

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.

**(2) Exclusion**

A civil action brought by a purchaser of a medical device, purchased for use in providing professional health care services, for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this chapter; and

(B) shall be governed by applicable commercial or contract law.

**(c) Scope of preemption**

**(1) In general**

This chapter supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this chapter establishes a rule of law applicable to the recovery of such damages.

**(2) Applicability of other laws**

Any issue that arises under this chapter and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

**(d) Statutory construction**

Nothing in this chapter may be construed—

- (1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or
- (2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28 that otherwise would not exist under applicable Federal or State law.

(Pub. L. 105–230, §4, Aug. 13, 1998, 112 Stat. 1523.)

**§ 1604. Liability of biomaterials suppliers**

**(a) In general**

Except as provided in section 1606 of this title, a biomaterials supplier shall not be liable for harm to a claimant caused by an implant unless such supplier is liable—

- (1) as a manufacturer of the implant, as provided in subsection (b) of this section;
- (2) as a seller of the implant, as provided in subsection (c) of this section; or
- (3) for furnishing raw materials or component parts for the implant that failed to meet applicable contractual requirements or specifications, as provided in subsection (d) of this section.

**(b) Liability as manufacturer**

**(1) In general**

A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

**(2) Grounds for liability**

The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

- (A)(i) registered or was required to register with the Secretary pursuant to section 360 of