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. 111.13, nor to agreements to arbitrate disputes under s. 292.63 (6s) or 230.44 (4) (bmn).

History: 1979 c. 32 ss; Stats. 1979 s. 788.01; 1993 a. 16; 1997 a. 237; 2004 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 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 ch. 788] constitutes waiver of the contractual right to arbitrate. 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. 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 ex rel. Teaching Assistants Associates v. U-W Madison 96 Wis. 2d 492, 292 N.W.2d 657 (Ct. App. 1980). But see also the note to State v. P.G. Miron Const. Co.

Municipal labor arbitration is within the scope of ch. 788. 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 950, 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 ch. 788. 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), 96−0339.

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 unavailingness 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 Association Council, 2005 WI App 180, 283 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 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 “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, no party can later renounce such 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 does 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 Neurosciences Associates, LLC v. Great Lakes Neurosciences Associates, LLC, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767, 16−0601.

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 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 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 proceeding with such arbitration.

History: 1979 c. 32 ss; Stats. 1979 s. 788.02.

Commencing litigation did not waive a contractual right to arbitration. J.J. Andrews, Inc. v. Midland, 164 Wis. 2d 215, 474 N.W.2d 756 (Ct. App. 1991). The right to arbitrate may be waived. Conduct that allows an action to proceed to a point where the purpose of arbitration is frustrated estops a party from claiming a right to arbitration. Meyer v. Classified Ins. Corp. 179 Wis. 2d 386, 507 N.W.2d 149 (Ct. 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 it. Mortimore v. Merge Technologies Inc., 2012 WI App 109, 344 Wis. 2d 459, 824 N.W.2d 155, 11−0393.

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 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 155, 11−0393.

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 unless the parties give arbitrators such authority. The evidence of this grant of 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 Neurosciences Associates, LLC, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767, 16−0601.

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 committing such disputes to arbitration) its enforceability or applicability to the dispute 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. Accordingly, 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 arbitration or that derive their meaning from the fact that an agreement to arbitrate was present.
The court order to arbitrate; procedure. The party aggrieved by the alleged failure, neglect or refusal of another to perform under an 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 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 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 such 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 for arbitration was made in writing and that there is a 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.

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 Insurance Exchange, 77 Wis. 2d 508, 253 N.W.2d 76 (1977).

In the absence of a reservation of rights, “partial participation” in the arbitration proceeding by the party from whom an arbitration agreement was obtained is to be considered as a rejection of the arbitration agreement. Pilgrim Investment Corp. v. Reed, 156 Wis. 2d 677, 457 N.W.2d 544 (Cl. App. 1990).

This section is only available when an underlying lawsuit has not yet been filed. When a lawsuit has been 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, but it must do so in the court where the underlying lawsuit is pending, not by initiating a separate action. The Payday Loan Store of Wisconsin Inc. v. Krueger, 2013 WI App 25, 346 Wis. 2d 237, 828 N.W.2d 587, 12-0753.

Timeliness and estoppel 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. Where an arbitration agreement in this case, the Realtors Association's memorandum 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 such 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 for arbitration was made in writing and that there is a 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.

A substitute member of an arbitration panel shall be appointed by the court.

Arbitrators have no inherent authority to dictate the scope of discovery. Absent an arbitration agreement, the arbitrators have no inherent authority to require a party to produce documents, described in this section. Borst v. Allstate Insurance Company, 2006 WI 70, 291 Wis. 2d 496, 800 N.W.2d 498, 13-1205.

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.
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 Association 97 Wis. 2d 15, 292 N.W.2d 841 (1980). Milwaukee agreed to a contract giving management the authority to determine the 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 another job requiring 2 years of college “or its equivalent in management.” Oshkosh v. Union Local 796–A, 99 Wis. 2d 95, 299 N.W.2d 210 (1980).

The burden of proving “evident partiality” of an arbitrator was not met when the apparent biased remarks of the arbitrator represented merely an initial impression, not a final conclusion. Diversified Management Services v. Slotten, 119 Wis. 2d 441, 351 N.W.2d 176 (Ct. App. 1984).

If an arbitrator had a reasonable basis for not following case law, the arbitrator’s decision will not be interfered with by the court. Lukowski v. Dunkart, 184 Wis. 2d 142, 515 N.W.2d 883 (1994).

“Evident partiality” under sub. (1) (b) exists only when a reasonable person knowing previously undisclosed information would have doubts about the arbitrator’s impartiality that the person would have taken action on the information. DeBaker v. Switzerland Life Ins. Co. 64 Wis. 2d 104, 333 N.W.2d 464 (1983). This section does not prevent the vacation of an arbitration award on the basis of a manifest disregard of the law. Employers Insurance of Wausau v. Lloyd's London, 202 Wis. 2d 673, 552 N.W.2d 420 (Ct. App. 1996), 95–2930.

That an arbitrator made a mistake by erroneously rejecting a valid legal defense does not provide grounds for vacating an award unless the arbitrator deliberately disregarded the law. Flexible Manufacturing Systems v. Super Products Corp. 96 F.3d 96 (1996).

Courts may vacate an arbitration award that was procured by fraud, but should be held to a high standard in order to protect the integrity of arbitration. Allstate Insurance Company v. Johnson, 468 N.W.2d 750 (1991), 108–0519.

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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 material 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 matter 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 2, 253 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.

There is no statutory authority for awarding costs to a party in an arbitration proceeding. Finkenbinder v. State Farm Mutual Insurance Co. 215 Wis. 2d 145, 572 N.W.2d 501 ( Ct. App. 1997), 97–0337.

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 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, 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, correcting 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.