

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1506

INTRODUCER: Senator Yarborough

SUBJECT: Civil Litigation

DATE: February 16, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Collazo</u>	<u>Kruse</u>	<u>RC</u>	Unfavorable

I. Summary:

SB 1506 amends s. 768.74, F.S., the remittitur and additur statute. This statute allows a court, upon a motion from a party, to evaluate whether an award of money damages to a plaintiff is excessive or inadequate in light of the facts and circumstances presented at trial. If the court determines that the damages awarded are excessive or inadequate, the court must order a remittitur/reduced amount of damages or additur/increased amount of damages, as appropriate, and offer the adversely affected party the option of a new trial on damages.

The changes to the remittitur and additur statute will more clearly authorize courts to find that an award is excessive or inadequate based on the use of unsubstantiated anchoring.

“Unsubstantiated anchoring” occurs when plaintiff or defense trial counsel references arbitrary values or things that have no rational connection to the facts of the case, aiming to influence the jury’s verdict.

Under the bill, in addition to criteria already listed in s. 768.74, F.S., the court must consider:

- Whether there is a rational, nonarbitrary connection grounded in the evidence between the injuries suffered and the amount of an award of noneconomic damages; and
- Whether the amount of an award of noneconomic damages resulted from references to objects or values that did not have a rational connection to the facts of the case.

The bill applies to causes of action pending on or after July 1, 2026.

The bill takes effect July 1, 2026.

II. Present Situation:

Florida's Civil Justice System

The main purpose of Florida's civil justice system is to properly and fairly redress civil wrongs caused throughout the state, whether such wrongs are in the form of tortious conduct, breaches of contract, or other non-criminal harm for which the law provides a remedy. The civil justice system accomplishes this goal by providing a neutral court system empowered to decide the amount of monetary damages required to make each wronged person whole again.

A functioning civil justice system, when it operates justly:

- Provides a fair and equitable forum to resolve disputes.
- Discourages persons from resorting to self-help methods to redress wrongs.
- Appropriately compensates legitimately harmed persons.
- Shifts losses to responsible parties.
- Provides incentives to prevent future harm.
- Deters undesirable behavior.¹

One of the goals of the civil justice system is to redress tortious conduct, or “torts.” A tort is a wrong for which the law provides a remedy. Torts are generally divided into two categories:

- Intentional torts, examples of which include an assault, battery, or false imprisonment.
- Negligence, which is a tort that is unintentionally committed. To prevail in a negligence lawsuit, the party seeking the remedy (the “plaintiff”) must demonstrate that the:
 - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks.
 - Defendant breached his or her duty of care by failing to conform to the required standard.
 - Defendant's breach caused the plaintiff to suffer an injury.
 - Plaintiff suffered actual damage or loss resulting from the injury.²

Negligence

Duty of Care

The first of the four elements a plaintiff must show to prevail in a negligence action is that the defendant owed the plaintiff a “duty of care” to do something or refrain from doing something. The existence of a legal duty is a threshold requirement that, if satisfied, “merely opens the courthouse doors.”³ Whether a duty sufficient to support a negligence claim exists is a matter of law⁴ determined by the court.⁵ A duty may arise from various sources, including:

¹ Cf. 74 AM. JUR. 2D *Torts* s. 2.

² See *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508, 513-14 (Fla. 2020).

³ *Kohl v. Kohl*, 149 So. 3d 127, 135 (Fla. 4th DCA 2014) (internal citation omitted).

⁴ A matter of law is a matter determined by the court, unlike a matter of fact, which must be determined by the jury. Matters of law include issues regarding a law's application or interpretation, issues regarding what the relevant law is, and issues of fact reserved for judges to resolve. Cornell Law School, Legal Information Institute, *Question of Law*, https://www.law.cornell.edu/wex/question_of_law (last visited Jan. 29, 2026); Cornell Law School, Legal Information Institute, *Question of Fact*, https://www.law.cornell.edu/wex/Question_of_fact (last visited Jan. 29, 2026).

⁵ *Kohl*, 149 So. 3d at 135; *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1105, 1110 (Fla. 2005).

- Legislative enactments or administrative regulations.
- Judicial interpretations of such enactments or regulations.
- Other judicial precedent.
- The general facts of the case.⁶

In determining whether a duty arises from the general facts of a case, courts look to whether the defendant's conduct foreseeably created a "zone of risk" that posed a general threat of harm to others—that is, whether there was a likelihood that the defendant's conduct would result in the type of injury suffered by the plaintiff.⁷ The zone of risk defines the scope of the defendant's legal duty, which is typically to either lessen the risk or ensure that sufficient precautions are taken to protect others from the harm the risk poses.⁸ However, it is not enough that a risk merely exists or that a particular risk is foreseeable; rather, the defendant's conduct must create or control the risk before liability may be imposed.⁹

Breach of the Duty of Care

The second element a plaintiff must prove is that the defendant "breached," or failed to discharge, the duty of care. Whether a breach occurred is generally a matter of fact for the jury to determine.¹⁰

Causation

The third element a plaintiff must prove is that the defendant's breach of the duty of care "proximately caused" the plaintiff's injury. Whether or not proximate causation exists is generally a matter of fact for the jury to determine.¹¹ Florida follows the "more likely than not" standard in proving causation; thus, the inquiry for the factfinder is whether the defendant's negligence probably caused the plaintiff's injury.¹² In making such a determination, the factfinder must analyze whether the injury was a foreseeable consequence of the danger created by the defendant's negligent act or omission.¹³ It is not required that the defendant's conduct be the exclusive cause, or even the primary cause, of the plaintiff's injury suffered; instead, the plaintiff must only show that the defendant's conduct substantially caused the injury.¹⁴

Damages

The final element a plaintiff must show to prevail in a negligence action is that the plaintiff suffered some harm, or "damages." Actual damages, also called compensatory damages, are damages the plaintiff actually suffered as the result of the injury.¹⁵ Juries award compensatory

⁶ *Goldberg*, 899 So. 2d at 1110 (citing *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003)).

⁷ *Kohl*, 149 So. 3d at 135 (citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992); *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001)).

⁸ *Kohl*, 149 So. 3d at 135; *Whitt*, 788 So. 2d at 216-17.

⁹ *Bongiorno v. Americorp, Inc.*, 159 So. 3d 1027, 1029-30 (Fla. 5th DCA 2015) (citing *Demelus v. King Motor Co. of Fort Lauderdale*, 24 So. 3d 759 (Fla. 4th DCA 2009)).

¹⁰ *Wallace v. Dean*, 3 So. 3d 1035, 1046 fn. 18 (Fla. 2009).

¹¹ *Sanders v. ERP Operating Ltd. P'ship*, 157 So. 3d 273, 277 (Fla. 2015).

¹² *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977, 981 (Fla. 2018).

¹³ *Id.* at 981-982.

¹⁴ *Id.* at 982.

¹⁵ *Birdsall v. Coolidge*, 93 U.S. 64, 64 (1876).

damages to compensate an injured person for a defendant's negligent acts.¹⁶ Compensatory damages consist of both:

- “Economic damages,” which typically consist of financial losses that can be easily quantified, such as lost wages, the cost to replace damaged property, or the cost of medical treatment; and
- “Non-economic damages,” which typically consist of nonfinancial losses that cannot be easily quantified, such as pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, and loss of the capacity to enjoy life.¹⁷

In certain limited situations, a court may also award “punitive damages,” the purpose of which is to punish a defendant for bad behavior and deter future bad conduct, rather than to compensate the plaintiff for a loss.¹⁸

Excessiveness or Inadequacy of Damages Award

It is the responsibility of the court, on proper motion, to review the amount of a damages award to determine whether the amount is excessive or inadequate in light of the facts and circumstances that were presented to the trier of fact.¹⁹

Bearing in mind the Legislature's intent that awards of damages be subject to close scrutiny by the courts and that all such awards be adequate and not excessive,²⁰ the courts must consider the following criteria in determining whether a verdict in an action for damages based on either tort or contract²¹ is inadequate or excessive:

- Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;
- Whether it appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amount of damages recoverable;
- Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;
- Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and
- Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.²²

¹⁶ *St. Regis Paper Co. v. Watson*, 428 So. 2d 243, 247 (Fla. 1983).

¹⁷ *Cf.* s. 766.202(3), (8), F.S.

¹⁸ “Exemplary or punitive damages are generally defined as damages which are given as an enhancement of actual or compensatory damages, when the acts complained of have been committed with malice, moral turpitude, wantonness, willfulness, outrageous aggravation, or with reckless indifference to the rights of others. Punitive damages go beyond the actual damages suffered and are imposed as a punishment of the defendant and as a deterrent to others.” 17 FLA. JUR. 2D *Damages* s. 116; *see also* ss. 768.72, 768.725, and 768.73, F.S. (providing standards and requirements for awarding punitive damages).

¹⁹ Section 768.74(1), F.S.

²⁰ Section 768.74(3), F.S.

²¹ Section 768.71(1), F.S.

²² Section 768.74(5), F.S.

If the court finds that the amount awarded is excessive or inadequate, it must order a remittitur or additur,²³ as the case may be,²⁴ and if the party adversely affected by the remittitur or additur does not agree, the court must order a new trial in the cause on the issue of damages only.²⁵ Conclusory justifications for remittitur without articulated factual basis are insufficient. The record must affirmatively show the impropriety of the verdict or there must be an independent determination by the trial judge that the jury was influenced by considerations outside the record.²⁶ Similarly, an order for a new trial is deficient if it does not contain reference to the record in support of the conclusion that additur of the jury award is necessary to cure the inadequacy of the verdict.²⁷

Anchoring Tactics

The use of anchoring tactics in litigation is a “well-known, much discussed practice among plaintiff- and defense-oriented attorneys and legal organizations.”²⁸ In most states, courts permit personal injury lawyers to suggest a specific sum or offer a method of calculating damages as part of closing arguments to a jury. These suggested damages, known as “anchors,” are an “arbitrary but psychologically powerful, baseline for jurors who are struggling with assigning a monetary value to pain and suffering.”²⁹

In the context of a jury trial, the anchoring effect suggests that the jury’s final award may sometimes be unduly affected by a large initial presentation of damages. Accordingly, a jury may rely on a plaintiff’s initial “anchoring value” to set the award’s range and then reach a final award by “discounting.”³⁰

“Unsubstantiated anchoring” occurs when trial counsel references values or things that have no rational connection to the case, aiming to influence the jury’s verdict.³¹ In *Gregory v. Chohan*,³² the Texas Supreme Court discussed and rejected unsubstantiated anchoring for noneconomic damages.

Chohan involved a wrongful death action in which plaintiff’s counsel argued in closing that the amount of the plaintiff’s noneconomic damages was analogous to a \$71 million Boeing F-18

²³ “Remittitur” means “it is remitted” or “sent back” and “additur” means “it is added” in Latin. Remittitur refers to a judge reducing an excessive jury award, whereas additur refers to a judge increasing an inadequate jury award.

²⁴ Section 768.74(2), F.S.

²⁵ Section 768.74(4), F.S.

²⁶ *School Bd. of Broward County v. Pierce Goodwin Alexander & Linville*, 137 So. 3d 1059, 1069-70 (Fla. 4th DCA 2014).

²⁷ *Bluth v. Blake*, 128 So. 3d 242, 246 (Fla. 4th DCA 2013).

²⁸ Eric R. Passeggio and Chris Turney, *Noneconomic Damages: Anchoring a Verdict Without Angering the Court*, FOR THE DEFENSE (Sept. 2023), at 15, available at https://www.sulloway.com/wp-content/uploads/2023/11/DRI_Anchoring-a-Verdict-Without-Angering-the-Court.pdf.

²⁹ Mark A. Behrens, Cary Silverman, Christopher E. Appel, *Summation Anchoring: Is It Time to Cast Away Inflated Requests for Noneconomic Damages*, 44 AM. J. TRIAL ADVOC. 321-22 (citing Kathleen Flynn Peterson et al., *Dropping the Anchor*, TRIAL, Apr. 2017, at 34, 34)).

³⁰ *Hodge v. State Farm Mut. Auto. Ins., Co.*, 84 N.W.2d 238, 56 (Mich. 2016) (Markman, J. Concurring) (citations omitted)

³¹ Tort Trial and Insurance Practice Section, American Bar Association, *Unsubstantiated Anchoring as Improper Jury Argument* (Mar. 18, 2025), https://www.americanbar.org/groups/tort_trial_insurance_practice/resources/brief/2025-winter/unsubstantiated-anchoring-improper-jury-argument/ (citing and quoting *Gregory v. Chohan*, 670 S.W. 3d 546, 557 (Tex. 2023)).

³² 670 S.W. 3d 546 (Tex. 2023).

fighter jet and a \$186 million painting by Mark Rothko.³³ The court held that “[u]nsubstantiated anchors like those employed here have nothing to do with the emotional injuries suffered by the plaintiff and cannot rationally connect the extent of the injuries to the amount awarded.”³⁴ Because the “only arguments provided to justify an amount of damages were impermissible appeals to irrelevant considerations, such as fighter jets,” the court reversed and remanded the case, concluding that there was no evidence to support the amount of noneconomic damages awarded by the jury.³⁵

The court suggested that instead of relying on “unsubstantiated anchors and unexamined ratios,” parties should consider relying on “direct evidence supporting quantification of an amount of damages, such as evidence of the likely financial consequences of severe emotional disruption in the plaintiff’s life” or an amount of money that “would enable plaintiff to better deal with grief or restore his emotional health.”³⁶ The court explained that the examples it offered were not intended to suggest that “in all cases there must be direct evidence of a quantifiable amount of damages,” but merely to reiterate the “requirement that the amount of damages must have a rational basis grounded in evidence.”³⁷

III. Effect of Proposed Changes:

The bill amends s. 768.74, F.S., the remittitur and additur statute. This statute authorizes a court, upon motion by a party, to review an award of damages for excessiveness or inadequacy. If the court finds that the award is excessive or inadequate based on the facts and circumstances, the statute requires the court to order, as appropriate, a remittitur which is a reduced award or an additur which is an increased award. An adversely effected party, however, must then be given the option of a new trial on damages.

Under the bill, in addition to existing criteria listed in the remittitur and additur statute, the court must consider:

- Whether there is a rational, nonarbitrary connection grounded in the evidence between the injuries suffered and the amount of an award of noneconomic damages; and
- Whether the amount of an award of noneconomic damages resulted from references to objects or values that did not have a rational connection to the facts of the case.

The new criteria make clear that awards of noneconomic damages based on unsubstantiated anchoring by plaintiff or defense counsel at trial may be grounds for remittitur or additur.

The bill applies to causes of action pending on or after July 1, 2026.

For the purpose of incorporating the amendment made by the bill to s. 768.74, F.S., the bill also reenacts ss. 400.0238(1)(d), 429.298(1)(d), 768.73(1)(d), and 768.735(2)(c), F.S.

The bill takes effect July 1, 2026.

³³ *Id.* at 557.

³⁴ *Id.* at 558.

³⁵ *Id.* at 563-65.

³⁶ *Id.* at 560.

³⁷ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.74 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 400.0238, 429.298, 768.73, and 768.735.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
