

278.686 Exemption from Uniform Commercial Code -- Security interest binding -- Filing of financing statement with Secretary of State -- Priority of securitized interest -- Exercise of rights and remedies upon default.

- (1) The creation, perfection, priority, and enforcement of any security interest or lien in securitized property to secure the repayment of the principal and interest and other amounts payable in respect of securitized bonds, amounts payable under any ancillary agreement, and other financing costs are governed by KRS 278.670 to 278.696 and 65.114 and not by the provisions of the code or other law, except as otherwise provided in KRS 278.670 to 278.696 and 65.114.
- (2) A security interest in securitized property is created, valid, and binding when the last of all the following actions has occurred:
 - (a) The financing order is issued;
 - (b) A security agreement is executed and delivered by the debtor granting the security interest;
 - (c) The debtor has rights to the securitized property or the power to transfer rights in the securitized property; or
 - (d) The value is received for the grant of the security interest in the securitized property.
- (3) A description of securitized property in a security agreement shall be sufficient if the description refers to KRS 278.670 to 278.696 and 65.114 and the financing order creating the securitized property. A security interest shall attach as provided in this section without any physical delivery of collateral or other act.
- (4) Upon the filing of a financing statement with the Office of the Secretary of State as provided in this section, a security interest in securitized property shall be perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, and regardless of whether the parties have notice of the security interest. Without limiting the foregoing, upon the time of filing a security interest in securitized property shall be perfected against all claims of lien creditors, and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with this section.
- (5) The priority of a security interest in securitized property shall not be affected by the commingling of securitized surcharges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all securitized surcharges that are deposited in any cash or deposit account of the qualifying electric utility where securitized surcharges have been commingled with other funds, and any other security interest that may apply to those funds shall be terminated when the funds are transferred to a segregated account for the assignee or a financing party.
- (6) No application of the formula-based true-up mechanism as provided in KRS 278.670 to 278.696 and 65.114 shall affect the validity, perfection, or priority of a security interest in or a transfer of securitized property.
- (7) If a default occurs of the securitized bonds that are secured by a security interest in the securitized property, the financing parties or their representatives may exercise

the rights and remedies available to a secured party under the code, including the rights and remedies available under Article 9, Part 6 of the code. The commission also may order amounts arising from securitized charges be transferred to a separate account for the benefit of the financing party, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Circuit Court for the county or city in which the electric utility's headquarters is located shall order the sequestration and payment of revenues arising from the securitized charges to the financing parties.

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