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 ss. 111.10, nor to agreements to arbitrate disputes under s. 292.63 (6s) or 230.44 (4) (b).

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 an 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. Karl 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 v. Teaching Assistants Ass’n v. University of Wisconsin-Madison, 96 Wis. 2d 492, 329 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 592, 321 N.W.2d 309 (App. 1982).

Insurance coverage is a proper matter for arbitration. Maryland Casualty Co. v. Seidenspinner, 181 Wis. 2d 930, 512 N.W.2d 186 (App. 1994).

Sovereign immunity is not applicable to arbitration, and there need not be specific statutory authority for the state to be subject to the arbitration provisions of this chapter. State v. P.G. Miron Construction Co., 181 Wis. 2d 1045, 512 N.W.2d 499 (1994).

Preclusion doctrines preventing rehearing of identical claims are applicable to arbitration according to a contract’s terms, a court must first know whether the contract itself 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.

Terms of the agreement 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 a right to arbitration. Meyer v. Classified Insurance Corp. of Wisconsin, 179 Wis. 2d 50, 507 N.W.2d 580 (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. Montimore v. Merge Technologies Inc., 2012 WI App 109, 344 Wis. 2d 459, 824 N.W.2d 155, 11–1039.

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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 arbitration issues that give arbitrators such authority. The evidence of the parties' intent that authority 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 the making of the arbitration 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, 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 agreements or that derive their meaning from the fact that an agreement to arbitrate 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, 16-0061.

The procedure under this section is somewhat facilitated 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 agreed to arbitrate, but it must do so in the court in which the underlying lawsuit is pending, not by any court of record having jurisdiction of the parties or of the property involved. However, arbitrators cannot determine whether they have the authority to decide arbitrability unless the parties give arbitrators such authority. The evidence of this grant of authority is 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, 16-0061.

(1) One arbitrator shall be appointed by the court from a list of arbitrators prepared by the court. The list shall be prepared and periodically revised by the State Bar of Wisconsin.

(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 in the type of action to be arbitrated.

(b) Any person appointed to the arbitration panel may disqualify himself or herself by or may 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.

(c) 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. 76 s. 75; 1977 c. 418 s. 929 (41); 1979 c. 124 s. 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 the subpoena is served as prescribed in s. 805.07 (5). If any person so served or refused to obey the subpoena, the issuing party may petition the circuit court for the county in which the hearing is held to impose a

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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 in which such arbitrators, or a majority of them, are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in the courts of record in this state.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.07.

Arbitrators have no inherent authority to dictate the scope of discovery.Absent an express agreement, 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, explicitly, specifically, and in a clearly drafted clause. For a policy to adequately describe the discovery mechanisms to be used at arbitration, it must indicate in the policy that the mechanisms are in fact discovery mechanisms and that they are meant to be available at arbitration. A provision stating that “local rules of law as to procedure and evidence will apply” is not an explicit, specific, and clearly drafted reference to ch. 804 or to any other discovery rules. Marlowe v. JDS Property Casualty Insurance Co., 2013 WI 29, 346 Wis. 2d 450, 829 N.W.2d 11, 08-26-2009.


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 within which such award was made for an order confirming the award, and the court may enter such order unless the award is vacated, modified or corrected under s. 788.07.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.09; 1981 c. 309; 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;

(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 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 impermissibly 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 to rehear was filed poses a question beyond the statutory jurisdiction of the arbitrator. Gallagher v. Schernecker, 60 Wis. 2d 143, 208 N.W.2d 437 (1973).

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).

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.

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.

**788.10 ARBITRATION**

Sub. (1) (d) requires a court to vacate an arbitrator’s award when the arbitrator exceeds her or his powers. Arbitration awards must be vacated when they conflict with governing law, as set forth in the constitution, a statute, or case law interpreting the constitution or a statute. Racine County v. International Ass’n of Machinists & Aerospace Workers, 2008 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, 04–2004.

Sub. (3) (b) requires a court to vacate an arbitrator’s award when the arbitrators exceed 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.

**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. Finkenhaver v. State Farm Mutual Auto Insurance Co., 215 Wis. 2d 145, 572 N.W.2d 501 (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 party moves to confirm under ss. 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, 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. 788.15. 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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