By Senator Cruz

A bill to be entitled
An act relating to employment practices; creating ch. 444, F.S., entitled the “Florida Family Leave Act”; providing a short title; providing legislative findings and intent; defining terms; requiring an employer to allow certain employees to take paid family leave to bond with a new child upon the child’s birth, adoption, or foster care placement; requiring an employee to take certain actions in order to receive family leave; specifying limitations and duties related to an employer’s administration of family leave; requiring that family leave be taken concurrently with any leave taken pursuant to federal family and medical leave provisions; requiring an employer to provide notice to employees of the right to paid family leave; prescribing notice requirements; requiring the Department of Economic Opportunity to create a poster and a model notice that specify family leave rights; specifying circumstances under which an employer is deemed in compliance with notice requirements; providing a civil penalty for an employer’s failure to comply with the notice requirements; authorizing the executive director of the department to conduct an investigation under certain circumstances; establishing rebuttable presumptions that an employer has violated certain provisions of ch. 444, F.S., under specified circumstances; authorizing the executive director to take certain actions in the event of specified circumstances in the event of a violation.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 444, Florida Statutes, consisting of sections 444.001-444.008, Florida Statutes, is created to read:

CHAPTER 444

THE FLORIDA FAMILY LEAVE ACT

444.001 Short title.—This chapter may be cited as the "Florida Family Leave Act."

444.002 Legislative findings and intent.—The Legislature finds that it is in the public interest to provide paid family
leave to workers for the birth, adoption, or foster care placement of a new child. The need for paid family leave has increased as the participation of both parents in the workforce has increased and the number of single parents has grown.

Despite knowing the importance of time spent bonding with a new child, the majority of workers in this state are unable to take family leave because they are unable to afford leave without pay. When a worker does not receive income during a leave of absence, his or her family suffers as a result of the worker’s loss of income, increasing demand on the state’s reemployment assistance program and dependence on the state’s welfare system. Therefore, in an effort to assist workers in reconciling the demands of work and family, the Legislature intends to require employers to allow employees to take paid family leave to bond with their minor child during the first 3 months after the birth of the child or the placement of the child through the foster care system or by adoption.

444.003 Definitions.—As used in this chapter, the term:

(1) “Adverse action” includes:

(a) Discharge.
(b) Demotion.
(c) A threat of discharge or demotion to an employee.
(d) Any other retaliatory action that results in a change in the terms or conditions of employment which would dissuade a reasonable employee from exercising a right under this chapter.

(2) “Child” means a biological, adopted, or foster son or daughter or a stepson or stepdaughter of an employee.

(3) “Department” means the Department of Economic Opportunity.
(4) “Employee” means a person who performs services for hire for an employer for an average of 20 or more hours per week. The term includes all individuals employed at any site owned or operated by an employer, not including an independent contractor.

(5) “Employer” has the same meaning as in s. 760.02.

(6) “Executive director” means the executive director of the Department of Economic Opportunity.

(7) “Family leave” means a paid leave of absence from employment because of the birth of an employee’s child or the placement of a child with an employee through the foster care system or by adoption.

444.004 Family leave upon the birth, adoption, or foster care placement of a child.—

(1) Beginning July 1, 2020, an employer shall allow an employee who has been employed by the employer for at least 18 months to take family leave from employment, for up to 3 months, for the employee to bond with his or her minor child during the first 3 months after the birth of the child or the placement of the child in connection with foster care or adoption. Such family leave must be without loss of pay or diminution of any privilege, benefit, or right arising out of the person’s employment.

(2) In order to receive family leave, an employee must:

(a) Request the leave from his or her employer as soon as practicable after the employee determines that he or she needs to take leave to bond with a new child.

(b) Notify the employer of the anticipated duration of the leave.
(c) Comply with any reasonable procedures established by
the employer for an employee to follow when requesting and
obtaining leave.

(3) An employer may require an employee who requests or
obtains family leave to provide reasonable documentation to
verify eligibility to take family leave.

(4) An employer may not take adverse action against an
employee for requesting or obtaining family leave authorized
under this section.

(5) An employer shall retain a record of family leave taken
by an employee for at least 3 years. After giving the employer
notice and determining a mutually agreeable time for inspection,
the executive director may inspect a record kept pursuant to
this subsection for the purpose of determining the employer’s
compliance. If an employer fails to retain a record as required
under this subsection or to allow the executive director to
inspect such records, the executive director may take action
pursuant to s. 444.006(3).

(6) Family leave taken pursuant to this section must be
taken concurrently with leave taken pursuant to the Family and

444.005 Notice requirements.—

(1) An employer shall notify his or her employees that they
are entitled to family leave to bond with a new child upon
meeting the requirements for eligibility set forth in this
chapter.

(2) The notice must include all of the following:

(a) The purposes for which the employer is required to
allow an employee to take a leave of absence.
(b) A statement regarding the prohibition of the employer’s taking adverse action against an employee who exercises a right under this section.

(c) Information regarding the right of an employee to report an alleged violation of this chapter by the employer to the executive director or to bring a civil action under s. 444.006.

(3) The department shall create and make available to employers a poster and a model notice that they may use in complying with subsection (1). The poster and model notice must be printed in English, Spanish, Haitian Creole, and any other language the executive director determines is necessary to notify employees of their rights under this chapter.

(4) An employer is deemed to be in compliance with subsection (1) by:

(a) Displaying the poster created by the department in a conspicuous and accessible area at the site where employees work;

(b) Including the model notice created by the department in an employee handbook or other written guide for employees concerning employee benefits or leave provided by the employer;

or

(c) Providing the model notice created by the department to each employee at the time of initial hiring.

(5) If an employer decides not to use the model notice created by the department, the employer’s notice must contain the same information that is included in the model notice.

(6) In lieu of posting the model notice, an employer may distribute the notice to employees by electronic means.
(7) An employer who violates this section is subject to a civil penalty of not more than $500 for the first violation and not more than $1,000 for each subsequent violation.

444.006 Violations of chapter; civil action; penalties.—

(1) Upon receiving a written complaint from an employee, the executive director may conduct an investigation to determine whether the employer has violated this chapter.

(2)(a) There is a rebuttable presumption that an employer has violated this chapter if the employer takes adverse action against an employee within 90 days after the employee:

1. Files a complaint with the executive director alleging a violation of this chapter or brings a civil action under this section;

2. Informs a person about an alleged violation of this chapter by his or her employer;

3. Cooperates with the executive director or another person in the investigation or prosecution of an alleged violation of this chapter by his or her employer; or

4. Opposes a policy or practice of his or her employer or an act committed by the employer which is prohibited under this chapter.

(b) The rebuttable presumption may be overcome by clear and convincing evidence.

(3) If the executive director determines that a violation of this chapter has occurred, the executive director may:

(a) Attempt to informally resolve any pertinent issue through mediation;

(b) With the written consent of the employee, request the Attorney General to bring an action on behalf of the employee in
accordance with this section; or

(c) Bring an action on behalf of an employee in the county where the violation allegedly occurred.

(4) An employee may bring a civil action in a court of competent jurisdiction against his or her employer for a violation of this chapter regardless of whether the employee first filed a complaint with the executive director.

(5) An action brought under subsection (3) or subsection (4) must be filed within 3 years after the occurrence of the act on which the action is based.

(6)(a) If a court finds that an employer violated this chapter in an action brought under subsection (3) or subsection (4), the court may award the employee:

1. The full monetary value of any unpaid family leave that the employee was unlawfully denied.

2. Actual economic damages suffered by the employee as a result of the employer’s violation of this chapter.

3. An additional amount not exceeding three times the damages awarded under subparagraph 2.

4. Reasonable attorney fees and other costs.

5. Any other relief the court deems appropriate, including reinstatement of employment, back pay, and injunctive relief.

(b) If the full monetary value of any unpaid family leave of an employee is recovered under this subsection, such leave must be paid to the employee without cost to the employee.

(c) If the action was brought by the Attorney General under paragraph (3)(b), the court may order the employer to pay $1,000 per violation to the state.

(7) An employee may not file a complaint in bad faith with
the executive director alleging a violation of this chapter or bring or testify in bad faith in an action under this section. An employee who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

444.007 Rules.—The department may adopt rules to implement and administer this chapter.

444.008 Construction.—
(1) This chapter does not diminish an employer’s obligation to comply with a collective bargaining agreement, a contract, an employee benefit plan, or an employer policy, as applicable, which requires leave in excess of that required under this chapter for the birth, adoption, or placement of a child.

(2) An individual’s right to family leave under this chapter may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, on or after July 1, 2020. Any agreement by an individual to waive his or her rights under this chapter is deemed against public policy and is void and unenforceable.

Section 2. Present subsections (2) through (10) of section 760.10, Florida Statutes, are redesignated as subsections (3) through (11), respectively, and a new subsection (2) is added to that section, to read:

760.10 Unlawful employment practices.—
(2) In addition to the provisions governing pregnancy under subsection (1), it is an unlawful employment practice for an employer to:

(a) Refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take
unpaid leave for a period, not to exceed 4 months, during which
the female employee is disabled on account of pregnancy,
childbirth, or a related medical condition. An employee is
entitled to use any accrued vacation leave to receive
compensation during the period of unpaid leave. An employer may
require an employee who plans to take leave pursuant to this
paragraph to provide the employer reasonable notice of the date
the leave will commence and the estimated duration of the leave.

(b) Refuse to maintain and pay for coverage for a group
health plan, as defined in s. 5000(b)(1) of the Internal Revenue
Code, for an eligible employee who takes leave pursuant to
paragraph (a) at the level and under the conditions that
coverage would have been provided if the employee had
continuously worked for the duration of the leave. This
paragraph does not preclude an employer from maintaining and
paying for coverage under a group health plan for a period
exceeding 4 months. An employer may recover the premium that the
employer paid for maintaining coverage as required under this
paragraph if:

1. The employee fails to return from leave after the period
of leave to which the employee is entitled has expired.

2. The employee’s failure to return from leave is for a
reason other than the employee’s taking paid family leave
pursuant to chapter 444 or other than the continuation,
recurrence, or onset of a medical condition that entitles the
employee to leave under paragraph (a) or circumstances beyond
the employee’s control.

(c) Refuse to provide reasonable accommodation for an
employee, if she so requests with the advice of her health care
provider, for pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. As an accommodation, and with the advice of her health care provider, an employee may request a transfer to a less strenuous or hazardous position for the duration of her pregnancy. This paragraph does not require an employer to create additional employment duties that the employer would not otherwise have created, to discharge another employee, to transfer an employee who has more seniority, or to promote an employee who is not qualified to perform certain duties.

(d) Refuse to return an employee to the same position after the period of leave to which the employee is entitled has expired. If her same position is no longer available, an employer must offer a position that is comparable in terms of pay, location, job content, and advancement opportunities, unless the employer can prove that no comparable position exists.

(e) Otherwise interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this subsection.

This subsection may not be construed to affect any other provision of law relating to pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other law, including chapter 444. An employee is entitled to take leave pursuant to this subsection in addition to any paid family leave the employee may be eligible to receive pursuant to chapter 444.
Section 3. Subsection (1) of section 760.11, Florida Statutes, is amended to read:

760.11 Administrative and civil remedies; construction.—

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of ss. 760.10(6), the person responsible for the violation and describing the violation. Any person aggrieved by a violation of s. 509.092 may file a complaint with the commission within 365 days of the alleged violation naming the person responsible for the violation and describing the violation. The commission, a commissioner, or the Attorney General may in like manner file such a complaint. On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission. In lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing. The date the complaint is filed with the commission for purposes of this section is the earliest date of filing with the Equal Employment Opportunity Commission, the fair-employment-practice agency, or the commission. The complaint shall contain a short and plain statement of the facts describing the violation and the relief
sought. The commission may require additional information to be in the complaint. The commission, within 5 days of the complaint being filed, shall by registered mail send a copy of the complaint to the person who allegedly committed the violation. The person who allegedly committed the violation may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.

Section 4. This act shall take effect July 1, 2020.