

# Understanding the Relationship Between State Minimum Pricing Laws and Discount Mechanisms, 2005-2014

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## Background

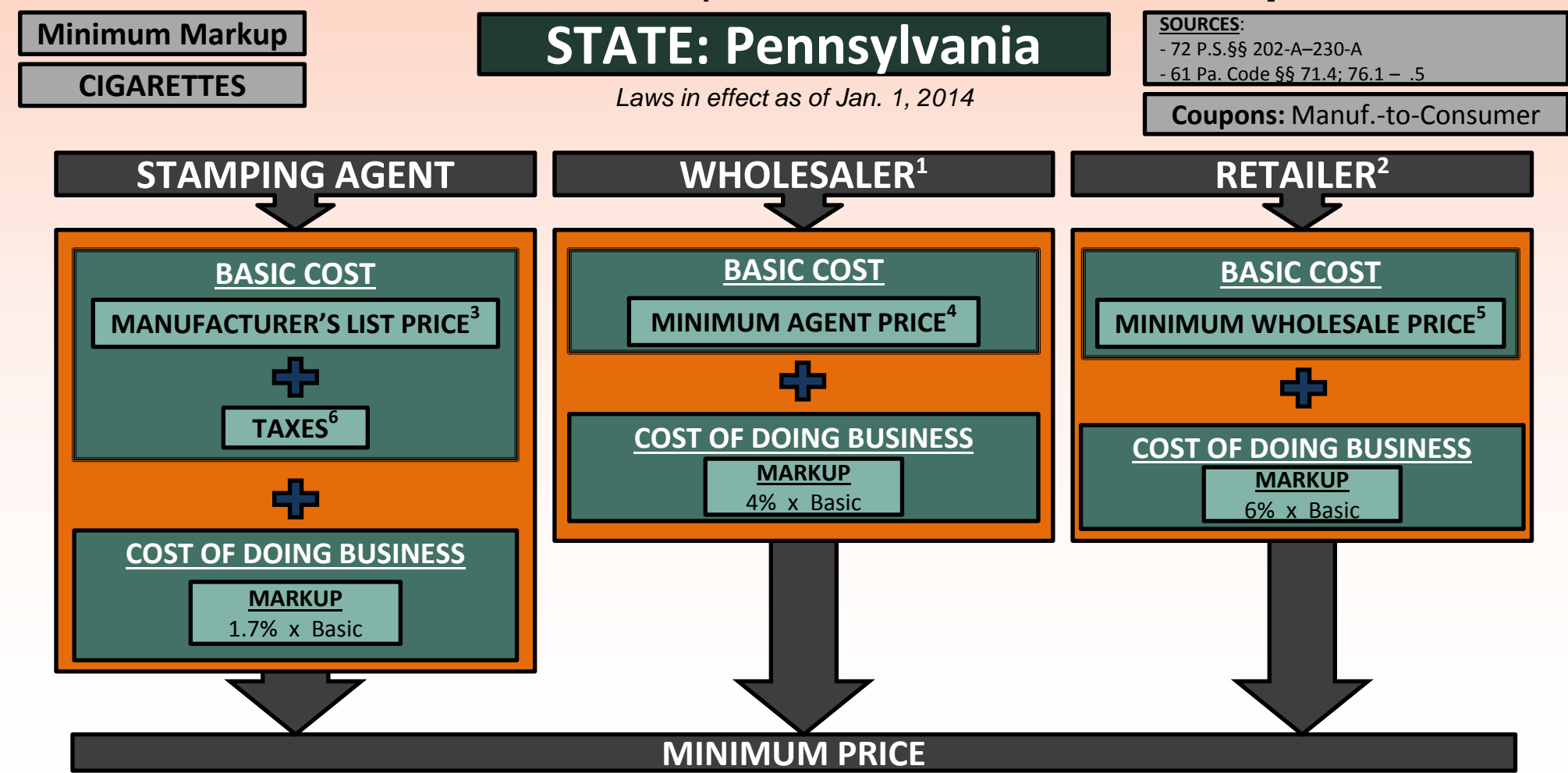
Pricing laws for tobacco, intended to promote fair competition, have an added benefit of standardizing consumer prices. Unfortunately, the power of these pricing laws may be reduced at both the distributor and consumer level. Allowing distributing parties to reduce their costs using trade/cash discounts or competitor price-matching, in conjunction with allowing consumers to reduce the purchase price of products below cost using coupons or to purchase bundled products below cost, lowers the intended strength of these laws.

## Purpose

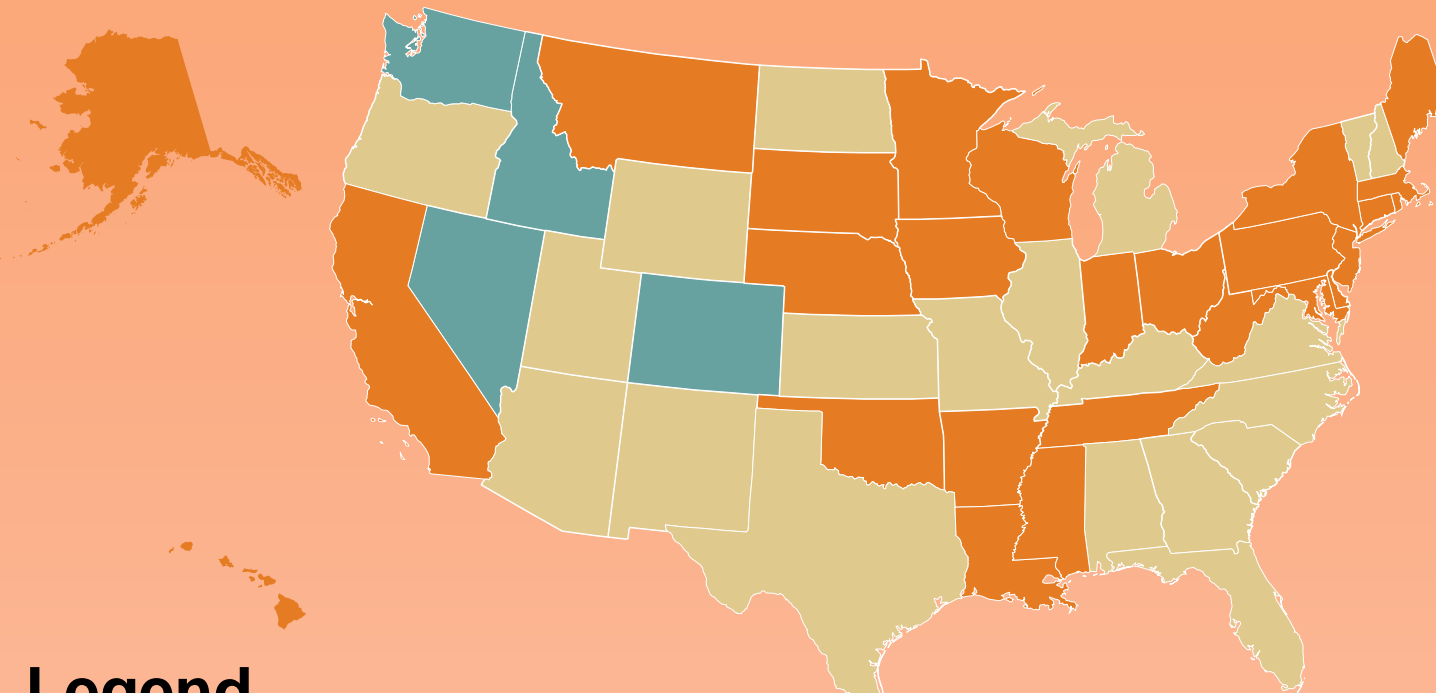
With this study, we sought to understand the complexity and variety of minimum pricing schemes across the United States, and to identify areas that increase or reduce the strength of a state's pricing efforts.

## Methods and Tools

Primary legal research was conducted using the state statutory and administrative law databases for all 50 state and the District of Columbia using Lexis-Nexis and Westlaw. Boolean keyword and indices searches were conducted in the state law databases, using key terms such as "cigarette," "tobacco," "fair," "price," "sales," "trade," and "below". A detailed coding scheme was pilot tested and finalized to capture minimum pricing/markup law provisions. Data were compiled as of January 1 of each year, 2005-2014 inclusive; with 2012 used as the baseline year against which other years' data were compared. PATH charts were developed using policy data 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 **minimum markup state**.



## U.S. Tobacco Pricing Scheme Types (2014)



### Legend

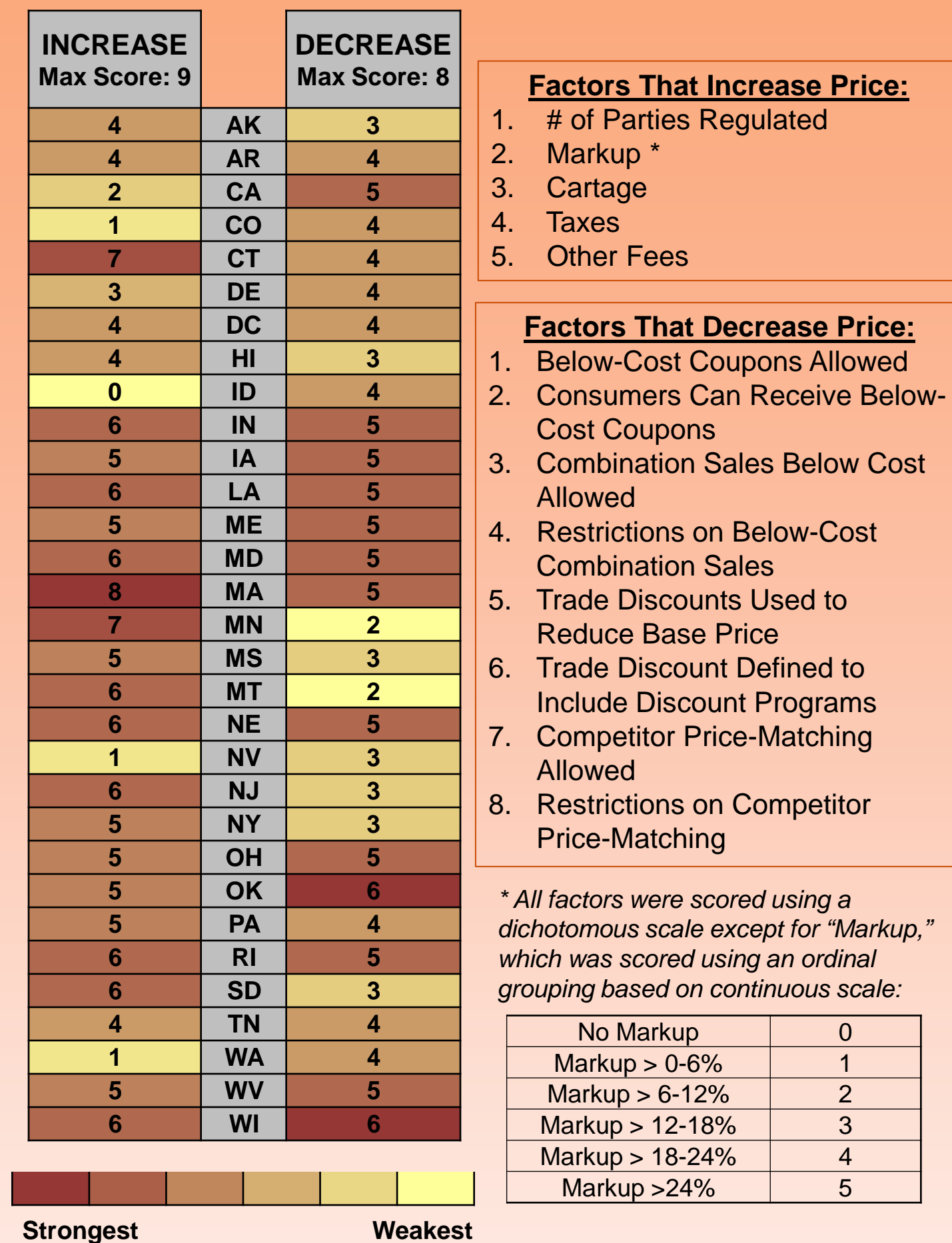
<b>MINIMUM MARKUP</b>	Parties must add a statutory markup (percentage) to the base cost of cigarettes and OTP, which represents an assumed cost of doing business. [27 States]
<b>MINIMUM PRICING</b>	Parties are prohibited from selling cigarettes or OTP below that party's respective cost. No statutory markup (percentage) is applied. [4 States]

### Cigarette Markup Rates Across a Standard Distribution Chain (2014)

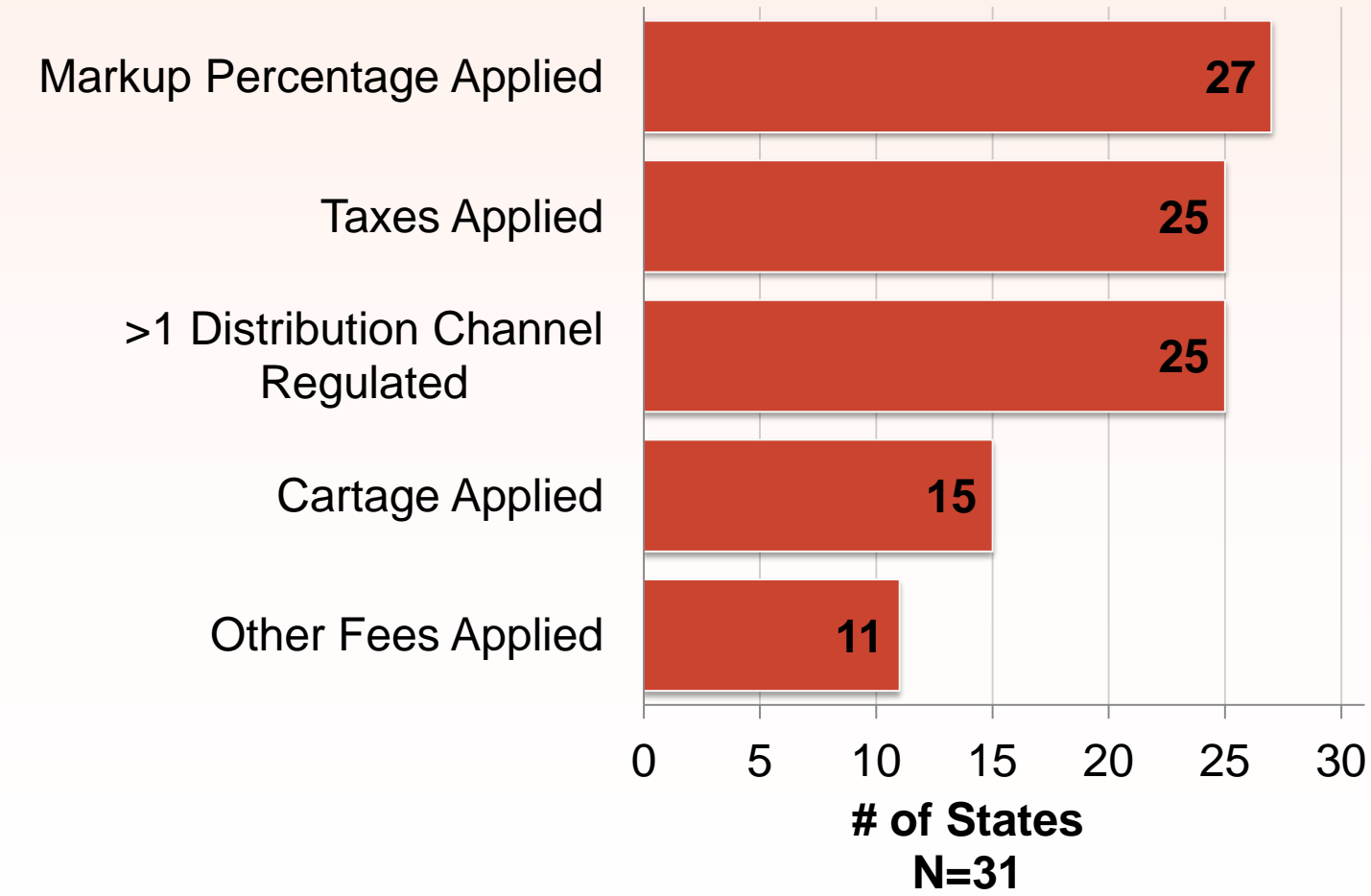
	Stamping Agent (S)	Wholesaler/Distributor (W)	Retailer/Dealer (R)
AK		2% <sup>†</sup>	4% <sup>†</sup>
AR		4%	7.50%
CA		6%	
CT	0.875%	4.875%	8%
DE		5%	
DC		2%	8%
HI		6%	
IN		4%	10% <sup>†</sup>
IA		4% <sup>†</sup>	8%
LA		2%	6%
ME		2%	6%
MD		5%	8%
MA		2%	25%
MI		4%	8%
MS		2%	6%
MT		5%	10%
NE		4.75% <sup>†</sup>	8%
NJ		5.25%	8%
NY	0.875%	3%	7%
OH		3.5%	8%
OK		2%	6%
PA	1.7%	4%	6%
RI		2%	6%
SD		4%	8%
TN			8%
WV		4%	7%
WI		3%	6%
AVG	1.15%	3.668%	8.021%
LOW	0.875%	2%	4%
HIGH	1.7%	6%	25%

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

## How States Utilize Regulatory Mechanisms That Increase and Decrease Base Cost of Cigarettes

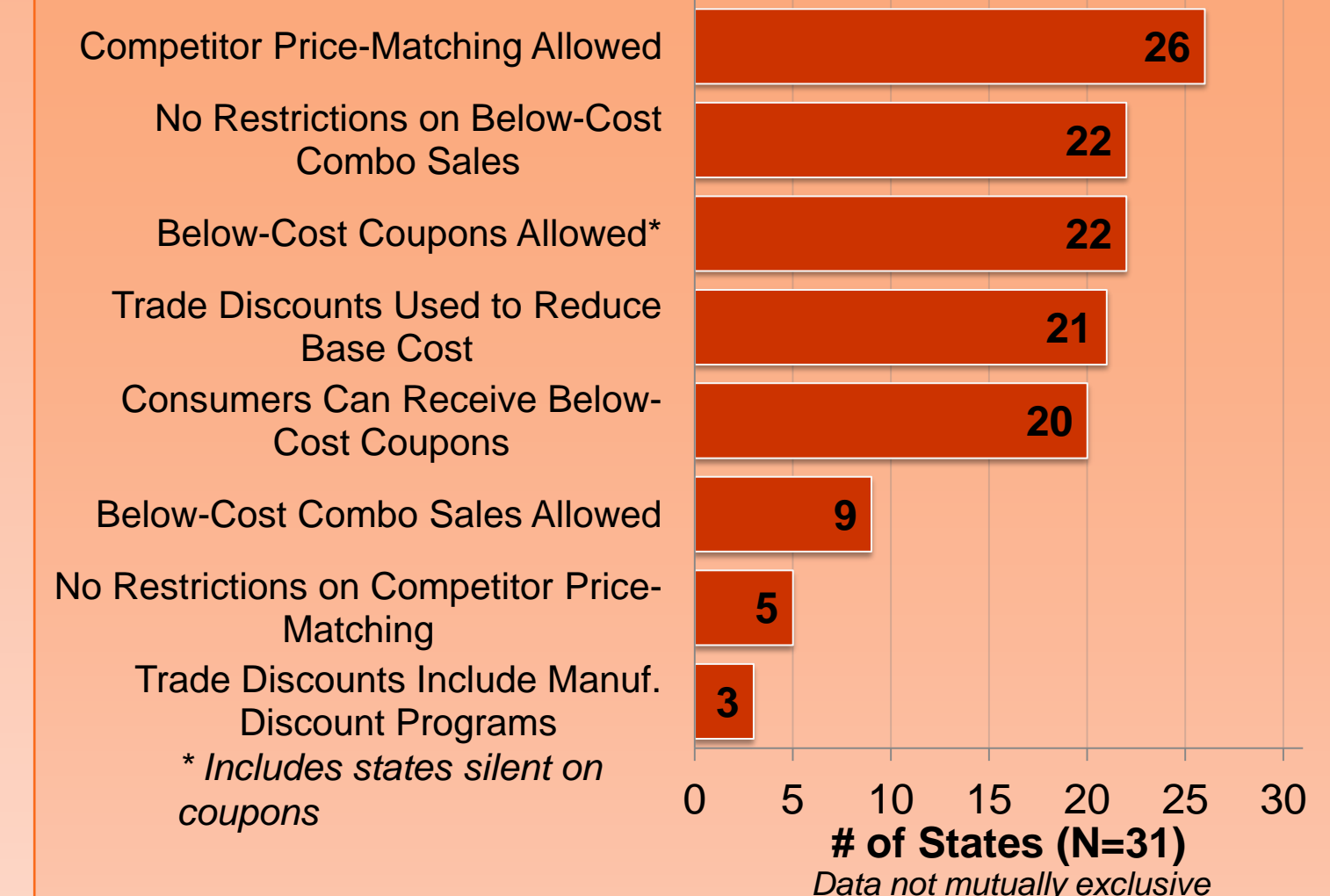


## Frequency of Factors That Increase the Base Cost of Cigarettes (2014)



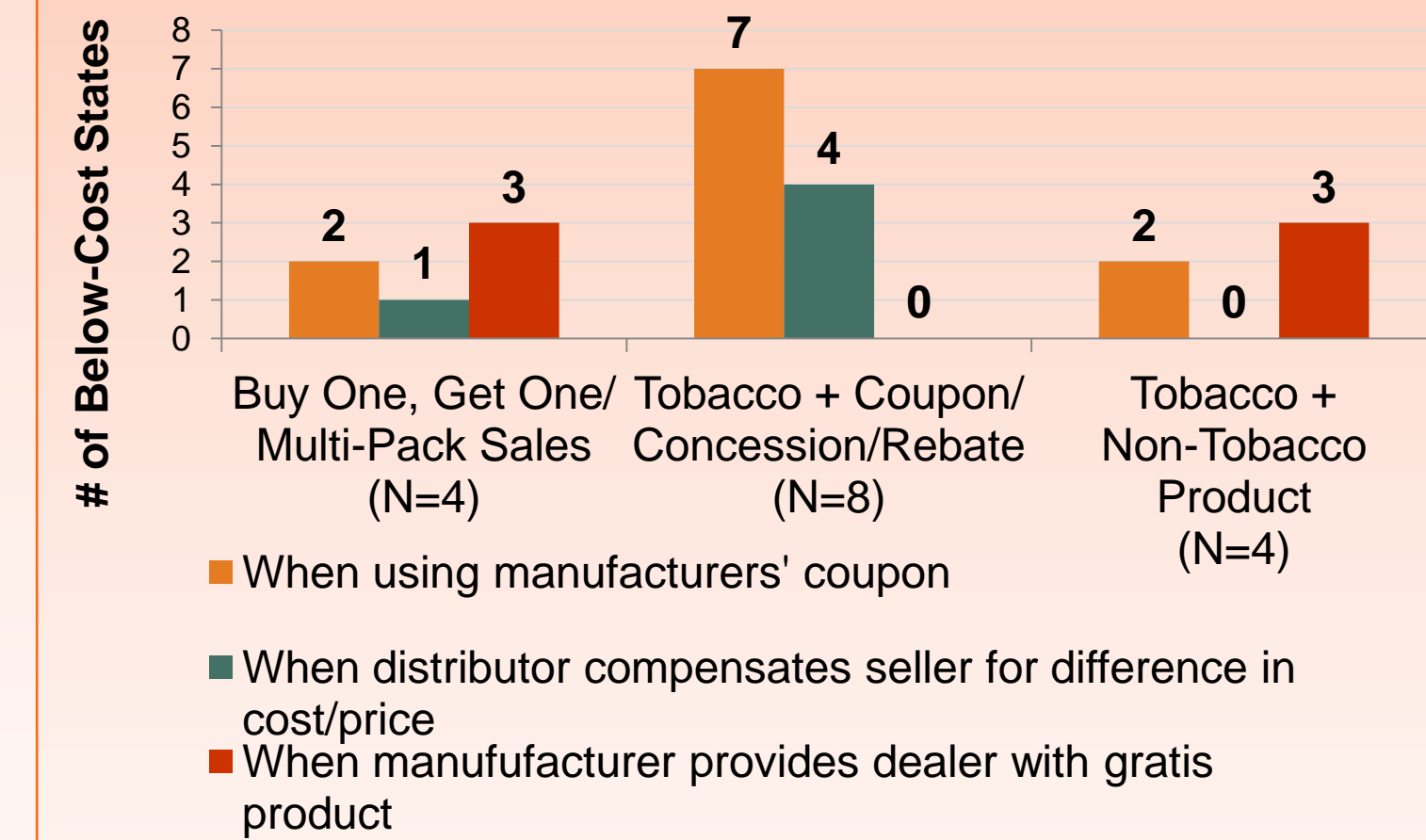
## Results

### Frequency of Factors That Decrease the Base Cost of Cigarettes (2014)

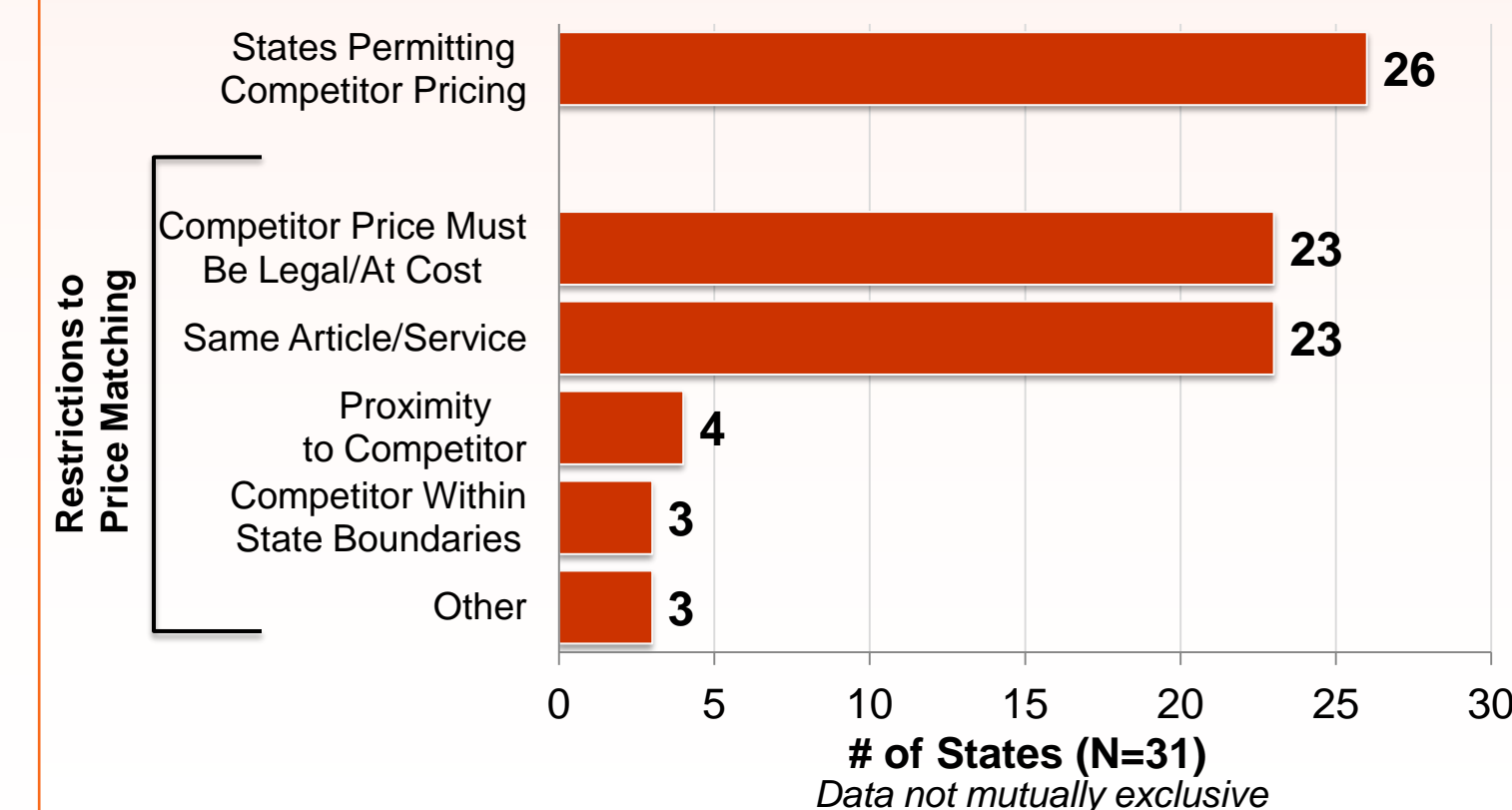


### Restrictions Placed on Below-Cost Combination Sales

9 states permit the below-cost pricing of at least one form of combination sale. Each of those states places restrictions on those sales. \*Data not mutually exclusive.



### Competitor Price-Matching



## 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

The intended strength of minimum pricing laws seems to be reduced with the introduction of trade discounts, combination sales, coupons, and competitor price-matching. Correspondingly, applying set percentage markups, cartage, taxes, and other fees to the base cost of cigarettes on more than one distribution level may result in higher retail prices. These factors should be balanced to reflect the intended effect of minimum pricing laws at the state level.

## Acknowledgements

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