

278.688 Sale, assignment, or transfer of securitized property -- Application of income tax law to transaction -- Conditions for enforceability.

- (1) Any sale, assignment, or other transfer of securitized property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to the seller's right, title, and interest in, to, and under the securitized property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes.
- (2) For all purposes other than federal and state income tax purposes, the parties' characterization of a transaction as a sale of an interest in securitized property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A sale or similar outright transfer of an interest in securitized property may occur only when all the following actions have occurred:
 - (a) The financing order creating the securitized property has become effective;
 - (b) The documents evidencing the transfer of securitized property have been executed by the assignor and delivered to the assignee; and
 - (c) Value is received for the securitized property.

The securitized property shall not be subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the securitized property perfected in accordance with this section.

- (3) The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall not be affected or impaired by the occurrence of any of the following factors:
 - (a) Commingling of securitized charges with other amounts;
 - (b) The retention by the seller of:
 1. A partial or residual interest, including an equity interest in the securitized property, whether direct or indirect, or whether subordinate or otherwise; or
 2. The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of securitized charges;
 - (c) Any recourse that the purchaser may have against the seller;
 - (d) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;
 - (e) The obligation of the seller to collect securitized surcharges on behalf of an assignee;
 - (f) The transferor acting as the servicer of the securitized surcharges or the existence of any contract that authorizes or requires the electric utility, to the extent that any interest in securitized property is sold or assigned, to contract with the assignee or any financing party that it will:
 1. Continue to operate its system to provide service to its customers;
 2. Collect amounts in respect of the securitized surcharges for the benefit

and account of the assignee or financing party; and

3. Account for and remit required amounts to or for the account of the assignee or financing party;
 - (g) The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes;
 - (h) The granting or providing to bondholders a preferred right to the securitized property or credit enhancement by the electric utility or its affiliates with respect to the securitized bonds; or
 - (i) Any application of the formula-based true-up mechanism as provided in KRS 278.670 to 278.696 and 65.114.
- (4) Any right that an electric utility has in the securitized property before its pledge, sale, or transfer, or any other right created under KRS 278.670 to 278.696 and 65.114, created in the financing order and assignable under KRS 278.670 to 278.696 and 65.114, or assignable pursuant to a financing order is property in the form of a contract right or a right to sue. Transfer of an interest of securitized property to an assignee shall be enforceable only upon the later of:
 - (a) The issuance of a financing order;
 - (b) The assignor having rights in the securitized property or the power to transfer rights in the securitized property to an assignee;
 - (c) The execution and delivery by the assignor of transfer documents in connection with the issuance of securitized bonds; and
 - (d) The receipt of value for the securitized property.

An enforceable transfer of an interest in securitized property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with KRS 278.692. After the transaction and filing, the transfer of the securitized property shall be absolute and shall be made free and clear of, and not subject to, competing claims of the creditors of the transferor, regardless of whether or not the competing claims are supported by any prior security interest or lien, other than prior claims or security interests in the securitized property perfected in accordance with this section.

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