788.01 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) (bn).

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. 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 Ass’n v. University of Wisconsin–Madison, 96 Wis. 2d 492, 292 N.W.2d 657 (App. 1980). But see State v. P.G. 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 596, 321 N.W.2d 109 (App. 1982).

Insurance coverage is a proper matter for arbitration. Maryland Casualty Co. v. Seidenspinner, 181 Wis. 2d 930, 512 N.W.2d 136 (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 re-hearing 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 (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 (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 the degree as integral as the agreement to arbitrate itself. In light of a consent judgment effectively barriing 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 396, 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 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. However, a provision for arbitration 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 Neurosurgical 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 a provision 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. Oliviera, 536 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. Nevill v. Johnson Controls International PLC, 364 F. Supp. 3d 932 (2019).


788.015 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.

788.02 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 s. 64; Stats. 1979 s. 788.02.


The right to arbitrate may be waived. Consent that allows an action to proceed to a point where the purpose of arbitration is frustrated estops a party from claiming to arbitration. Meyer v. Classified Insurance Corp. of Wisconsin, 179 Wis. 2d 366, 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) 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, 11–1039.

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.


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. The question of arbitrability is for arbitrators such as this court. The evidence of this 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, 16–0001.

A court should order arbitration only if the court is satisfied that neither the formation of the arbitration agreement nor the enforcement of an agreement specifically commits such disputes to an arbitrator——its enforceability or applicability to the dispute is in issue. In answering both who determines arbitrability and what is subject to arbitration, the court applies 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 arbitrations under state law contract law. The question of arbitrability is to be decided by the court, not the arbitrator——its enforceability or applicability to the arbitration 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, 16–0001.

The procedure under this section is somewhat truncated in comparison to s. 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.

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 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 the issue to a jury summoned and selected under s. 756.06. If the jury finds that no agreement in writing for arbitration existed or that the agreement 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 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 insuror who acceded to the insurer’s refusal to arbitrate the uninsured motorist claim until after the insured’s passengers’ claims were litigated was not an “agency of party” within the meaning of this section. Wootson 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 process may estop a party from challenging an arbitration agreement. Pilgrim Investments, Inc. v. Seton Financial Corp., 76 Wis. 2d 677, 357 N.W.2d 544 (Ct. App. 1984).

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 compelling arbitration, but it must do so in the court in which the underlying lawsuit is pending, not in the arbitration court. Payday Loan Store of Wisconsin Inc. v. Kreuger. 2013 WI App 25, 346 Wis. 2d 237, 828 N.W.2d 587, 12–0751.

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. The question of arbitrability is to be determined by the court, not the arbitrator. Midwest Neurosciences Associates, LLC v. Great Lakes Neurosurgical Associates, LLC, 2015 WI 34, 361 Wis. 2d 496, 860 N.W.2d 498, 13–1205.

The legislature has determined that the courts have a limited role in determining whether the terms of an arbitration agreement in this case were agreed to in contemplation of 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 upon such demand 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 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 arbitration clause that would cover the grievance on its face and whether any other provision of the contract specifically excludes it. First Weber Group, Inc. v. Synergy Real Estate Group, LLC, 2015 WI 34, 361 Wis. 2d 496, 860 N.W.2d 498, 13–1205.

The procedure under s. 788.02 is somewhat truncated in comparison to this section, 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.

788.04 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 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 arbitrators with trial experience and minimum qualifications. 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 list 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: 1975 c. 43, 199; 1977 c. 26 s. 75; 1977 c. 418 ss. 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 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. 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 wherein 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. Borst v. Allstate Insurance Co., 2006 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, 04–09–2004.

For a party in arbitration to enjoy discovery outside of that allowed by this section, an insurance policy must provide for it expressly, 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, 828 N.W.2d 912, 11–06–2007.


### 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 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. 788.09; 1981 c. 390; 1993 a. 486.

The time limit under s. 788.13 does not apply when the prevailing party moves to confirm under s. 788.10 and an 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, 288 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 pertinent and material and 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 imperfectly 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 petition for rehearing was filed before an arbitration was ineffective to vacate an award. Milwaukee City Dep’t of Public Safety v. City of Milwaukee, 60 Wis. 2d 860, 211 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 270, 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 otherwise provide for non-neutral arbitrators. Borst v. Allstate Insurance Co., 2006 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, 2004-0.

Sub. (1) (d) requires a court to vacate an arbitrator’s award when the arbitrator exceeded his or her powers 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 751, 791 N.W.2d 312, 2008-0.

Courts will vacate an award when arbitrators exceeded their powers through per-verse 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 con-tradictory 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. Balanced Budget School District No. 7 v. Wisconsin Education Association, 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, 11-1747.

The arbitration panel’s decision in this case was properly modified by the circuit court under this section and 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.

A court has no jurisdiction to vacate or modify an award if grounds under this section or s. 788.10 did not exist. Milwaukee Police Ass’n v. City of Milwaukee, 92 Wis. 2d 175, 285 N.W.2d 133 (1979).

There is no statutory authority for awarding costs to a party in an arbitration proceeding. Finkenbinder v. State Farm Mutual Auto Insurance Co., 215 Wis. 2d 145, 572 N.W.2d 301 (Ct. App. 1997), 97-0357.

A party to a proceeding for an order confirming, modifying or correcting an award shall, at the time the order is filed, serve the clerk of the circuit court with the following papers:

(a) Each notice, affidavit or other paper used upon an application for confirmation, modification or correction of an award, and a copy of each order confirming, modifying or correcting an award.

(b) The award;

(c) Notice of a motion to change award.

There is no retroactive authority to vacate or modify an award if the granting of the order confirming, modifying or correcting an award was not timely. History: 1979 c. 32; 1979 c. 176; Stats. 1979 s. 788.13.

The judgment shall be entered in the judgment and lien docket as if it was rendered in an action. History: 1979 c. 32; 1979 c. 176; Stats. 1979 s. 788.14. 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,” and it may be enforced as if it had been rendered in an action in the court in which it is entered.

(2) The order 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; 64; Stats. 1979 s. 788.15.

The title of this chapter may be referred to as “The Wisconsin Arbitration Act”. History: 1979 c. 32; 64; Stats. 1979 s. 788.17.

The provisions of this chapter shall not apply to contracts made prior to June 19, 1931. History: 1979 c. 32; 64; Stats. 1979 s. 788.18.