Arbitration clauses in contracts enforceable. A provision in any written contract to settle by arbitration a controversy thereafter arising out of the contract, or out of the refusal to perform the whole or any part of the contract, or an agreement in writing between 2 or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable and enforceable except upon such grounds as exist at law or in equity for the revocation of any contract. This chapter shall not apply to contracts between employers and employees, or between employers and associations of employees, except as provided in s. 111.10, nor to agreements to arbitrate disputes under s. 292.63 (6s) or 230.44 (4) (b)(m).

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.01; 1993 a. 16; 1997 a. 237, 254; 2001 a. 38; 2013 a. 20.

An insurer’s refusal to either pay the plaintiff’s claim under the uninsured motorist provision of its automobile policy or to submit to arbitration under an arbitration clause that could be invoked by either party constituted a breach of the contract and a waiver of the insurer’s right to later demand arbitration. Collicott v. Economy Fire & Casualty Co., 68 Wis. 2d 115, 227 N.W.2d 668 (1975).

Failure to comply with provisions of ch. 298 [now this chapter] constitutes waiver of the contractual right to arbitration. State ex rel. Carlson v. Charles, 71 Wis. 2d 85, 237 N.W.2d 29 (1976).

If the intent of the parties is not clearly expressed, the court favors construing an arbitration agreement as statutory rather than common law arbitration. Stradinger v. City of Whitewater, 89 Wis. 2d 19, 277 N.W.2d 827 (1979).

Although courts have common law jurisdiction to enforce arbitration awards generally, they cannot enforce an award against the state absent express legislative authorization. State v. Teaching Assistants Ass’n of University of Wisconsin–Madison, 96 Wis. 2d 492, 329 N.W.2d 657 (Ct. App. 1980). But see State v. Miron Construction Co., 181 Wis. 2d 1045, 512 N.W.2d 499 (1994).

Municipal labor arbitration is within the scope of this chapter. Milwaukee District Council 48 v. Milwaukee Sewerage Commission, 107 Wis. 2d 590, 321 N.W.2d 309 (Ct. App. 1982).

Insurance coverage is a proper matter for arbitration. Maryland Casualty Co. v. Seidenspinner, 181 Wis. 2d 930, 512 N.W.2d 136 (Ct. App. 1994).

Sovereign immunity is not applicable to arbitration, and there need not be specific statutory authority for the state to be subject to the arbitration provisions of this chapter. State v. P.G. Miron Construction Co., 181 Wis. 2d 1045, 512 N.W.2d 499 (1994).

Preclusion doctrines preventing reharing of identical claims are applicable to a limited extent in arbitration cases. Dane County v. Dane County Union Local 65, 210 Wis. 2d 267, 565 N.W.2d 540 (Ct. App. 1997), 96–0359.

Whether the parties agreed to submit an issue to arbitration is a question of law for the courts to decide. Kimberly Area School District v. Zdanovec, 222 Wis. 2d 27, 586 N.W.2d 41 (Ct. App. 1998), 98–0783.

The trial court erred in ruling that the unavailability of the arbitrator named in an agreement resulted in a dissolution of the agreement’s arbitration provision. When the primary purpose of the dispute resolution provision in the agreement is to arbitrate disputes that arise between the parties, the unavailability of the named arbitrator does not nullify an arbitration provision. Madison Teachers, Inc. v. Wisconsin Education Ass’n Council, 2005 WI App 180, 285 Wis. 2d 737, 703 N.W.2d 711, 04–1053.

The designation of a specific arbitration service and the incorporation of its rules governing all aspects of arbitration was integral to the parties’ alternate dispute resolution (ADR) agreement to a degree as integral as the agreement to arbitrate itself. In light of a consent judgment effectively barring the arbitration service from arbitrating, the ADR agreement failed altogether. Riley v. Extendicare Health Facilities, Inc., 2013 WI App 9, 345 Wis. 2d 804, 826 N.W.2d 398, 12–0311.

This section provides that a contractual provision to arbitrate is irrevocable “except upon such grounds as exist at law or in equity for the revocation of a contract.” No Wisconsin or federal case establishes that, once arbitration is contracted as the forum for disputes arising out of the contract, parties can never later contract for an alternative forum for dispute resolution. Fundamental principles of freedom to contract support the proposition that parties can subsequently contract to modify the terms of a previous contract. This section also provides that a court may not limit such freedom to contract. Another contract that clearly and expressly supersedes a first contract is grounds as exist at law or in equity for the revocation of a contract. Midwest Neurosurgeries Associates, LLC v. Great Lakes Neurosurgical Associates, LLC, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767, 16–0601.

Arbitration is a matter of contract between private parties who enjoy that freedom. A circuit court has no authority to halt a contractually agreed upon arbitration. The circuit court may act only to ensure the parties who contracted for arbitration abide by their contractual agreement. State ex rel. CityDeck Landing LLC v. Circuit Court, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 832, 18–0291.

While a court’s authority under the Federal Arbitration Act to compel arbitration may be considerable, it isn’t unconditional. A court should decide for itself whether 9 of the Act’s “contracts of employment” exclusion applies before ordering arbitration. After all, to invoke its statutory powers to stay litigation and compel arbitration according to a contract’s terms, a court must first know whether the contract itself falls within or beyond the boundaries of the Act. New Prime Inc. v. Olivera, 586 U.S. 139 S. Ct. 532, 202 L. Ed. 2d 536 (2019).

The Federal Arbitration Act (FAA) precludes states from singling out arbitration provisions for suspect status. When state law prohibits outright the arbitration of a particular type of claim, the conflicting rule is displaced by the FAA. This section prohibits outright enforcing arbitration agreements in employment disputes, which means that it is displaced by the FAA. Neville v. Johnson Controls International PLC, 364 F. Supp. 3d 932 (2019).


Arbitration clauses in contracts enforceable. A provision in any written agreement between a purchaser or seller of real estate and a real estate broker, or between a purchaser and seller of real estate, to submit to arbitration any controversy between them arising out of the real estate transaction is valid, irrevocable and enforceable except upon any grounds that exist at law or in equity for the revocation of any agreement. The agreement may limit the types of controversies required to be arbitrated and specify a term during which the parties agree to be bound by the agreement.

History: 1991 a. 163.

Stay of action to permit arbitration. If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall upon application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02.
underlying claim; 4) contracts that contain arbitration clauses carry a strong presumption of arbitration; therefore, doubts are resolved in favor of arbitration coverage.

Mortimore v. Merge Technologies Inc., 2012 WI App 109, 344 Wis. 2d 459, 824 N.W.2d 509, 923 N.W.2d 646.

Parties may contract broadly and agree to arbitrate even the issue of arbitrability. However, arbitrators cannot determine whether they have the authority to decide arbitrability issues for arbitrators such as this authority. The evidence of the court's authority must be clear and unmistakable; otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator. Midwest Neurosciences Associates, LLC v. Great Lakes Neurosurgical Associates, LLC, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767, 16–0061.

A court should order arbitration only if the court is satisfied that neither the formation of the arbitration agreement nor any agreement specifically committing such disputes to an arbitrator—its enforceability or applicability to the dispute—is in issue. In answering both who determines arbitrability and what is to be decided under 788.04, the court should follow these principles and this chapter. Generally, a court may invalidate an arbitration agreement based on generally applicable contract defenses like fraud or unconscionability, but not on legal rules that apply only to agreements to arbitrate. The deciding issue is the fact that an agreement to arbitrate is at issue. Midwest Neurosciences Associates, LLC v. Great Lakes Neurosurgical Associates, LLC, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767, 16–0061.

The procedure under this section is somewhat truncated in comparison to 788.03, but the circuit court's responsibility is essentially the same. Both this section and s. 788.03 require the circuit court to do nothing more than determine whether the parties must arbitrate their dispute and then ensure that they do. L.G. v. Aurora Residential Alternatives, Inc., 2019 WI 79, 387 Wis. 2d 724, 929 N.W.2d 590, 18–0656.

An application to stay pursuant to this section is a special proceeding within the meaning of s. 802.13(1), and a circuit court order denying a request to compel arbitration and stay a pending lawsuit is final for the purposes of appeal. L.G. v. Aurora Residential Alternatives, Inc., 2019 WI 79, 387 Wis. 2d 724, 929 N.W.2d 590, 18–0656.

788.03 Court order to arbitrate; procedure. The party aggrieved by the alleged failure, neglect or refusal of another to perform under a written agreement for arbitration may petition any court of record having jurisdiction of the parties or of the property for an order directing that such arbitration proceed as provided in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made as provided by law for the service of a summons. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure, neglect or refusal to perform the same is in issue, the court shall proceed summarily to the trial thereof. If no jury trial is demanded, the court shall hear and determine such issue. Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue to a jury summoned and selected under s. 755.52. If the jury finds that no agreement in writing for arbitration existed which required disqualification. A substitute member of the panel may disqualify himself or herself or be disqualified by the court if any reason exists which requires disqualification. A substitute member of the arbitration panel shall not be chosen in the same manner as the person disqualified was chosen.

(c) No member of the panel may participate in any subsequent court proceeding on the action arbitrated as either a counsel or a witness unless the court deems the member's testimony necessary for hearings under s. 788.10 or 788.11.

History: 1975 c. 43, 199; 1977 c. 26 s. 75; 1977 c. 418 s. 929 (41); 1977 c. 449; 1979 c. 32 ss. 64, 92 (15); Stats. 1979 s. 788.04; 2001 a. 103.

788.05 Court procedure. Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.05.

788.06 Hearings before arbitrators; procedure. (1) When more than one arbitrator is agreed to, all of the arbitrators shall hear the case unless all parties agree in writing to proceed with a lesser number.

(2) Any arbitrator may issue a subpoena under ch. 885 or may furnish blank forms therefor to a representative for any party to the arbitration. The representative may issue a subpoena under s. 805.07. The arbitrator or representative who issues the subpoena shall sign the subpoena and provide that the subpoena is served as prescribed in s. 805.07 (5). If any person so served seeks to quash the subpoena, the issuing party may petition the circuit court for the county in which the hearing is held to impose motion to quash.
a remedial sanction under ch. 785 in the same manner provided for witnesses in circuit court. Witnesses and interpreters attending before an arbitration shall receive fees as prescribed in s. 14.67.

History: 1985 a. 168.

788.07 Depositions. Upon petition, approved by the arbitrators or by a majority of them, any court of record in and for the county in which such arbitrators, or a majority of them, are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in the courts of record in this state.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.07.

Arbitrators have no inherent authority to dictate the scope of discovery. Absent an express agreement, the parties are limited to the procedure for depositions, as described in this section. Bost v. Allstate Insurance Co., 2006 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, 04−2004−0517.

For a party in arbitration to enjoy discovery outside of that allowed by this section, an insurance policy must provide for it expressly, explicitly, specifically, and in a clearly drafted clause. For a policy to adequately describe the discovery mechanisms to be used at arbitration, it must indicate in the policy that the mechanisms are in fact discovery mechanisms and that they are meant to be available at arbitration. A provision stating that “local rules of law as to procedure and evidence will apply” was not an explicit, specific, and clearly drafted reference to ch. 804 or to any other discovery rules. Marlowe v. JDS Property Casualty Insurance Co., 2013 WI 29, 346 Wis. 2d 450, 829 N.W.2d 11−2007.


788.08 Written awards. The award must be in writing and must be signed by the arbitrators or by a majority of them.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.08.

788.09 Court confirmation award, time limit. At any time within one year after the award is made any party to the arbitration may apply to the court in and for the county wherein such award was made for an order confirming the award, and thereupon the court may confirm such order unless the award is vacated, modified or corrected under s. 788.10 or 788.11. Notice in writing of the application shall be served upon the adverse party or the adverse party’s attorney 5 days before the hearing thereof.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.09; 1981 c. 390; 1993 a. 486.

The time limit under s. 788.13 does not apply when the prevailing party moves to confirm an award and the adverse party wishes to raise objections under ss. 788.10 and 788.11. Milwaukee Police Ass’n v. City of Milwaukee, 92 Wis. 2d 145, 285 N.W.2d 119 (1979).

788.10 Vacation of award, rehearing by arbitrators. (1) In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear competent and material testimony on the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

(d) Where the arbitrators exceeded their powers, or so impermissibly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(2) Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.10.

A court may order arbitrators to hear further testimony without establishing a new panel. Gallagher v. Schermecker, 60 Wis. 2d 143, 208 N.W.2d 437 (1973).

The interjection of a new contract time period in an amended final offer after the petitioning party’s question beyond the statutory authority of the arbitrator. Milwaukee Deputy Sheriffs’ Ass’n v. Milwaukee County, 64 Wis. 2d 651, 221 N.W.2d 673 (1974).

Arbitration awards are presumptively valid, and an award may not be attacked on the grounds that a portion of it could conceivably be allocable to an allegedly improper item. Scherrer Construction Co. v. Burlington Memorial Hospital, 64 Wis. 2d 720, 221 N.W.2d 855 (1974).

Contacts between the arbitrator and one party outside the presence of the other do not in themselves justify vacating an award to the party involved if the challenger does not demonstrate either improper intent or influence by clear and convincing evi-
A presumption of impartiality among all arbitrators, whether named by the parties or not, is adopted. This presumption may be rebutted, and an arbitrator may act as a non-neutral when the parties contract for non-neutral arbitrators or the arbitration rules authorize non-neutral arbitrators. Borst v. Allstate Insurance Co., 2006 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, 04–0034.

Sub. (1) (d) requires a court to vacate an arbitrator’s award when the arbitrator exceeds his or her powers. Arbitration awards must ordinarily await until the arbitrators have reached a final decision on the award to be given, if any, before turning to the circuit courts. Courts that have permitted interlocutory review during an arbitration proceeding have done so only in rare circumstances that present a compelling reason to depart from the normal practice, balancing the need for efficient and orderly arbitration proceedings with the need for an occasional exception to accommodate extraordinary and inevitably irreparable special matters that demand the immediate attention of the courts. Marlowe v. IDS Property Casualty Insurance Co., 2012 WI 29, 346 Wis. 4d 450, 828 N.W.2d 812, 11–2067.

The arbitration panel’s decision in this case was properly modified by the circuit court under section s. 788.11 because the arbitrators exceeded their authority by failing to fully review and apply the supreme court’s decisions on the collateral source rule and the law of damages. Orlowski v. State Farm Mutual Automobile Insurance Co., 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09–2848.

The arbitration panel’s decision in this case was properly modified by the circuit court under section s. 788.11 because the arbitrators exceeded their authority by failing to fully review and apply the supreme court’s decisions on the collateral source rule and the law of damages. Orlowski v. State Farm Mutual Automobile Insurance Co., 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09–2848.

The arbitration panel’s decision in this case was properly modified by the circuit court under section s. 788.11 because the arbitrators exceeded their authority by failing to fully review and apply the supreme court’s decisions on the collateral source rule and the law of damages. Orlowski v. State Farm Mutual Automobile Insurance Co., 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09–2848.

The arbitration board’s decision in this case was properly modified by the circuit court under section s. 788.11 because the arbitrators exceeded their authority by failing to fully review and apply the supreme court’s decisions on the collateral source rule and the law of damages. Orlowski v. State Farm Mutual Automobile Insurance Co., 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09–2848.

The arbitration panel’s decision in this case was properly modified by the circuit court under section s. 788.11 because the arbitrators exceeded their authority by failing to fully review and apply the supreme court’s decisions on the collateral source rule and the law of damages. Orlowski v. State Farm Mutual Automobile Insurance Co., 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09–2848.

The arbitration panel’s decision in this case was properly modified by the circuit court under section s. 788.11 because the arbitrators exceeded their authority by failing to fully review and apply the supreme court’s decisions on the collateral source rule and the law of damages. Orlowski v. State Farm Mutual Automobile Insurance Co., 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09–2848.