The Colorado Lawsuit

On August 27, 2026, Colorado Attorney General Philip J. Weiser and Martha Fulford, the administrator of Colorado's Uniform Consumer Credit Code, filed a civil complaint against Activehours, Inc., doing business as EarnIn. The action was filed in state court, in the District Court for the City and County of Denver, Colorado.

The Colorado Attorney General's office describes the lawsuit as challenging EarnIn's direct-to-consumer product, rather than an EWA product integrated with an employer. That distinction is important because much of the federal and state debate over EWA products has focused on employer-integrated products in which the provider receives payroll information from the employer and repayment occurs through the employer's payroll process.

EarnIn's model, as described in the complaint, is different. Consumers use the EarnIn application to obtain what EarnIn calls "Cash Outs." The company has described the service as allowing consumers to access money they have already earned before payday and has said that its product is not a loan. EarnIn also maintains that the tips and other fees it receives are not interest or finance charges because they are not mandatory payments by consumers. Finally, EarnIn claims that consumers are not legally obligated to repay the Cash Outs to EarnIn.

Colorado Says EarnIn's Cash Outs Are Loans

The complaint alleges that EarnIn provides consumers with money before payday and then requires them to authorize repayment from their bank accounts. Consumers must link a bank account, and when they request a Cash Out they allegedly authorize EarnIn to initiate electronic debits for the outstanding balance. The repayment date is generally tied to the consumer's next paycheck.

The state contends that those characteristics make the transactions loans under Colorado law. Colorado relies particularly heavily on the Colorado Supreme Court's decision in Oasis Legal Finance Group, L.L.C. v. Coffman, 361 P.3d 400 (Colo. 2015), a case dealing with litigation funding. The complaint states that Oasis instructs courts to look at the substance of a transaction, including how the transaction is designed to work and how it actually operates, rather than simply accepting the parties' labels.

Colorado argues that EarnIn's own agreements and practices demonstrate that repayment is expected. The complaint alleges that EarnIn automatically schedules repayment, retains authority to debit consumers' bank accounts and can continue attempting to obtain repayment following a failed debit.

The complaint also points to EarnIn's extraordinarily high repayment rate in Colorado. From January 2023 through July 2025, consumers allegedly repaid 99.18% of transactions, representing 99.23% of the dollars owed, including tips and fees. Colorado says that repayment experience undermines EarnIn's characterization of Cash Outs as transactions for which consumers have no obligations to repay.

As stated above, EarnIn's agreements allegedly state that consumers have no legal or contractual obligation to repay a Cash Out and that EarnIn has no legal or contractual remedy based on nonpayment. But the complaint alleges that consumers who do not repay are barred from obtaining additional Cash Outs and that EarnIn nevertheless has substantial mechanisms in place to obtain repayment.

Colorado argues that the practical operation of the product, rather than the language used in the agreement, should control.

The Cost of the Cash Outs

Colorado alleges that EarnIn made more than 3.15 million Cash Outs to 56,778 Colorado consumers between January 2023 and July 2025. The total amount financed was approximately $300 million, while EarnIn allegedly collected $16.14 million in tips and Lightning Speed fees.

The average Cash Out was approximately $94.87, and the average term was only about 9.74 days. Yet 85.5% of the transactions allegedly involved a Lightning Speed fee, 50.17% involved a tip, and 92.1% involved either a tip or a Lightning Speed fee. Colorado calculates that the resulting average APR was 387.69%.

The complaint describes several consumers whose effective APRs were substantially higher. One consumer allegedly made 1,151 Cash Outs over the relevant period and paid $4,038.50 in Lightning Speed fees, resulting in an average APR of 1,421.06%. Another allegedly made 1,033 Cash Outs and paid $8,561.22 in tips and Lightning Speed fees, producing an alleged average APR of 1,539.55%. A third consumer allegedly incurred an average APR of 2,215.63%.

Those calculations are central to Colorado's argument that EarnIn is operating a high-cost lending business while avoiding the restrictions that Colorado law imposes on lenders.

The Lightning Speed Fees

EarnIn's expedited-transfer fees are another important part of Colorado's case.

According to the complaint, consumers could receive their money immediately only by paying a "Lightning Speed" fee. Without the fee, the transfer could take one or two business days. Colorado alleges that EarnIn nevertheless advertised that consumers could access their pay immediately and that there were "no hidden fees" or "mandatory fees."

The complaint alleges that EarnIn began charging Lightning Speed fees in 2022 and subsequently increased them. Between January 2023 and July 2025, Colorado consumers allegedly paid an average of $4.20 per transaction for Lightning Speed. Colorado says the fee was particularly profitable because EarnIn's cost for a real-time payment was only a small fraction of what consumers were charged.

Colorado contends that these fees constituted finance charges that should have been disclosed under the Colorado Uniform Consumer Credit Code.

The "Optional" Tip Issue

The complaint separately takes aim at EarnIn's tipping practices.

EarnIn allegedly represented that tips were entirely optional. Colorado contends, however, that the company's application was designed to make declining a tip difficult and that EarnIn internally referred to these design techniques as "roadblocks."

The complaint alleges that a consumer using the 2023 version of the app had to make at least 18 separate taps to complete a Cash Out while reducing the default tip to zero. A $100 Cash Out allegedly carried a default $11 tip and reducing that amount to zero required 13 taps on a minus button.

Colorado also alleges that the application made the zero-tip option visually less prominent, used messages encouraging consumers to "pay it forward," and displayed other statements designed to encourage tipping. The complaint alleges that internal testing showed that removing certain messages reduced the amount consumers tipped.

The state further alleges that EarnIn described tips to investors as revenue and conducted A/B testing designed to maximize its "monetization" of tips and Lightning Speed fees.

EarnIn stopped charging tips in July 2025, according to the complaint.

Colorado's Six Claims

The complaint asserts six claims under Colorado law.

The first claim alleges excessive and unauthorized charges under Colo. Rev. Stat. § 5-2-201. Colorado contends that the Cash Outs are "supervised loans" because they are consumer loans carrying finance charges in excess of 12% per year and that the charges exceeded the amounts permitted by the UCCC.

The second claim alleges violations of the Colorado disclosure requirements under Colo. Rev. Stat. § 5-3-101. The state contends that EarnIn extended credit and charged finance charges without making the disclosures required by Colorado law.

The third claim alleges unlicensed activity under Colo. Rev. Stat. § 5-5-201. Because Colorado characterizes the Cash Outs as supervised loans, it alleges that EarnIn was required to obtain a supervised-lender license and was prohibited from collecting finance charges without one.

The fourth claim invokes Colorado's Deferred Deposit Loan Act (DDLA), Colo. Rev. Stat. §§ 5-3.1-101 et seq. The complaint points out that Colorado voters approved Proposition 111 in 2018 by a 77% vote. The measure established a 36% APR ceiling for payday loans and was intended to address what the voters regarded as a debt trap created by repeated high-cost borrowing.

Colorado contends that the DDLA's definition of a payday loan is broad enough to cover EarnIn's transactions because an "instrument" includes an authorization to transfer or withdraw funds from a consumer's account.

The fifth claim alleges that EarnIn's use of dark patterns violated the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(rrr). The statute prohibits knowing or reckless unfair or deceptive trade practices, and Colorado contends that EarnIn's interface was designed to manipulate consumer choice and induce consumers to pay tips.

The sixth claim alleges false or misleading statements concerning price under Colo. Rev. Stat. § 6-1-105(1)(l). Colorado contends that EarnIn represented that consumers could access their money immediately without fees when, in reality, an expedited transfer required payment of a Lightning Speed fee.

Colorado seeks injunctive relief, restitution, disgorgement, refunds, civil penalties and other remedies.

Is Colorado an Outlier?

Colorado's position is not unique, but neither is there a uniform national approach to EWA.

According to Urban Institute, as of March 2026, 12 states had adopted EWA-specific laws or regulations. The Urban Institute describes the resulting landscape as a patchwork in which states differ over whether EWA is credit, how providers may charge consumers, what disclosures are required and what restrictions apply to repayment and collection.

The important point is that most of these statutes do not simply leave EWA providers entirely outside consumer-finance regulation. Instead, they establish special rules designed to determine when an EWA provider can operate without being treated as a conventional lender.

Kansas provides a particularly useful example. Under the Kansas Earned Wage Access Services Act, Kan. Stat. Ann. § 9-2407, compliant EWA services are expressly declared not to be loans or other forms of credit, and providers are not considered creditors or lenders. The statute also provides that fees, voluntary tips, gratuities and donations paid in accordance with the Act are not interest or finance charges.

But Kansas did not simply give EWA providers a blanket exemption. Providers must register, and the statute imposes numerous consumer protections. Among other things, providers must disclose fees, explain how consumers can receive proceeds at no cost and disclose that tips are voluntary and may be zero.

Kansas also prohibits providers from compelling repayment through lawsuits or third-party collection, charging late fees or interest, misleading consumers about the voluntary nature of tips, or conditioning eligibility on whether a consumer pays a tip. Kan. Stat. Ann. § 9-2406.

Those provisions are noteworthy when read alongside Colorado's allegations. Colorado says EarnIn's product functions as a loan because of its repayment mechanisms and because consumers routinely pay fees and tips. Kansas, by contrast, has legislatively determined that compliant EWA is not credit while imposing rules intended to preserve the characteristics that distinguish EWA from lending.

California has taken another approach. The California Department of Financial Protection (DFPI) and Innovation requires persons offering "income-based advances" to California residents to register with the Department under the California Consumer Financial Protection Law. DFPI defines an income-based advance as an advance based on accrued but unpaid income that is scheduled to be repaid in a single payment on the anticipated date the income will be paid. Registration became effective February 15, 2025.

The result is a fragmented regulatory landscape. Providers cannot necessarily assume that a product that is treated as EWA and not credit in one state will receive the same treatment in another.

Colorado's Approach Is Particularly Significant

There is an important difference between Colorado's lawsuit and the states that have enacted EWA-specific statutes.

Colorado is not relying on a newly enacted EWA statute that says how EWA should be regulated. Instead, the state is attempting to apply existing provisions of the UCCC, the Deferred Deposit Loan Act and the Colorado Consumer Protection Act to EarnIn's existing product.

The question for the Colorado court will not simply be whether EarnIn satisfies the requirements of an EWA statute. It will have to consider whether, under Colorado's existing law, the substance of EarnIn's transactions makes them consumer loans notwithstanding EarnIn's contractual description of the product.

The answer could turn on facts that are less important under statutes that expressly create an EWA safe harbor, including the manner in which consumers authorize repayment, the extent to which a provider can pursue repayment, the fees charged and the provider's treatment of consumers who do not repay.

The CFPB's Changing Position

The federal regulatory history adds another layer to the issue.

In 2020, the CFPB issued an advisory opinion concerning a narrowly defined form of employer-partnered EWA. The Bureau concluded that a "Covered EWA Program" meeting specified conditions did not involve an extension of credit for purposes of the Truth in Lending Act and Regulation Z.

The Bureau subsequently took a much different approach. In July 2024, the CFPB proposed an interpretive rule that would have treated many paycheck-advance products as credit subject to the Truth in Lending Act. The proposal specifically raised questions concerning expedited-delivery fees and tips as potential finance charges.

The CFPB's research at the time underscored why the issue mattered. In a 2024 report, the Bureau examined employer-partnered EWA products and reported an illustrative annual percentage rate of 109.5% for a typical transaction based on the methodology it used.

That approach did not last. The CFPB withdrew its earlier EWA guidance in 2025 and in December 2025 issued a new advisory opinion entitled "Truth in Lending (Regulation Z); Non-application to Earned Wage Access Products." The current opinion concludes that a "Covered EWA" transaction meeting the requirements specified by the Bureau is not credit under Regulation Z. The advisory opinion is published at 90 Fed. Reg. 60069 (Dec. 23, 2025).

The current CFPB framework is quite specific. Among other requirements, a Covered EWA transaction cannot exceed the accrued cash value of wages the worker has earned, as determined using payroll data. In addition, the provider must use a payroll-process deduction rather than debiting the consumer's regular transaction account, subject to limited exceptions.

The CFPB framework also requires the EWA provider to have no legal or contractual claim against the worker for repayment and restricts traditional debt-collection and credit-reporting practices.

These requirements are particularly relevant to the Colorado case because Colorado alleges that EarnIn's product operates differently. The complaint alleges that EarnIn requires consumers to authorize ACH debits from their bank accounts and reserves the right to make repeated debit attempts, including attempts extending well beyond the expected payday.

The CFPB's current position therefore does not necessarily help EarnIn with Colorado. The CFPB advisory opinion addresses whether a defined category of EWA constitutes "credit" under federal TILA and Regulation Z. It does not determine whether a product is a loan under Colorado law, and the CFPB expressly limited the scope of the opinion to Covered EWA transactions.

That distinction is critical. A product could fall outside the definition of credit under the CFPB's current interpretation of Regulation Z while still being treated as a loan under a particular state's consumer-credit statute.

The Dark-Pattern Issue Could Have Broader Consequences

Even if EarnIn ultimately prevails on Colorado's loan theory, the dark-pattern allegations could make this litigation important.

Colorado is alleging more than simply that EarnIn charged fees. It alleges that the company's web interface was deliberately designed to influence consumers' decisions about whether to pay supposedly optional amounts.

The complaint alleges that EarnIn used defaults, repeated screens, visual cues, emotionally charged messaging and additional steps to make paying a tip easier than declining one.

This theory is becoming increasingly important in consumer financial services because many financial products are now delivered almost entirely through mobile applications.

The legal question is not necessarily whether a consumer technically had the ability to decline a payment. The more difficult question is whether the provider's web interface was designed in a way that effectively undermined that choice. Colorado has expressly incorporated that concept into its Consumer Protection Act claim, alleging that EarnIn's design manipulated consumers and impaired their ability to make autonomous decisions.

The allegations also have an interesting parallel in Kansas. Kansas's EWA statute specifically prohibits providers from misleading consumers about the voluntary nature of tips and requires providers that solicit tips to tell consumers immediately before each transaction that the tip may be zero and is voluntary. Kan. Stat. Ann. §§ 9-2405(h), 9-2406(g).

Thus, the issue presented by Colorado is not simply whether tips are legally "optional." Regulators and legislatures increasingly appear interested in how the option is presented to the consumer.

What the Case Could Mean for EWA Providers

The Colorado litigation could have implications well beyond EarnIn.

For EWA providers, and providers of other alternative "non-loan" products, the most important lesson may be the reminder that regulators and courts are likely to examine the underlying transaction, including how the consumer obtains the money, how repayment occurs, what fees are imposed, whether the provider has recourse against the consumer and how the product is presented through the application.

The case also illustrates why the distinction between employer-integrated and direct-to-consumer EWA matters. The CFPB's current Covered EWA framework places considerable emphasis on payroll data and payroll-process deductions. Colorado's allegations against EarnIn concern a product in which consumers link their own bank accounts and authorize the provider to debit such accounts.

State statutes may provide a safe harbor for EWA, but those safe harbors generally come with conditions. Kansas, for example, requires registration and imposes restrictions on fees, tips, repayment and collection.

The Colorado lawsuit therefore may ultimately become a test of where the line should be drawn between EWA and short-term credit.

House Republicans Introduce Omnibus Reform Legislation Clarifying that EWA Is Not Credit

Section 304 incorporates into H.R. 10184, The Consumer Financial Protection Accountability and Reform Act of 2026 (The Reform Act) the substance of H.R. 9330, the "Earned Wage Access Consumer Protection Act," introduced by Rep. Bryan Steil (R-WI), which was ordered to be reported favorably by a 29-22 vote of the House Financial Services Committee on June 30, 2026.

Section 304 of the Reform Act would establish a federal statutory framework for earned wage access services. Among other things, an earned wage access provider that charges a consumer a fee to access earned wages would have to offer the consumer a no-cost option to receive the same amount of earned wages. The no-cost transfer generally would have to be initiated within one business day.

Providers also would be required to make specified disclosures before entering into an agreement with a consumer, including limitations on the amount and frequency of wage access.

Perhaps most importantly, the legislation would provide that earned wage access services complying with the Reform Act, and associated fees or tips, would not be treated under federal law as credit, a loan, debt, or consumer credit. The provider would not be treated as a creditor or lender, and the fees or tips would not be treated as interest or a finance charge.

The legislation also contains an important federal-state partial preemption provision. States generally could not treat compliant earned wage access services as credit, loans, or debt, or prohibit or significantly interfere with their provision. The bill nevertheless preserves state laws of general applicability, including laws concerning fraud, deceit, UDAP, contracts, property, and taxation.

It seems unlikely that this Bill will become law this year.