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) (b)mm.

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 authority, the ADR agreement failed altogether. Riley v. Extendicare Health Facilities, 227 N.W.2d 668 (1979).

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).

Municipal labor arbitration is within the scope of this chapter. Milwaukee County v. Milwaukee Sewerage Commission, 107 Wis. 2d 596, 321 N.W.2d 309 (1982).

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

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 is not unconditional. A court should decide for itself whether 9 U.S.C. 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 is within or beyond the boundaries of the Act. New Prime Inc. v. Olvera, 586 U.S., ___ 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 and means that it is displaced by the FAA. Nevill v. Johnson Controls International PLC, 364 F. Supp. 3d 932 (2019).


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: 1991 a. 163.

788.03 Court order to arbitrate. A party may petition any circuit court established under this chapter to order arbitration. The petition shall state the nature of the controversy, the names of the parties, and the names of the persons chosen to act as arbitrators.


788.04 Arbitrators, how chosen. The parties to any arbitration action or proceeding shall mutually agree upon the persons chosen to act as arbitrators. If the parties do not agree, the court may appoint persons to act as arbitrators. If the court appoints persons to act as arbitrators, the court may also appoint a single arbitrator to review the award of the panel of arbitrators.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02; 1993 a. 16; 1997 a. 237, 254; 2001 a. 38; 2013 a. 20.

788.05 Court procedure. The parties to arbitration actions or proceedings shall mutually agree upon the rules of procedure to be observed in such action or proceeding.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02; 1993 a. 16; 1997 a. 237, 254; 2001 a. 38; 2013 a. 20.

788.06 Hearsings before arbitrators. Procedure.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02; 1993 a. 16; 1997 a. 237, 254; 2001 a. 38; 2013 a. 20.

788.07 Depositions.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02; 1993 a. 16; 1997 a. 237, 254; 2001 a. 38; 2013 a. 20.

788.08 Written awards.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02; 1993 a. 16; 1997 a. 237, 254; 2001 a. 38; 2013 a. 20.

788.09 Court confirmation award, time limit.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.02; 1993 a. 16; 1997 a. 237, 254; 2001 a. 38; 2013 a. 20.

788.010 Vacation of award, rehearing by arbitrators.

History: 1991 a. 163.

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.
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 153 (2012).

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. Moreover, 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 Neurosurgical Associates, LLC, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767, 16-0061.

A court should order arbitration only if the court is satisfied that neither the formation of the arbitration agreement nor any valid provision specifically committing such disputes to an arbitrator—its enforceability or applicability to the dispute is in issue. In answering both who determines arbitrability and what is subject to arbitration, courts have held that 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. 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 complicated 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 with the provisions thereof 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. 757.05. If the jury finds that no agreement in writing for arbitration existed which 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 c. 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 Insurance Exchange, 77 Wis. 2d 508, 253 N.W.2d 76 (1977).

In the absence of a reservation of rights, “participation in the arbitration process may estop a party from challenging an arbitration agreement.” Pilgrim Investments v. Lex Wys. 2d 677, 457 N.W.2d 544 (Ct. 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 compelling arbitration, but it must do so in the court in which the underlying lawsuit is pending, not in the arbitration proceeding. Payday Loan Store of Wisconsin, Inc. v. Krueger, 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 court’s determination 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, the Realtors Association’s arbitration agreement, 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 legislature has determined that the courts have a limited role in arbitrating under this section, the issues 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 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 shall make an order compelling the parties to proceed with the arbitration in accordance with the terms thereof.

Any application to the court hereunder is 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.

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 court circuit. 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, 04−2004.


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 make such order unless the award is vacated, modified or corrected under s. 788.10 or 788.11. Notice of 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. 396; 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, 285 N.W.2d 119 (1979).

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

(a) Where the award was procured by corruption, fraud or undue means; History: 1979 c. 32 s. 64; Stats. 1979 s. 788.10.

(b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them; History: 1979 c. 32 s. 64; Stats. 1979 s. 788.09.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone 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 imperf ectly 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. Schernecker, 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 arbitration subsides the arbitrator's authority in the arbitration. Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee County, 64 Wis. 2d 651, 221 N.W.2d 673 (1974).

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

Contacts between the arbitrator and one party outside the presence of the other do not in themselves justify vacating an award to the party involved if the challenger does not demonstrate either improper intent or influence by clear and convincing evidence.
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.

Sub. (1) (d) requires a court to vacate an arbitrator’s award when the arbitrator exceeded the powers of the arbitrator or when the arbitrator did not follow the law of damages. Orlowski v. State Farm Mutual Automobile Insurance Co., 2006 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, 2004–04-04.

Sub. (1) (e) requires that the court consider whether 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, 2012–09–64.

Courts will vacate an award when arbitrators exceeded their powers through perverse misconstruction, positive misconduct, a manifest disregard of the law, or when the arbitrators failed to follow or 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.

Thus, in order to vacate an award, the arbitrators have reached a final decision on the award to be given, if any, before turning to the circuit courts. Courts have permitted interlocutory review during an arbitration proceeding but done so only in rare circumstances that present a compelling reason to depart from the normal practice, balancing the need for efficient and orderly arbitration proceedings with the need for an occasional exception to accommodate extraordinary or irreplaceable prejudicial matters that demand the court’s attention. The circuit courts have reached a final decision on the award to be given, if any, before turning to the circuit courts. Courts have permitted interlocutory review during an arbitration proceeding but done so only in rare circumstances that present a compelling reason to depart from the normal practice, balancing the need for efficient and orderly arbitration proceedings with the need for an occasional exception to accommodate extraordinary or irreplaceable prejudicial matters that demand the court’s attention. Baldwin–W oodville Area School District v. West Central Education Ass’n, 2007 WI App 14, 2008 WI 70, 310 Wis. 2d 511, 751 N.W.2d 312, 2002–09–06.

The arbitration panel’s decision in this case was properly modified by the circuit court under this section and s. 788.10 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.

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 Auto Insurance Co., 215 Wis. 2d 145, 572 N.W.2d 301 (Ct. App. 1997), 97–0357.

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 partymoves 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. City of Milwaukee, 52 Wis. 2d 145, 205 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 246, 831 N.W.2d 805, 12–0266.

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.