Arbitration clauses in contracts enforceable. A provision in any written contract to settle by arbitration a controversy theretofore 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 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. State 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 Const. Co.

Municipal labor arbitration is within the scope of this chapter. Milwaukee District Council 48 v. Milwaukee Sewerage Commission, 107 Wis. 2d 596, 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 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), 96–0783.

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 arbitration under the ADR agreement, 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.

In determining whether a dispute is arbitrable, a court’s function is to determine if there is construction of the arbitration clause that would cover the grievance on its face; and 2) whether any other provision of the contractual agreement unambiguously stops a party from invoking its right to arbitration. Meyer v. Classified Ins. Corp., 179 Wis. 2d 386, 507 N.W.2d 149 (Ct. App. 1993).

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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 arbitrability; therefore, doubts are resolved in favor of arbitration; Mortimore v. Merge Technologies Inc., 2012 WI App 109, 344 Wis. 2d 459, 824 N.W.2d 155, 11–0399.

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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

2017−18 Wisconsin Statutes updated through 2019 Wis. Act 186 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on November 3, 2020. Published and certified under s. 35.18. Changes effective after November 3, 2020, are designated by NOTES. (Published 11−3–20)
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 Neurosurgical Associates, LLC, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767, 16-0661.

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 fact that the parties to an arbitration agreement are an insurer and an insured has jurisdiction over the parties or of the claims of the parties or of the right to compel arbitration, 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, 2018 WI 138, 361 Wis. 2d 496, 866 N.W.2d 951, 16-0595.

Arbitrators, how chosen. (1) If, in the agreement, provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire that method shall be followed. If no method is provided in the agreement, or if a method is provided and any party thereto fails to make use of the method, or if for any other reason there is a lapse in the naming of an arbitrator or arbitrators or an umpire, or in filling a vacancy, then upon the application of either party to the controversy, the court specified in s. 788.02 or the circuit court for the county in which the arbitration is to be held shall designate and appoint an arbitrator, arbitrators or umpire, as the case or sub. (2) May require, who shall act under the agreement with the same force and effect as if specifically named in the agreement; and, except as provided in sub. (2) or unless otherwise provided in the agreement, the arbitration shall be conducted by a single arbitrator.

(2) A panel of arbitrators, consisting of 3 persons shall be appointed to arbitrate actions to recover damages for injuries to the person arising from any treatment or operation performed by or any omission by any person who is required to be licensed, registered or certified to treat the sick as defined in s. 448.01 (10). (a) One arbitrator shall be appointed by the court from a list of attorneys with trial experience. The list shall be prepared and periodically revised by the State Bar of Wisconsin.

(b) One arbitrator shall be appointed by the court from lists of health professionals prepared and periodically revised by the appropriate statewide organizations of health professionals. The lists shall designate the specialty, if any, of each health professional listed. The organizations of health professionals shall assist the court to determine the appropriate specialty of the arbitrator for each action to be arbitrated.

(c) One arbitrator who is not an attorney or a health professional shall be appointed by the court.

(d) Any person appointed to the arbitration 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 be chosen in the same manner as the person disqualified was chosen.

(e) 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: 1957 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.

808.05 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.

808.06 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 neglects or refuses to obey the subpoena, the issuing party may petition the circuit court for the county in which the hearing is held to impose 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. 814.67.

History: 1965 a. 168.

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An arbitrator did not exceed his powers by adopting a ministerial–substantive distinction in determining the scope of the unfettered management function provided for agreement. The arbitrator did exceed his powers by ordering maintenance of past practice without finding that the agreement covered such a term. Milwaukee Fire Department General Headquarters Local 215 v. Milwaukee, 75 Wis. 2d 1, 253 N.W.2d 481 (1977).

An arbitrator did not exceed their authority by arbitrating a grievance under a “discharge and nonrenewal” clause of a collective bargaining agreement when the contract offered by the board was signed by a teacher after deleting the title “probationary contract” and the board did not accept this counteroffer or offer the teacher a second hearing. Joint School District No. 10 v. Jefferson Education Association, 78 Wis. 2d 94, 253 N.W.2d 536 (1977).

Although the report of an arbitrator did not explicitly mention a counterclaim, the trial court did not err in determining that the denial of the counterclaim was not grounds for objection to the arbitrator’s award. McKenzie v. Warmka, 81 Wis. 2d 131, 260 N.W.2d 752 (1978).

The disclosure requirements for neutral arbitrators regarding the vacation of an award under sub. (1) (b) are discussed. Richco Structures v. Parkside Village, Inc., 82 Wis. 2d 547, 263 N.W.2d 204 (1978).

Courts should apply one standard of review of arbitration awards under municipal collective bargaining agreements. Madison Metropolitan School District v. WERC, 86 Wis. 2d 249, 272 N.W.2d 314 (Ct. App. 1978).

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).

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 415, 287 N.W.2d 131 (1980).

An arbitrator exceeded his authority by directing that the grievant be transferred with authority reserved transferred to another city and changing the grievant’s promotion to a job requiring two years of college “or its equivalent as determined by management.” Oshkosh v. Union Local 796–A, 99 Wis. 95, 299 N.W.2d 210 (1981).

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

An award was vacated for “evident partiality” because the arbitrator failed to discharge his duty in the employment of the employee by supplying a party’s counsel. Spooner Dist. v. N. Educators, 136 Wis. 2d 263, 401 N.W.2d 578 (1987).

A party cannot complain to the courts that an arbitrator acted outside the scope of his jurisdiction if an objection was raised before the arbitrator. DePue v. Master- mold, Inc., 161 Wis. 2d 697, 468 N.W.2d 750 (Ct. App. 1991).

A party disputes the existence of an arbitration agreement may choose not to participate in arbitration and may challenge the existence of the agreement by motion to vacate the award under sub. (1) (d). Schell v. Lundberg, 178 Wis. 2d 239, 504 N.W.2d 115 (Ct. App. 1993).

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

“Evident partiality” under sub. (1) (b) exists only when a reasonable person knows or reasonably should know that the partiality was so great as to destroy the impartiality that the person would have taken action on the information. DeBaker v. Shah, 194 Wis. 2d 104, 533 N.W.2d 464 (1995).

The vacation of an arbitration award on the basis of a manifest disregard of the law. Employers Insurance of Wausau v. Lloyd’s, 202 Wis. 2d 673, 552 N.W.2d 420 (Ct. App. 1996), 95–9290.

An arbitrator’s award that relied on oral testimony with no formal record, rather than the wording of the prevailing party’s proposal, was not final and definite as required by sub. (1) (d). LaCrosse Professional Police Ass’n v. City of LaCrosse, 212 Wis. 2d 95, 568 N.W.2d 20 (Ct. App. 1997), 98–2741.

Courts may vacate an arbitration award that was procured by fraud, but should be hesitant to do so in order to protect the finality of arbitration decisions. To merit vaca- tion of the award, the plaintiff must demonstrate: 1) clear and convincing evidence of fraud; 2) that the fraud materially relates to an issue involved in the award; and 3) that due diligence would not have prompted the discovery of the fraud during or prior to the arbitration. Steicken v. Hensler, 2005 WI App 177, 283 Wis. 2d 755, 701 N.W.2d 1, 03–2990.

Evident partiality under sub. (1) (b) cannot be avoided simply by a full disclosure and determination of impartiality. Brown v. Carpenter, 253 Wis. 2d 594, 646 N.W.2d 264 (2002).

A presumption of impartiality among all arbitrators, whether named by the parties or selected by the parties 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.

An arbitrator or a majority of them may issue a commission, and thereupon the court in and for the county within 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.
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 perversely 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 691, 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., 2012 WI 21, 339 Wis. 2d 1, 810 N.W.2d 775, 09-2848.

A party involved in an arbitration proceeding must ordinarily wait 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 especially urgent or potentially irreparably prejudicial matters that demand the immediate attention of the courts. Marlowe v. IDS Property Casualty Insurance Co., 2013 WI 29, 346 Wis. 2d 450, 828 N.W.2d 812, 11-2067.

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., 86 F.3d 96 (1996).

**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 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.

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), 97-0057.

**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, 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.

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