Exclusion

The term does not include any commercial loss or loss of or damage to an implant.

### (5) Implant

The term “implant” means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

### (6) Manufacturer

The term “manufacturer” means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 360(a)(1) of this title) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 360 of this title and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to

section 360(j) of this title and the regulations issued under such section.

### (7) Medical device

The term “medical device” means a device, as defined in section 321(h) of this title, and includes any device component of any combination product as that term is used in section 353(g) of this title.

### (8) Raw material

The term “raw material” means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

### (9) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

### (10) Seller

#### (A) In general

The term “seller” means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

#### (B) Exclusions

The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional health care services in any case in which—

(I) the sale or use of the implant is incidental to such services; and

(II) the essence of the professional health care services provided is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

(Pub. L. 105-230, §3, Aug. 13, 1998, 112 Stat. 1520.)

## § 1603. General requirements; applicability; preemption

### (a) General requirements

#### (1) In general

In any civil action covered by this chapter, a biomaterials supplier may—

(A) raise any exclusion from liability set forth in section 1604 of this title; and

(B) make a motion for dismissal or for summary judgment as set forth in section 1605 of this title.

#### (2) Procedures

Notwithstanding any other provision of law, a Federal or State court in which an action covered by this chapter is pending shall, in connection with a motion under section 1605 or 1606 of this title, use the procedures set forth in this chapter.

### (b) Applicability

#### (1) In general

Except as provided in paragraph (2), this chapter applies to any civil action brought by a claimant, whether in a Federal or State court, on the basis of any legal theory, for harm allegedly caused, directly or indirectly, by an implant.