(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.

(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;