

Understanding State Minimum Pricing/Markup Tobacco Product Regulatory Schemes, 2005-2014

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Abstract

Background: Pricing laws for tobacco, intended to promote fair competition, have an added benefit of standardizing consumer prices. Pricing formulas that introduce coupons or other discount mechanisms may reduce the law's strength.

Objectives: 1) Understand the complexity and variety across state-level minimum pricing schemes; 2) Determine the practical result of state-level minimum pricing schemes, identifying areas that increase or reduce the strength of a state's pricing efforts.

Methods: Laws were collected for all 50 states plus Washington, D.C. for years 2005-2014. Boolean searches were done in Lexis-Nexis and Westlaw in the following state-level databases: statutes and regulations, case law, Attorney's General opinions, and Dept. of Revenue notices/rulings. General unfair pricing laws that did not specifically reference tobacco/cigarettes, and were not applied to tobacco/cigarettes by a state ruling, were excluded. All laws were double-coded by two legal researchers for one year to ensure consistency in the analysis.

Results: As of January 1, 2014: 31 states apply fair pricing schemes (27 of which apply a specific markup ranging from 2% to 25% of the base cost); 25 states regulate prices at ≥2 distribution levels; 26 states allow price-matching; 21 states allow trade discounts when calculating price; and 9 states allow for coupons to reduce prices below statutory base costs.

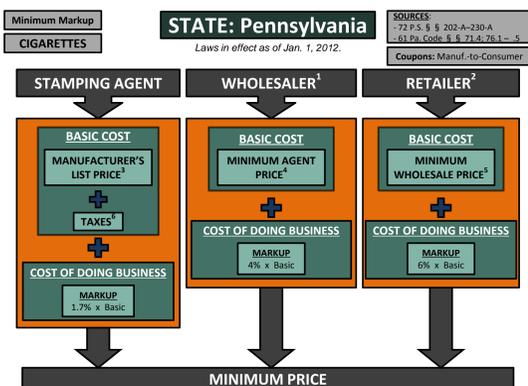
Implications: The intended strength of minimum pricing laws may be diminished where price-reducing mechanisms exist. Removing these mechanisms may provide for stronger, more straightforward, pricing laws.

Definitions and Tools

Minimum Markup: Parties must add a statutory markup (percentage) to the base cost of cigarettes and OTP, which represents an assumed cost of doing business. **[27 States]**

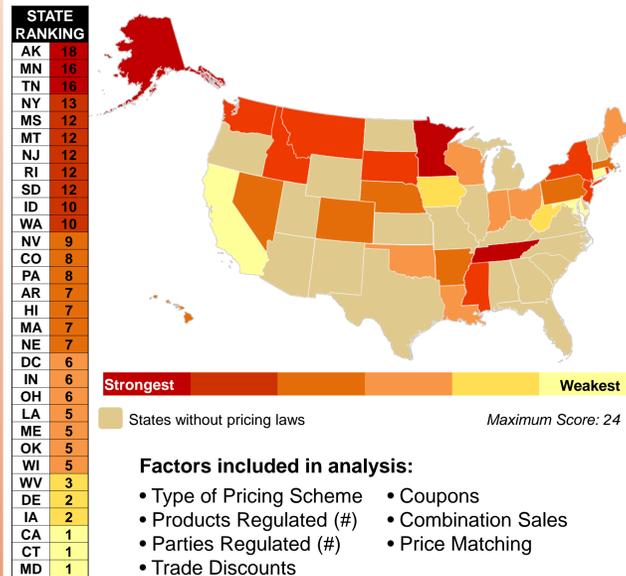
Minimum Pricing: Parties are prohibited from selling cigarettes or OTP below that party's respective cost. No statutory markup (percentage) is applied. **[4 States]**

PATH charts were developed for each state (cigarette and OTP) to aid in analysis. Charts illustrate pricing formulas for each party, as outlined by codified law. Below is an example of a Markup state.



Results

Strength of State Regulatory Pricing Schemes (Laws effective Jan 1, 2014)



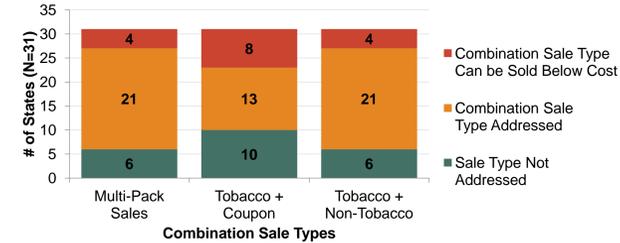
Cigarette Markup Rates Across a Standard Distribution Chain

	Stamping Agent	Wholesaler/Distributor	Retailer/Dealer
Alaska		2%†	4%†
Arkansas		4%	7.50%
California		6%	
Connecticut	0.875%	4.875%	8%
Delaware		5%	
District of Columbia		2%	8%
Hawaii		6%	
Indiana		4%	10%†
Iowa		4%†	8%
Louisiana		2%	6%
Maine		2%	6%
Maryland		5%	8%
Massachusetts		2%	25%
Minnesota		4%	8%
Mississippi		2%	6%
Montana		5%	10%
Nebraska		4.75%†	8%
New Jersey		5.25%	8%
New York	0.875%	3%	7%
Ohio		3.5%	8%
Oklahoma		2%	6%
Pennsylvania	1.7%	4%	6%
Rhode Island		2%	6%
South Dakota		4%	8%
Tennessee			8%
West Virginia		4%	7%
Wisconsin		3%	6%
Average	1.15%	3.668%	8.021%
Lowest	0.875%	2%	4%
Highest	1.7%	6%	25%

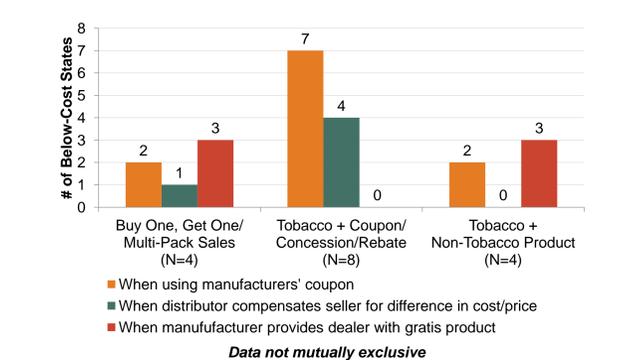
† Only four states' markup rates changed between 2005 and 2014. In 2005, the following states' rates were as follows:
 AK: 4.5% (W), 6% (R) | IA: 3% (W) | IN: 8% (R) | NE: 4% (W)

Results

Combination Sales Types and Below Cost Sale Provisions



Conditions Placed on Below-Cost Combination Sales

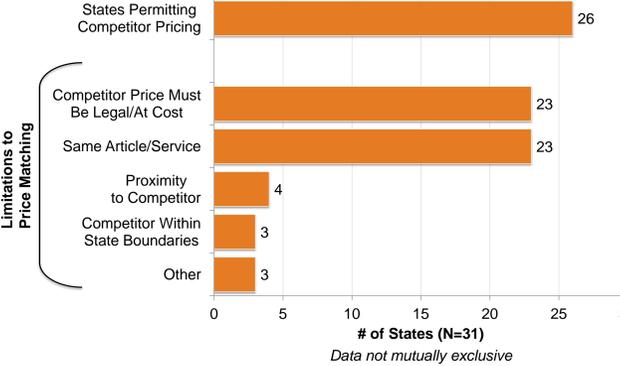


In States Where Coupons May Be Used to Reduce Price Below Cost, Who Can Distribute Coupons to the Consumer?

9 states permit coupons to be used in reducing the sale price of tobacco below statutory cost. Two of those states (CT, DE) are silent about who can distribute coupons to the consumer.

	AR	CT	DE	IA	MD	NE	PA	TN	WV
Manufacturer	X			X	X	X	X	X	X
Wholesaler					X				
Dealer									
Distributor									
Retailer					X				
Agent									
None									
Silent		X	X						
Other									

Competitor Price-Matching



Results

Can a State's Presumptive Cost Be Reduced by Trade Discounts?

- 19 states permit parties to reduce their presumptive costs with trade discounts.
 - Of those states, only 5 define trade discounts;
 - Furthermore, only 2 of those states (OK, WI) explicitly define trade discounts to include buydowns, master-type plans, or other manufacturer-sponsored discount programs.

Common Forms of Discount Programs

Buydown (Paperless Coupon)	Master-Type Program/Plan	Trade Discount	Cash Discount
An agreement between a manufacturer and a dealer, where a manufacturer pays the dealer a certain amount per pack or carton of cigarettes if the dealer agrees to sell those packs or cartons at a discounted price (often in the form of an instant rebate).	A program sponsored by a manufacturer where retailers receive rebates from stamping agents or wholesalers, who are then reimbursed by the manufacturer.	A discount given to the buyer of tobacco products at the time of sale, oftentimes meant to account for differences in the cost of manufacture, sale, or delivery methods or quantities.	Discounts given to retailers or wholesalers by manufacturers for prompt payment of invoices or for payment in a particular form (e.g. EFT payment). Some states explicitly disallow parties from using cash discounts in their pricing calculations.

Implications for State and Community Tobacco Control

The intended strength of minimum pricing laws seems to be reduced with the introduction of trade discounts, combination sales, coupons, and competitor price-matching. Eliminating these mechanisms will likely result in higher retail prices.

Acknowledgments

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For more information visit tobacconomics.org.

