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) (bmk). 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 and 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. Carl 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. Stadlinger 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. Wisconsin ex rel. Teaching Assistants Associates v. UW–Madison, 96 Wis. 2d 492, 292 N. W. 2d 657 (Ct. App. 1980). But see the note to State v. P.G. Miron Constr. Co.

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 109 (Ct. App. 1982).

Insurance coverage is a proper matter for arbitration. Maryland Casualty Co. v. Seidenspinner, 181 Wis. 2d 930, 512 N.W.2d 186 (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 rehearing 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 effectuating the arbitration service from arbitration, 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 an arbitration is contracted as the forum for dispute resolution, 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. Thus, this section does not limit such freedom to contract; rather contract that clearly and expressly supersedes a first contract is grounds as exist at law or in equity for the revocation of a contract. Northwestern Mutual Life Insurance Co. 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 for Door County, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 932, 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 U.S.C. 1 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. 522, 20 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. Nevill v. Johnson Controls International PLC, 364 F. Supp. 3d 932 (2019).

Commercial arbitration agreements: let the signers beware. 61 MLR 466.

Agreement to arbitrate real estate transaction disputes. 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 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 on 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 pursuing with such arbitration. History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02.


The right to arbitrate may be waived. Conduct that allows an action to proceed to a point where the purpose of arbitration is frustrated leaves a party free to claim a right to arbitration. Meyer v. Classified Ins. Corp., 179 Wis. 2d 386, 507 N.W.2d 149 (Cl. App. 1993).

In determining whether a dispute is arbitrable, a court’s function is limited to a determination of whether: 1) there is a construction of the arbitration clause that would cover the grievance on its face; and 2) whether any other provision of the contract specifically excludes the dispute. Mortimore v. Merge Technologies Inc., 2012 WI App 109, 344 Wis. 2d 459, 824 N.W.2d 155, 11–1039.

In determining a court’s function in arbitration disputes, Wisconsin has adopted the following general teachings: 1) arbitration is a matter of contract, and, as such, no party can be compelled to arbitrate a matter that the party has not agreed to submit to arbitration; 2) the question of arbitrability is one for judicial determination unless the parties expressly agree otherwise; 3) in determining whether the parties have agreed to submit a matter for arbitration, the court does not consider the merits of the underlying claim; 4) contracts that contain arbitration clauses carry a strong presump-
tion of arbitration; therefore, doubts are resolved in favor of arbitration coverage. Mortimore v. Merger Technologies Inc., 2012 WI App 109, 544 Wis.2d 459, 824 N.W.2d 155, 11–1039.

Both parties agreed broadly and agree to arbitrate even the issue of arbitrability. However, arbitrators cannot determine whether they have the authority to decide arbitrability unless the parties give arbitrators such authority. The evidence of this grant of authority is unambiguous, contrary wise, 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, 16–0001.

A court should order arbitration only if the court is satisfied that neither the formation of the parties’ arbitration agreement nor (absent a valid provision specifically compelling otherwise) the consideration to arbitrate is in issue. In answering both who determines arbitrability and what is subject to arbitration, a court applies state–law contract principles and this chapter. Accord- ingly, to invalidate an arbitration agreement based on generally applicable contract defenses like fraud or unconscionability, but not on legal rules that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue, the court specified in s. 788.02 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 Regional 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 in dispute directing that such arbitration proceed as provided for 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 such 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. 756.06. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury finds that an agreement in writing for arbitration was made in writing and that there is default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1977 c. 187, s. 135, 1979 c. 32 s. 64; Stats. 1979 s. 788.03; Sup. Ct. Order No. 96–08, 207 Wis.2d xv (1997).

An insured who acceded to the insurer’s refusal to arbitrate the insured’s uninsured motorist claim until after the insured’s passengers’ claims were litigated was not an “aggrieved party” within the meaning of this section. Worthington v. Farmers Insur- ance Exchange, 77 Wis.2d 508, 253 N.W.2d 76 (1977).

In the absence of a reservation of rights, “partial participation” in the arbitration process may estop a party from challenging an arbitration agreement. Pilgrim Invest- ment Corp. v. Reed, 156 Wis.2d 677, 457 N.W.2d 541 (Ct. App. 1990).

This section is only available when an underlying lawsuit has not yet been filed. When a lawsuit has commenced, a party may not use the special procedure outlined in this section to compel arbitration. The party may still seek an order to arbitrate in the court where the underlying lawsuit is pending, not by initiating a separate action. The Payday Loan Store of Wisconsin Inc. v. Krueger, 2002 WI App 151, 257 Wis.2d 787, 692 N.W.2d 123–075.

Time-limited and estopped defenses against arbitration are to be determined in the arbitration proceedings, not by a court in a proceeding under this section to compel arbitration. This conclusion in this case was based on Wisconsin’s public policy favoring arbitration, the arbitration agreement in this case, the Realtors Association’s arbitration procedures, the limited role of courts in actions to compel arbitration under this section, and relevant case law. First Weber Group, Inc. v. Synergy Real Estate Group, LLC, 2018 WI App 104, 361 Wis.2d 496, 860 N.W.2d 498, 13–1205.

The legislature has determined that the courts have a limited role in the context of arbitration to decide whether the parties agreed to arbitrate the dispute, the issues are arbitrable, and the parties are limited to the making of the arbitration agreement or the failure, neglect, or refusal to perform under the agreement. When determining whether a dispute is arbitrable, a court’s function is limited to a determination of whether there is a construction of the arbi-
witnesses in circuit court. Witnesses and interpreters attending before an arbitration shall receive fees as prescribed in s. 814.67.

**878.07 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 by the parties the arbitrators are limited to the procedures for discovery described in this section. Borst v. Allstate Insurance Co., 2006 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, 04–0049.

In preserving the 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. IDS Property Casualty Insurance Co., 2013 WI 29, 346 Wis. 2d 450, 826 N.W.2d 812, 11–0067.


**878.08 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.

**878.09 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 within which such award was made for an order confirming the award, and thereupon the court must grant such an 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. 788.10, 1981 c. 390; 1993 a. 788.10.

The time limit under s. 788.13 does not apply when the prevailing party moves to confirm under s. 788.09 and an adverse party wishes to raise objections under ss. 788.10 and 788.11. Milwaukee Police Association v. Milwaukee, 92 Wis. 2d 145, 263 N.W.2d 119 (1977).

An arbitrator appointed under a specific contract had no power to make awards under successor contracts not in existence at the time the grievance was submitted. Milwaukee Board of School Directors v. Milwaukee Teachers’ Education Ass’n, 93 Wis. 2d 145, 287 N.W.2d 131 (1980).

An arbitrator exceeded his authority by directing that the grievant be transferred when the contract reserved transfer authority to the city and chief of police. Milwaukee v. Milwaukee Police Ass’n, 95 Wis. 2d 411, 292 N.W.2d 841 (1980).

Although a contract gave management the right to determine job description classifications, the arbitrator did not exceed his authority by overruling management’s determination that an employee with 8 years of job experience was not qualified for promotion to a job requiring two years of college “or its equivalent as evidence of management.” Oshkosh v. Union Local 796–A, 99 Wis. 2d 95, 299 N.W.2d 210 (1980).

An arbitrator exceeded his authority by directing that the grievant be transferred when the contract reserved transfer authority to the city and chief of police. Milwaukee v. Milwaukee Police Ass’n, 95 Wis. 2d 411, 292 N.W.2d 841 (1980).

An arbitrator appointed under a specific contract had no power to make awards under successor contracts not in existence at the time the grievance was submitted. Milwaukee Board of School Directors v. Milwaukee Teachers’ Education Ass’n, 93 Wis. 2d 145, 287 N.W.2d 131 (1980).

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An arbitrator appointed under a specific contract had no power to make awards under successor contracts not in existence at the time the grievance was submitted. Milwaukee Board of School Directors v. Milwaukee Teachers’ Education Ass’n, 93 Wis. 2d 145, 287 N.W.2d 131 (1980).

An arbitrator exceeded his authority by directing that the grievant be transferred when the contract reserved transfer authority to the city and chief of police. Milwaukee v. Milwaukee Police Ass’n, 95 Wis. 2d 411, 292 N.W.2d 841 (1980).

**878.10 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 proceed the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to 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 imperceptibly executed them that a mutual, final and definite award upon the agreement required the award to be made has not expired, the award is vacated.

(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.

Sub. (1) (d) requires a court to vacate an arbitrator’s award when the arbitrator exceeded his or her powers, or vacating or modifying an award must be vacated when they conflict with governing law, as set forth in the constitution, a statute, or case law interpreting the constitution or a statute. Racine County v. International Ass’n of Machinists & Aerospace Workers, 2008 WI 70, 310 Wis. 2d 508, 751 N.W.2d 312, 2008–2008.

Courts will vacate an award when arbitrators exceeded their powers through perverse misconstruction, positive misconduct, a manifest disregard of the law, or when the award is illegal or in violation of strong public policy. When there is no contractual language that would allow for the arbitrator’s construction, there is no reasonable foundation for the award. In such a case, the arbitrator pervasively misconstrues the contract and exceeds the authority granted by the collective bargaining agreement. Baldwin–Woodville Area School Dist. v. West Central Education Ass’n, 2009 WI 51, 317 Wis. 2d 601, 766 N.W.2d 591, 08–0519. See also Milwaukee Police Supervisors’ Organization v. City of Milwaukee, 2012 WI App 59, 341 Wis. 2d 361; 815 N.W.2d 391, 11–1174.

The arbitration panel’s decision in this case was properly modified by the circuit court under ss. 788.10 and 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., 2013 WI 29, 346 Wis. 2d 450, 828 N.W.2d 812, 11–2067.


788.11 Modification of award. (1) In either of the following cases the court in and for the county wherein the award was made must make an order modifying or correcting the award upon the application of any party to the arbitration:

(a) Where there was an evident miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;

(b) Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted;

(c) Where the award is imperfect in manner of form not affecting the merits of the controversy.

(2) The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.11.

The intent of the parties controls a determination under sub. (1) (b) whether a matter was submitted to the arbitrator. Milwaukee Professional Fire Fighters Local 215 v. Milwaukee, 78 Wis. 2d 1, 233 N.W.2d 481 (1977).

A court had no jurisdiction to vacate or modify an award if grounds under s. 788.10 or 788.11 did not exist. Milwaukee Police Association v. Milwaukee, 92 Wis. 2d 175, 285 N.W.2d 133 (1979).

The arbitration panel’s decision in this case was properly modified by the circuit court under ss. 788.10 and 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 Company, 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09–2848.

788.12 Judgment. Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court wherein the order was granted.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.12.


788.13 Notice of motion to change award. Notice of a motion to vacate, modify or correct an award must be served upon the adverse party or attorney within 3 months after the award is filed or delivered, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

History: 1979 c. 32 s. 64; 1979 c. 176; Stats. 1979 s. 788.13.

The time limit under this section does not apply when the prevailing party moves to confirm under s. 788.09 and an adverse party wishes to raise objections under ss. 788.10 and 788.11. Milwaukee Police Ass’n v. Milwaukee, 92 Wis. 2d 145, 285 N.W.2d 119 (1979).


788.14 Papers filed with motion regarding award; entry of judgment, effect of judgment. (1) Any party to a proceeding for an order confirming, modifying or correcting an award shall, at the time the order is filed with the clerk of circuit court for the entry of judgment thereon, also file the following papers with the clerk of circuit court:

(a) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time, if any, within which to make the award;

(b) The award;

(c) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(2) The judgment shall be entered in the judgment and lien docket as if it was rendered in an action.

(3) The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.14; 1995 a. 224.

Section 806.07 (1) can be used to reopen judgments confirming arbitration awards. Under sub. (3), a judgment confirming an arbitration award shall “have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action.” Sands v. Menard, Inc., 2013 WI App 47, 347 Wis. 2d 446, 831 N.W.2d 805, 12–0286.

788.15 Appeal from order or judgment. An appeal may be taken from an order confirming, modifying or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.15.

788.17 Title of act. This chapter may be referred to as “The Wisconsin Arbitration Act”.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.17.

788.18 Not retroactive. The provisions of this chapter shall not apply to contracts made prior to June 19, 1931.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.18.