

2021 Kansas Statutes

66-1,246. Same; sale, assignment and transfer of securitized utility tariff property; characterization; requirements; perfection and priority. (a) Any sale, assignment or other transfer of securitized utility tariff 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 utility tariff 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. 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 utility tariff 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 such interest in securitized utility tariff property. A sale or similar transfer of an interest in securitized utility tariff property may occur only when:

- (1) The financing order creating the securitized utility tariff property has become effective;
- (2) the documents evidencing the transfer of securitized utility tariff property have been executed by the assignor and delivered to the assignee; and
- (3) value is received for the securitized utility tariff property. After such a transaction, the securitized utility tariff 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 utility tariff property perfected in accordance with K.S.A. 2021 Supp. 66-1,245, and amendments thereto.

(b) 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:

- (1) Commingling of funds from securitized utility tariff charges with other amounts;
- (2) the retention by the seller of:
 - (A) A partial or residual interest, including an equity interest, in the securitized utility tariff property, whether direct or indirect or whether subordinate or otherwise; or
 - (B) the right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of securitized utility tariff charges;
- (3) any recourse that the purchaser may have against the seller;
- (4) any indemnification rights, obligations or repurchase rights made or provided by the seller;
- (5) the obligation of the seller to collect securitized utility tariff charges on behalf of an assignee;
- (6) the transferor acting as the servicer of the securitized utility tariff charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in securitized utility tariff property is sold or assigned, to contract with the assignee or any financing party so that the public utility will continue to operate the public utility system to provide service to the assignee's customers, collect amounts relating to the securitized utility tariff charges for the benefit and account of such assignee or financing party and account for and remit such amounts to or for the account of such assignee or financing party;
- (7) the treatment of the sale, conveyance, assignment or other transfer for tax, financial reporting or other purposes;
- (8) the granting or providing to bondholders a preferred right to the securitized utility tariff property or credit enhancement by the public utility or its affiliates with respect to

such securitized utility tariff bonds; or

(9) any application of the adjustment mechanism as provided in K.S.A. 2021 Supp. 66-1,241, and amendments thereto.

(c) Any right that a public utility has in the securitized utility tariff property before its pledge, sale or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in securitized utility tariff property to an assignee is enforceable only upon the latest of:

- (1) The issuance of a financing order;
- (2) the assignor having rights in such securitized utility tariff property or the power to transfer rights in such securitized utility tariff property to an assignee;
- (3) the execution and delivery by the assignor of transfer documents in connection with the issuance of securitized utility tariff bonds; and
- (4) the receipt of value for the securitized utility tariff property.

(d) An enforceable transfer of an interest in securitized utility tariff 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 K.S.A. 2021 Supp. 66-1,248, and amendments thereto. The transfer is perfected against third parties as of the date of filing.

(e) The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or securitized utility tariff property or by the commingling of funds arising from the securitized utility tariff property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under K.S.A. 2021 Supp. 66-1,245, and amendments thereto, is terminated when they are transferred to a segregated account for the assignee or a financing party. If securitized utility tariff property has been transferred to an assignee or financing party, any proceeds of such property shall be held in trust for the assignee or financing party.

(f) The priority of conflicting interests of assignees in the same interest or rights in any securitized utility tariff property is determined as follows:

- (1) Conflicting perfected security interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with K.S.A. 2021 Supp. 66-1,245, and amendments thereto;
- (2) a perfected security interest or right of an assignee has priority over a conflicting unperfected security interest or right of an assignee; and
- (3) a perfected security interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

History: L. 2021, ch. 29, § 7; April. 22.