

# GK QUARTERLY

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## ***New Wisconsin LLC Law Goes into Effect Jan. 1, 2023: Are you ready?***

Wisconsin recently enacted the Wisconsin Uniform Limited Liability Company Law (the **WULLCL**), 2021 Wis. Act 258, which repealed and replaced Wisconsin Statute Chapter 183 (the **Prior LLC Law**). WULLCL adopts the most recent version of the Revised Uniform Limited Liability Company Act with certain Wisconsin-specific modifications. On Jan. 1, 2023, the WULLCL will apply to all limited liability companies (**LLCs**) formed in Wisconsin on or after Jan. 1, 2023. The WULLCL imposes new responsibilities and obligations on members and managers of Wisconsin limited liability companies, as outlined below. Further, LLCs formed prior to Jan. 1, 2023 will be subject to the WULLCL as of Jan. 1, 2023 (provided the LLC does not opt-in earlier), unless the LLC files an election to opt-out of the WULLCL and continue to be governed by the Prior LLC Law. We have provided information on the process to opt-out below.

The discussion below applies to LLCs formed in Wisconsin only (i.e., these changes do not apply to limited liability companies formed in other jurisdictions, such as Delaware) and is intended to highlight certain key changes under the WULLCL for further consideration by LLC owners and management teams to their respective situations and circumstances.

### **Key changes from the prior LLC law to the WULLCL:**

- **Fiduciary Duties:** Under the Prior LLC Law, members and managers of an LLC could agree to waive certain fiduciary duties owed to each other and the company. After Jan. 1, 2023, the WULLCL mandates that members and managers comply with (i) the duty of care, (ii) the duty of loyalty, and (iii) the obligations of good faith and fair dealing. The intention of this change, in part, is to protect the interests of minority owners.

The WULLCL allows members to contract around the above duties to a certain extent in their written operating agreements, but not remove them entirely. For LLCs that were organized prior to Jan. 1, 2023, the WULLCL will honor any provision in an operating agreement that waived certain fiduciary duties, so long as the provision was enforceable under the Prior LLC Law.

- **Access to Information:** The WULLCL also provides all LLC members with broader rights to access company information. Any member (including a member not actively involved in management) may now obtain, inspect and copy information regarding the company's activities, including information regarding the financial affairs of the company, so long as the member reasonably requests the information and it relates to the member's interests and rights as a member. Further, the WULLCL states that an operating agreement may not unreasonably restrict a member's right to access this information.

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- **Authority to Bind Company:** Under the WULLCL, a member is not an agent of the LLC solely by reason of being a member, eliminating the concept of “apparent authority,” and may not have the power to bind the company to contracts or other undertakings. At its option, LLCs may now deliver a statement of authority to the Wisconsin Department of Financial Institutions (WDFI) indicating which position within the LLC has authority to bind the company in transactions.
- **Operating Agreement:** Under the Prior LLC Law, LLC members had the option of executing a written operating agreement. Now, under the WULLCL, an operating agreement is no longer limited to a written document, meaning the operating agreement may also be verbal, implied, or any combination of the three. However, the WULLCL requires a written operating agreement for certain specified actions, such as matters concerning fiduciary duties.

The Wisconsin State Legislature [archived](#) the Prior LLC Law. The WULLCL is the current version of Chapter 183 on the Wisconsin State Legislature [website](#).

## What does this mean for existing LLCs?

Existing LLCs will become subject to the WULLCL on Jan. 1, 2023 unless the LLC files a Statement of Nonapplicability with the WDFI by Dec. 31, 2022. This Statement of Nonapplicability will allow your LLC to continue to be governed by the Prior LLC Law.

Conversely, an existing LLC may take no action and, as a result, on Jan. 1, 2023, the LLC will be governed by the WULLCL by operation of law. If your LLC elects to be governed by the WULLCL, we recommend reviewing your current operating agreement to evaluate if there are any provisions that may be at risk of being invalidated under the WULLCL. Those LLCs that opt-out of the WULLCL likely do not need to make changes to their operating agreement solely as a result of this change in the law, though individual circumstances may vary. LLCs that opt-out of the WULLCL may later “opt-in” by filing a Statement of Applicability at any time.

## How do I file a Statement of Nonapplicability?

The form of Statement of Nonapplicability may be found [here](#). Instructions to complete the form are located on Page 2 and the completed form must be sent via mail at the address indicated or [emailed to the WDFI](#) prior to Jan. 1, 2023. There currently is no filing fee associated with this form.

In addition, the LLC’s decision-making body needs to consent to the filing of this form. The approval required for this consent will be the same approval currently required to amend the LLC’s operating agreement. If an operating agreement doesn’t exist, or doesn’t contain a provision on how to amend the operating agreement, the default consent or approval under the Prior LLC Law requires unanimous manager consent or approval from all members of the LLC.

Lastly, the new business entity law also repealed and replaced the Wisconsin Uniform Limited Partnership Act (Wisconsin Statute Chapter 179). The changes to this law are similar to that of WULLCL.

There may be other changes resulting from the WULLCL that affect your LLC or LP. Please contact [WIServicesMKE@gklaw.com](mailto:WIServicesMKE@gklaw.com) or your Godfrey & Kahn attorney with specific questions about the WULLCL, changes to the Wisconsin Uniform Limited Partnership Act, filing a Statement of Nonapplicability, or any other matters addressed above.